



# City of Westminster Draft Cabinet Member Report

<b>Decision Maker:</b>	<i>Deputy Leader and Cabinet Member for Built Environment</i>
<b>Date:</b>	<i>6 December 2016</i>
<b>Classification:</b>	<i>General Release</i>
<b>Title:</b>	<i>Building Control – Cross Borough Partnership Proposals</i>
<b>Wards Affected:</b>	<i>All</i>
<b>Key Decision:</b>	<i>Approval is required for the service area to move into a partnership arrangement with both the Royal Borough of Kensington &amp; Chelsea and the London Borough of Camden</i>
<b>Financial Summary:</b>	<i>The proposal will reduce the overall cost of the service and this will be reflected in the charges made to customers</i>
<b>Report of:</b>	<i>Executive Director, Growth, Planning and Housing</i> <i>Ed Watson</i>

## **1. Executive Summary**

- 1.1 This report sets out the proposals to create a partnership between Westminster's existing Building Control team and those of the Royal Borough of Kensington and Chelsea (K&C) and the London Borough of Camden.

## **2. Recommendations**

It is recommended that:

1. That the Cabinet Member agrees in principle to enter into a partnership arrangement with RB Kensington & Chelsea and the London Borough of Camden to share their respective Heads of Service for Building Control. Once in place the new head of service will draft proposals for the merger of all existing teams into a single unified team.

2. It is recommended that staff are consulted and discussions continue on the operating model and to identify a host borough, subject to an agreed set of criteria including cost, location and systems. The host borough would then lead on the recruitment of a Head of Service, in consultation with the other two boroughs. The final decision to enter into the shared service, or to withdraw from discussions, would be taken by the Cabinet Member.

### **3. Reasons for Decision**

- 3.1 Several local authorities across the country have decided to share building control services to streamline delivery mechanisms, increased resilience, make savings and create efficiencies. In a climate where the private sector continues to provide competition for non-statutory building control work, authorities that have shared building control services have seen a sustained or increased market share over time. Additionally, those that have set up as Local Authority Trading Companies (LATCs) have been able to operate as commercial companies whilst being able to keep strong links to their parent local authorities.
- 3.2 Officers in Westminster, K&C and Camden have significant experience of setting up shared services and are coming together now to assess the opportunities for creating a Central London shared service for Building Control, building on lessons learned and research across all three boroughs.
- 3.3 At present, all boroughs have agreed to build a business case which, if successful, would see a shared service established under a joint head of service by April 2017. This paper sets out the key drivers and options for establishing a shared service and the expected timescales for this.

### **4. Background, including Policy Context**

- 4.1 The main driver for setting up a building control shared service is to ensure that the service is resilient to a number of challenges within the current market. Westminster has seen their market share drop by 15% over the past 5 years from 35% to 20% , which is in line with a falling market share for local authority services nationally.
- 4.2 Based on research and conversations with authorities that have chosen to share services, it is anticipated that a shared service between these authorities will lead to a number of benefits and efficiencies for all partner boroughs.
- 4.3 In this case, there will be a saving initially from two head of service posts via the establishment of one shared Head of Service post initially. In the medium term, it is anticipated that there would be efficiencies created by streamlining delivery and there could be further savings made from duplicate posts and back office support in the long term. A number of potential structures have been considered and these are attached within Appendix A.

- 4.4 Additionally, by bringing services together, the shared service would need to standardise an hourly rate across the three boroughs and there is an opportunity to make the revised rate more competitive with the private sector due to proposed reduction in expenditure.
- 4.5 There will also be an opportunity to maximise each borough's existing commercial partnerships across the larger geographical area by marketing the shared service as a trusted council brand. Additionally, once the shared service has built its brand as a trusted Central London competitor, there will be further opportunities to broker new commercial partners.
- 4.6 Over the long term, it is also thought that merging staff expertise and specialisms across the three teams will also contribute to building a stronger reputation for delivering quality service and will retain and attract talent.
- 4.7 If the shared service goes ahead and is operational by April 2017, it would be the first to come together in London and act as a proof of concept. From that point onwards there would be opportunities to look at joining up with other Central London Forward boroughs, which would further contribute to savings and resilience.

## 5. Proposed changes

- 5.1. Officers have considered a number of business models in bringing together a shared service. These are outlined below, with option 2 splitting into 3 sub-options.

Models	
<b>Option 1: BAU</b>	
<p><b>Option 2: Temporary shared service</b></p> <p>Staff move to a host borough and success of the shared service will be reviewed at the end of a defined period e.g. 2 years.</p>	<p><b>2a</b> Staff seconded and processes remain separate with the view that the service may not continue in the future; keeping them separate would make it easier to separate the service back out</p>
	<p><b>2b As 2a</b> but processes, systems etc will be fully integrated with staff working across all areas. Staff would move across on individual secondments.</p>
	<p><b>2c As 2b</b> but staff moved across under section 113 agreement - eliminating need for individual secondment agreements (this is a common method across shared services).</p>
<b>Option 3: Permanent shared service - TUPE</b>	
<b>Option 4: Local Authority Trading Company (LATC)</b>	

- 5.2 *Option 1* - As set out above, building control services have seen an overall downward trend in their market share due to private sector competition. Although this option would have the least impact on staff in the short term, the financial challenges facing all authorities could result in staff reductions in the future if income continues to fall. Additionally, the commercial benefits of this option are limited when compared to the opportunities that a shared service/LATC could create.
- 5.3 *Option 2* - A temporary shared service would benefit from aforementioned market opportunities and would be flexible enough to separate the services back out if assumptions for making savings and efficiencies weren't met. This option also gives all authorities the space to bring staff and processes together gently, without the pressure of more fixed arrangements. Each sub-option demonstrates the different mechanisms for bringing a temporary service together.
- 5.4 *Option 3* - TUPE would provide a more permanent solution where all staff would move straight over to the host borough and would relinquish ties to their current authority. Permanent arrangements would drive delivery efficiencies from the outset and any savings would be permanent, however, this would create a great deal of upheaval for staff and the timescales for this would be considerably lengthened.
- 5.5 *Option 4* - LATCs create the most competitive model with the private sector and have been established in a number of authorities nationally. A fundamental change in culture is required for staff working in an LATC (as profit becomes a main driver for the service) and the timescales for setting these up are considerable. Westminster already has considerable experience with this type of model through WESTCO and we would seek their advice in shaping this option at the appropriate time.
- 5.6 When considering each of the options above, officers recommend that option 2c, (setting up a temporary shared service under a section 113 agreement) is pursued in the short term, with a view to transition to option 4 (an LATC) in the long term, if the hypothesis (that a shared service will deliver savings and efficiencies) is proven. By taking a two-stage approach, the shared service would have the space and time to harmonise processes and bring teams together gently, whilst building a strong market presence that would provide strong foundations in setting up an LATC in the future.

## **6. Project Governance**

- 6.1 A project group has been established to build the business case with finance and HR representatives and Heads of Service from each borough. An interim project manager has been appointed from Camden but will be accountable to all boroughs. A steering group has also been established with executive officer representation from all three boroughs.
- 6.2 Each authority has been reporting progress on the development of this shared service to their respective Cabinet Members and this will continue as the project develops.

## **7. Challenges and Risks**

7.1 Officers have identified a number of challenges and risks in bringing together a shared service. The project is underpinned by a project plan and risk register (Appendix B) and risks are communicated to the steering group as and when they arise.

7.2 Some of the key challenges, and the mitigation actions for these, are:

- *Staff retention* – officers are communicating and engaging with staff often as the proposals emerge.
- *IT systems* – IT leads have been appointed from each partner borough to ensure that systems are accessible to all staff in time for April 2017. At the appropriate point in time the host authority also consider the allocation and cost of supplying agile kit to new members of staff.
- *Declining market share* - if the trend continues it could negatively affect the viability of a shared service going forward in the medium/long term but this will be monitored over the course of the temporary shared service.

## **8. Legal Implications**

8.1 In respect of the proposal for a temporary shared service, the Council has power under Section 113 of the Local Government Act 1972 to place staff at the disposal of another authority for the purpose of their functions providing that they consult with officers affected by the arrangement.

8.2 In respect of the long term proposal for establishing a trading company, the Council has power under Section 95 of the Local Government Act 2003 (“LGA 2003”) to trade through a company for activities which relate to its functions. Local authorities have a general duty to ensure that building works comply with building regulations.

8.3 In addition to the powers given to local authorities under Section 95 of the LGA 2003, the general power of competence established under the Localism Act 2011 confers on local authorities a power to undertake activities which it would do for a non-commercial purpose also for a commercial purpose.

8.4 Options 3 and 4 involve a relevant transfer under TUPE 2006, with its concomitant implications. Option 3 involves a TUPE-transfer from two boroughs to the host. Option 4 involves a TUPE-transfer from all three to a new legal entity. In both cases, employees would transfer with their continuous employment and existing terms and conditions. Any subsequent harmonisation could not lawfully derogate from those terms so, unless they were all being revised ‘upwards’ to meet the standard of the most generous, the employer would have three different sets of terms to administer for a period of indeterminate length.

8.5 In a transfer situation, the staff would be entitled to the benefit of pension protection under the Pensions Direction 2007. This is straightforward in the case of option 3 where it may be assumed that no change would be required. Option 4 would require an

agreement admitting the LATC to the LGPS or the instantiation of a fresh scheme by the LATC, certified as being broadly comparable to the LGPS.

- 8.6 In a secondment or section 113 LGA arrangement, the identity of the employer, by contrast, remains the same. Any secondment agreements formalising arrangements should adopt the prudent practice of making it clear where rights and liabilities lie with consideration being given to the inclusion of indemnities to protect parties against any employment liabilities generated by the other parties.
- 8.7 Depending on the model adopted, the Councils may have a statutory duty to inform and consult the relevant trade unions. Consultation with individual employees, though usually advisable, is not mandated unless the section 113 LGA model is adopted in option 2 or where redundancies are proposed.

## **9. Financial Implications**

- 9.1 As referenced above, the key driver for bringing a shared service together is resilience rather than savings. The current approach would see a saving from two heads of service posts by establishing a single shared head of service.
- 9.2 It is also assumed that efficiencies will be created on bringing services together and harmonising delivery mechanisms. However, in order to fully cost these savings a final operating model would need to be agreed. Officers anticipate that the new head of service will want to shape this and therefore costs will be shared with members once the head of service has been appointed. Financial details of the current teams are attached in Appendix C.

## **10. Consultation**

- 10.1 Initially it will only be the Heads of Service that will need to be consulted. Each borough has a different approach to staff consultation and HR leads from each borough form the project team and will assess how this will be managed.
- 10.2 As the process develops there will be a need to consult with all staff affected. To take this forward and ensure a consistent message across all boroughs, the HR leads from each borough will form the project team and will determine how this will be managed.

## **11. Conclusions and Next Steps**

- 11.1 Considering the benefits that could be achieved in bringing together a shared service the Project sponsors are recommending that a temporary shared service is established, and if the benefits are achieved, a permanent LATC is set up in the long term.
- 11.2 If agreed, the recruitment of a shared head of service will be set in motion following consultation with the current heads of service.

**BACKGROUND PAPERS:**

Appendix A – Potential Team Structures

Appendix B – Project Plan and Risk Register

Appendix C – Financial Summary

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact:** Ed Watson on 020 7641 1747 or [ewatson@westminster.gov.uk](mailto:ewatson@westminster.gov.uk)