

FUTURE OF THE BUILDING CONTROL SERVICE

Head of Service:	Viv Evans, Head of Planning
Wards affected:	(All Wards);
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	NA
Appendices (attached):	None

Summary

This report seeks Committee approval to commence a public consultation, in line with best practice, on the future delivery of the Council's building control service.

Recommendation (s)

The Committee is asked to:

- (1) Agree that officers commence consultation with the public and other interested parties as soon as possible to obtain views on the future delivery of the building control service;**
- (2) Delegate authority to the Director of Environment, Housing and Regeneration to approve the final consultation document; and**
- (3) Note that a further report will be brought to this Committee on the outcome of the public consultation and seek a decision on the future delivery of the service.**

1 Reason for Recommendation

- 1.1 To ensure continued delivery of a sustainable, resilient building control service that fulfils both the Council's statutory obligations as defined within the Building Act 1984 and ensures provision of a cost effective and customer focused chargeable building control service.
- 1.2 To progress a course of action in line with the decision of the S&R Committee at its meeting of 16 March 2021, namely to pursue a programme of collaboration in service delivery with other local authority partners for services, including building control.

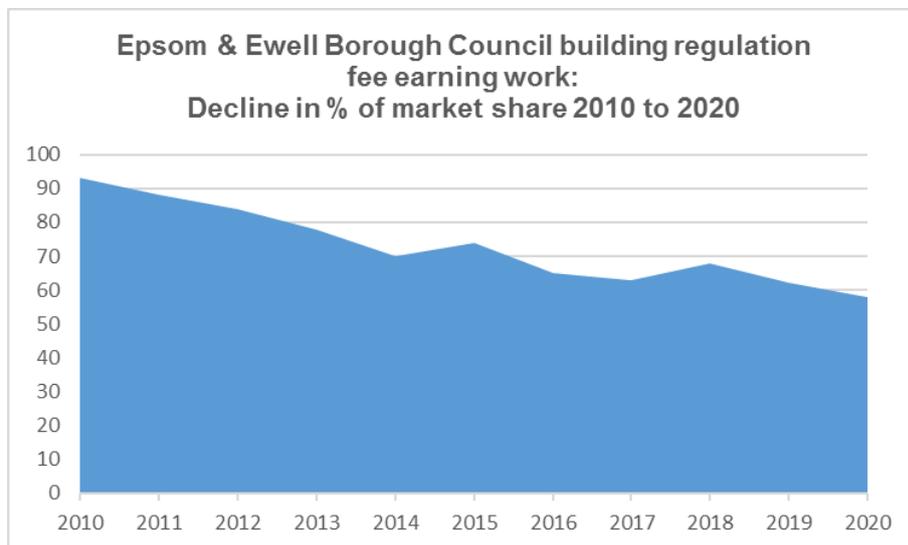
Strategy and Resources Committee

27 July 2021

- 1.3 To comply with the Best Value duty to consult set out under section 3 of the Local Government Act 1999, and the Revised Best Value Statutory Guidance March 2015

2 Background

- 2.1 The Council has a statutory duty to provide a building control service to its residents in accordance with the Building Act 1984. The building control function provides two types of service. They are referred to as chargeable and non-chargeable work. Non-chargeable work consists of work the Council has to carry out as a statutory function which has to be provided or commissioned for provision by the Council. Such services include dangerous structures, competent person notifications and initial notices and are paid for by the general fund.
- 2.2 Chargeable work, as its name suggests, is work that is carried out for which the Council makes a charge. This is business that is undertaken in competition with Approved Inspectors (AI), who are commercial organisations also able to offer chargeable building control services. Despite this, the Council is statutorily responsible to retain a chargeable service despite this being provided by the private sector. These services include plan checking, structural engineering checks and on-site inspections. The council's market share in the fee-earning work available has declined dramatically over the past ten years as the table below illustrates:

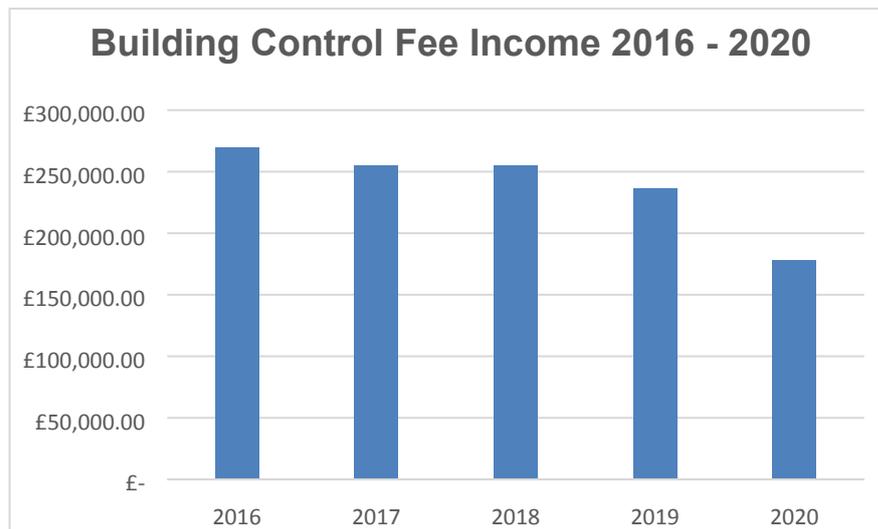


- 2.3 The chargeable part of the (Council's) business is unable to make a profit when the balance sheet is considered over a three year period. Further, any surplus which could be reinvested can only be invested in the building control service itself whether in service improvement or lowering fees. AI's are free to make a profit, resulting in higher wages being available for those choosing to work as a building control surveyor in the private sector.

Strategy and Resources Committee

27 July 2021

- 2.4 There are significant difficulties associated with operating within the competitive market. As a result, income derived from fee-earning building control work has declined (see table below), despite the Council having reviewed the service and implemented a marketing strategy and improvement plan.
- 2.5 A national shortage of qualified building control surveyors, together with the higher salaries available with Approved Inspectors mean that it has not been possible to recruit new qualified staff in recent years. The councils' remaining building control surveyors have now retired and significant recruitment difficulties persist.
- 2.6 Recruitment difficulties are expected to worsen with the enactment of the forthcoming Building Safety Bill when the requirement for qualified building control surveyors is expected to increase substantially, salaries are also anticipated to rise for qualified staff as the Local Authority Building Control body are advising Local Authorities at present.



- 2.7 With the declining market share, loss of income, persistent significant recruitment difficulties and increased workloads associated with processing AI applications, there is a significant risk of service failure in the building control department unless an alternative way of delivering the service is enacted.
- 2.8 On March 16 2021, Strategy & Resources Committee agreed to pursue a programme of collaboration and shared service delivery opportunities, one of which was for building control. A number of options for future collaborative delivery of the service have been pursued, including conversations with several neighbouring Authorities.
- 2.9 Given the above, Elmbridge Building Control Service (EBCS) have been asked to provide an interim building control service while the options for the long term future of the service are presented to Members for consideration at a forthcoming meeting of the Strategy & Resources Committee.

Strategy and Resources Committee

27 July 2021

- 2.10 EBCS are a Public Service Mutual which was established to provide the building control service to Elmbridge Borough Council whilst also operating entirely independently from them. The interim arrangement is being funded using the unspent building control staffing budget. EBCS began providing an interim building control service with effect from 8 June 2021.
- 2.11 The interim arrangement means that customers still make applications and payments to Epsom & Ewell Borough Council and book inspections through the Business Support team. The only difference for our customers is that the building control surveyors going out on site are from Elmbridge Building Control Service. The number of daily building control inspections being undertaken have doubled as a result of EBCS stepping in, and positive feedback has been received from staff and customers to date.

Best Value - duty to consult

- 2.12 Members have provided a clear strategic direction for the future of the building control service, in resolving at S&R Committee on 16 March 2021 to mandate officers to pursue collaboration opportunities on a range of services, of which the building control service is one.
- 2.13 Discussions have been held with three separate organisations regarding potential future collaboration in the delivery of the building control service, one of which has resulted in a viable option that could be progressed further and is the subject of one of the options in the current consultation proposals.
- 2.14 The council has a 'Best Value' duty to consult specified persons, representatives and groups before making a decision as to how the building control service will be provided. This is in line with the requirements set out under section 3 of the Local Government Act 1999. The Council must consult those who: pay council tax; pay business rates to the Council; use services provided by the Council; and have an interest in any area in which the Council carries out its functions.
- 2.15 In order to comply fully with the duty, consultations regarding future service delivery must be at an early enough stage to allow meaningful input from consultees that can shape and influence the resulting service provision.
- 2.16 To that end, a survey is being prepared along with background information describing the building control service and challenges associated with continued delivery, together with a range of options for future service delivery. It is proposed that the Director of Environment, Housing and Regeneration approve the final consultation materials prior to commencing an electronic consultation process, with adjustments being made for those wishing to contribute but unable to do so digitally without assistance.

Strategy and Resources Committee

27 July 2021

- 2.17 Consultees will be asked to provide feedback on the identified options, one of which involves collaboration, long term, with Elmbridge Building Control Service.
- 2.18 Although Elmbridge Building Control Service is currently providing an interim temporary service following the retirement of the council's remaining building control surveyors this does not prejudice the course or outcome of the public consultation exercise now proposed, and does imply a forgone conclusion.
- 2.19 It is proposed that the consultation commences on Monday 2nd of August and closes on Sunday 29th August 2021, allowing for a four week consultation period. As the Council's remaining building control surveyors have now retired, and it is imperative to ensure continuity in delivery of this statutory service, the public consultation has been scheduled to take place at the first available opportunity. Every effort will be made to encourage responses in light of the consultation taking place during the summer period. The survey and supporting information will be placed on the Council's website, pushed through social media channels, in face to face or telephone conversations with service users and directed to the Citizens Panel members.
- 2.20 Officers will report the outcome at a forthcoming meeting of this Committee and seek a decision on the future direction of the service based on the outcome of the consultation, further business case preparation and due diligence.
- 2.21 If the outcome of any future decision on the provision of the service has a direct impact on the Structural Engineer or Business Support Staff engaged in providing elements of the building control service, the council's policy on 'Managing Workforce Change' will be followed, together with any relevant employment law, guidance and best practice.

Future service delivery options for consultation

- 2.22 A review of the Building Control service was carried out during 2017 when a range of options for service delivery were considered.
- 2.23 Given the many challenges facing the service, the options for the future delivery of the building control service considered during the service review undertaken in 2017 have been re-considered, are summarised below and a select number of the remaining alternative delivery options will now be consulted on as summarised in the table below:

Option	Assessment of viability of proposed approach
Do Nothing	No longer a viable option. The information above shows that the inability to recruit and retain staff, compete with the private sector and reducing fee

Strategy and Resources Committee
27 July 2021

(continue as usual)	<p>income represent too great a financial risk to carry on as we are.</p> <p><i>Discounted as an option and not included in the current consultation.</i></p>
‘Do it better’	<p>This approach has been pursued since 2017 and is no longer considered viable given the challenges and risks highlighted above (Paragraph 2.4).</p> <p><i>Discounted as an option and not included in the current consultation.</i></p>
<p>Collaboration</p> <p>Shared Service delivery</p> <p>Partnership delivery</p>	<p>Building Control is one of the eight priority service areas identified for future shared/ collaborative service delivery.</p> <p>The Council has been pursuing discussions with a number of neighbouring local authorities and Elmbridge Building Control Service (EBCS), a Public Service Mutual. As this is the only viable collaboration option, the Best Value consultation will be specific in consulting on this option. Elmbridge Building Control Service (EBCS), a Public Service (Building Control Body) Mutual have proposed a viable partnership service delivery model for the provision of a full Building Control service in Epsom & Ewell. They have the staff, expertise and close affiliation with Local Authorities to understand and be able to deliver the statutory parts of the building control service (dangerous structures/ demolitions etc...) as well as a fee-earning building regulation service.</p> <p>Epsom & Ewell Borough Council could become a shareholder in the Public Service Mutual and be able to have a say in the direction of the company and the service it provides to residents of Epsom & Ewell.</p> <p>As a Mutual, EBCS are a staff owned company bound by the Building Control Charges Regulation who have retained 75% of the market share of the Building Control fee earning market in Elmbridge since ‘spinning out’ from Elmbridge Borough Council and regularly achieve very high customer satisfaction ratings. As a staff owned Mutual they offer a unique staff incentive that helps to ensure the recruitment and retention of staff.</p> <p><i>Consultation Option 1 in the Survey</i></p>
Establish (Building	<p>Requires significant time and financial investment that is considered disproportionate when considered against the Building Control budgeted net direct income of £37,600 during</p>

Strategy and Resources Committee
27 July 2021

<p>Control) trading company</p>	<p>2020/21). The limited scope and scale of the workload would mean that we would still be unlikely to be able to recruit and retain staff.</p> <p><i>Discounted as an option and not included in the current consultation.</i></p>
<p>Outsource delivery to the private sector</p>	<p>This has the benefit of over-coming the issue with recruitment as private sector employers can pay the higher salaries that building control staff command.</p> <p>Higher salaries, may translate into higher costs being passed on to the Council, and Council Taxpayers and service users in turn.</p> <p>There are some legal difficulties around the full out-sourcing of a statutory service to the private sector meaning that some in-house resource would likely still need to be retained. This means that the recruitment issues and use of interim and agency staff may continue if this option is pursued.</p> <p>It is not possible to make a profit from delivery of a statutory service, and it is difficult to see the business case for a private company wishing to undertake the statutory building control service when fees cannot be charged for this element of the work (around 30- 35% of all Building Control work undertaken in Epsom & Ewell).</p> <p>Epsom & Ewell Borough Council will have limited influence over the service provided.</p> <p><i>Consultation Option 2 in the Survey</i></p>
<p>Wait to see what happens with other neighbouring Local Authority delivery models</p>	<p>Southern Building Control Partnership, is a successful shared service delivering a Building Control service across East Surrey. Discussions have been held regarding Epsom & Ewell joining the service.</p> <p>Elmbridge Building Control Service (EBCS) is the only Public Service (Building Control) Mutual in the Country and is providing a successful Building Control service under contract to Elmbridge Borough Council, our neighbouring Borough. EBCS have presented a viable proposal for the provision of a full Building Control in Epsom & Ewell.</p> <p><i>See: Consultation Option 1 in the Survey</i></p>

Strategy and Resources Committee

27 July 2021

Promote Approved Inspectors and reduce our in-house service	<p>Approved Inspectors do not carry out every function of a Building Control service, the statutory non-fee earning work would still need to be undertaken by Epsom & Ewell Borough Council. The Council also has a statutory duty to provide a fee earning service in-house as a “service of last resort”. In addition, the Building Safety Bill is likely to place greater responsibility on LA Building Control Services further emphasising the need to retain an element of service provision that the Council is directly responsible for.</p> <p>Recruiting sufficient staff to undertake only the statutory role will be extremely challenging as there is reduced job satisfaction in carrying out a limited role, and the challenged to recruitment will still persist.</p> <p>However, many Approved Inspectors have developed a strong reputation for delivering a swift and responsive customer focused service, and most are successful in attracting and retaining qualified Building Control staff.</p> <p><i>Consultation Option 3 in the Survey</i></p>
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2.24 Three main options for future service delivery will be therefore be consulted on, together with an opportunity for consultees to recommend their own solution that may not have been considered to date. The options are as follows:

- Option one: Enter a partnership arrangement with Elmbridge Building Control Service (a Public Service Mutual)
- Option two: Outsource delivery to the private sector
- Option three: Promote Approved Inspectors and reduce our in-house service
- Other option (identified by consultees)

3 Risk Assessment

Legal or other duties

3.1 Impact Assessment

3.1.1 A full equality impact assessment will be undertaken once a clear direction for the service has been established. There are no equality impacts associated with the contents of this report.

Strategy and Resources Committee

27 July 2021

3.2 Crime & Disorder

3.2.1 There are no specific Crime and Disorder considerations associated with this report.

3.3 Safeguarding

3.3.1 There are no safeguarding risks considerations associated with this report.

3.4 Dependencies

3.4.1 In order to pursue Members ambition to explore the potential for a collaborative approach to service delivery, the Best Value duty to consult must be complied with. A public consultation is considered essential to progress with any change to the current service provision.

3.5 Other

3.5.1 None identified.

4 Financial Implications

4.1 In the past, income from the building control service used to contribute towards funding of the Council's corporate costs incurred in running the Council, such as accommodation costs and central support charges.

4.2 However, as set out in this report, in recent years the Council has experienced a decline in external demand for the building control service. This decline in demand, in conjunction with staff retirements within the team, has rendered the service unable to achieve budgeted levels of income as agreed by the Council.

4.3 For example, in 2020/21, the building control service had been budgeted to achieve a net direct surplus for the Council of £37,600. Owing to reduced demand, the service's outturn position for 2020/21 was a net direct cost of £27,400 in 2020/21, resulting in an adverse variance to the budget of £65,000.

4.4 **Section 151 Officer's comments:** Any proposed change in service delivery will need to be costed and should ensure that the Council achieves best value for residents, whilst meeting statutory responsibilities.

4.5 The financial implications of the preferred option(s) will be assessed and reported to this Committee alongside the outcome of the public consultation, when a decision will be sought on the future delivery of the service.

Strategy and Resources Committee

27 July 2021

5 Legal Implications

- 5.1 The Council has a duty to provide building control services in its area under the Building Act 1984 (the Building Act).
- 5.2 The Council has the power to enter into contracts for the provision of services (or assets) for the purpose of, or in connection with, the discharge of the Council's functions, under section 1 of the Local Government (Contracts) Act 1997. This means that the Council is able to enter into contracts for the provision of building control services, subject to there being no specific prohibitions against the Council doing so.
- 5.3 Section 111 of the Local Government Act 1972, also empowers the Council to do anything calculated to facilitate or be conducive or incidental to the discharge of any of their functions.
- 5.4 The Building Act contains intricate rules on services which must be provided by the Council and signed off by an authorised Council Officer (**non-delegable functions**) and those services which may be delegated to a person or body which is not an authorised Officer of the Council.
- 5.5 The Council will therefore enter into secondment arrangements whereby two named employees of Elmbridge Building Control Services Limited will be approved as authorised Officers of the Council. This will allow the Council to comply with the law and also enable Elmbridge Building Control Services Limited to provide building control services (including carrying out non-delegable functions) to the Council in line with the requirements of the Building Act.
- 5.6 The current arrangement with Elmbridge Building Control Services Limited is a temporary arrangement which has become necessary due to the Council losing its in-house building control provision due to staff leaving.
- 5.7 The temporary building control services arrangement between the Council and Elmbridge Building Control Services Limited will be below the current public procurement threshold of £189,330 plus VAT for the provision of goods and services.
- 5.8 Subject to conducting a formal Best Value consultation exercise under section 3(2) of the Local Government Act 1999 (see below), the Council could enter into a longer term formal arrangement with another service provider. The Council has investigated this proposal and the only viable option is to join Elmbridge Building Control Services Limited for the provision of building control services. The formal building control services arrangement would involve the Council becoming a shareholder in Elmbridge Building Control Services Limited and appointing a director to the company's board. The discussions with Elmbridge Building Control Service represent the only viable collaboration option for future delivery of the building control service, all other collaboration discussions have not resulted in a viable proposal.

Strategy and Resources Committee

27 July 2021

- 5.9 The proposed formal arrangement will therefore be a joint Teckal arrangement which is currently provided for under Regulation 12(7) of the Public Contracts Regulations 2015, as amended (the **PCR**).
- 5.10 Joint Teckal arrangements provide for co-operation between contracting authorities (e.g. the Council and Elmbridge Council) with a view to achieving objectives that they have in common (i.e. the provision of building control services).
- 5.11 As noted above, the Council will conduct a Best Value consultation exercise under section 3(2) of the Local Government Act 1999. The Council will need to consult those who pay council tax, pay business rates to the Council, use services provided by the Council; and anyone who has an interest in any area in which the Council carries out its functions.
- 5.12 The Council must also have regard to the Best Value guidance produced by the Department of Communities and Local Government in 2015 (the DCLG Guidance) which provides that the Council should also consult "local voluntary and community organisations and small businesses" when conducting a consultation in respect of the proposed longer term building control services arrangements, or change to the provision of building control services.
- 5.13 **Monitoring Officer's comments:** none arising from the contents of this report.

6 Policies, Plans & Partnerships

- 6.1 **Council's Key Priorities:** The Council's Four Year Plan sets five overall themes, reflecting the priorities for the Borough until 2040. It recognises the challenges, and sets out a road map of how the Council will continue to drive forward the work required as efficiently and effectively as possible. The following Key Priorities are engaged:
- 6.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 6.3 **Climate & Environmental Impact of recommendations:** There are no specific climate and environmental recommendations associated with this report.
- 6.4 **Sustainability Policy & Community Safety Implications:** There are no specific sustainability and community safety implications associated with this report.
- 6.5 **Partnerships:** The Council has held collaboration discussions with a number of neighbouring authorities, and one of the options open to consultation would involve the Council joining a Public Service Mutual to deliver the building control service in the Borough in collaboration.

Strategy and Resources Committee

27 July 2021

7 Background papers

7.1 The documents referred to in compiling this report are as follows:

Previous reports:

- [Local Government Reorganisation and Collaboration in Surrey, 16 March 2021](#) and annex containing [KPMG](#) report

Other papers:

- None