

Report of:	Meeting	Date
Councillor Peter Le Marinel, Planning Policy and Economic Development Portfolio Holder and Marianne Hesketh, Corporate Director Communities	Cabinet	14 February 2024

Proposal to develop a Wyre and Fylde Building Control Shared Service

Key decision: No

1. Purpose of report

- 1.1 This report seeks approval to commence work on developing a shared building control service between Wyre Borough Council and Fylde Borough Council.
- 1.2 This report does not seek approval to implement a shared building control service, that will be a subsequent decision of the Cabinet or Executive Committee of each authority.
- 1.3 Fylde Borough Council will be seeking a substantively similar approval from its Executive Committee in February 2024, the two decisions, taken contemporaneously, setting a clear statement of intent thus allowing detailed and involved exploratory work to commence.

2. Council priorities

- 2.1 Innovative and customer focussed - deliver high quality, value for money services that meet the needs of our customers.

3. Recommendation

- 3.1 That the Cabinet approve commencement of work on developing the shared service proposals as outlined in this report and delegate the Corporate Director Communities to undertake the work with Fylde Borough Council to achieve this.

4. Background

- 4.1** Fylde Council and Wyre Council building control services are part of the Local Authority Building Control (LABC) network and deliver the duty set out in the Building Act 1984. The service is in the unique position of being the only regulatory service delivered by local authorities that is exposed to competition from private sector providers, competing with approved inspectors for market share.
- 4.2** Building control is the process by which the Building Regulations are set down by Government. They are a set of standards for the design and construction of buildings primarily established to ensure the health and safety of people in and around buildings through regulations for fire, structural safety, access for all etc.
- 4.3** Historically the local authority performed this function exclusively however, through registered individuals and companies it competed with the private sector for fee-earning work. These private sector companies and individuals are known as Approved Inspectors (AI) or Registered Building Approvers (post April 2024), the most well-known one being the National House Building Council (NHBC). This competition has resulted in local authority building control being acutely aware of the need for efficient service delivery and excellent customer service in order to be able to compete for work. The Building (Local Authority Charges) Regulations 2010 (Charging Regulations) and associated Chartered Institute of Public Finance and Accountancy (CIPFA) guidance require local authority building control to set charges to recover the costs of carrying out the building regulation service.
- 4.4** Only a local authority can undertake enforcement of the Building Regulations, approved inspectors must 'revert' applications back to the local authority when they are unable to complete a project due to contraventions of the Building Regulations. Local Authorities are required to assess the legal status of any AI application (known as an Initial Notice) before work commences.

5. Key issues and proposals

Case for Change

- 5.1** The Government are improving the professional standards and introducing regulatory oversight of all building control inspectors and organisations via a new framework for registration and regulatory oversight of the profession. These changes are part of the Government's response to the Grenfell tragedy of 2017 with the primary legislation being the Building Safety Act 2022. The Building Safety Act will run alongside the Fire Safety Act 2021 with both pieces of legislation aimed at bringing about fundamental change to the building safety system in England and the duty holders mirror those under the Construction (Design and Management) Regulations of 2015.

- 5.2** There is a new Building Safety Regulator (BSR) which will oversee the safety and performance of all buildings and promote competence and organisational capability within the sector including for building control professionals and tradespeople. This new framework sets out new requirements and standards that apply across both the public and private sector parts of the profession. Registration with the BSR is compulsory from April 2024 and the ability of building control professionals to practice will be dependent upon the validation of levels of competency leading to a considerable increase in training requirements and validation of experience. From April 2024 only 'Registered Building Inspectors' may undertake many of the functions currently completed by Building Control Officers.
- 5.3** A consequence of this is that many building control officers are leaving the profession meaning recruitment and retention of staff is increasingly difficult and puts at risk both authorities ability to maintain high standards of service delivery and income.
- 5.4** Smaller teams in both authorities tend to present lower efficiency and effectiveness. For example, they do not have the staff numbers or resources to dedicate to marketing and sales to increase market share and income, or train staff; an essential element in terms of maintaining competence in line with Building Safety Regulator requirement. The inability to offer a full building control service across administrative boundaries, is often seen as an advantage of AIs as the lack of boundaries to their areas of operation together with continuity of staff from project to project is attractive to service users. Local authorities have sought to offset this weakness in their service delivery through a formal partnership scheme across England and Wales though in recent years LABC nationally have tended to steer away from this.
- 5.5** Nationally private sector competition has increased over recent years. Whilst market share at Wyre and Fylde remains at or above the national average, AIs are looking at developing existing income streams as the scope of work available to them diminishes following implementation of the Building Safety Act 2022

Framework for change

- 5.6** Section 113 of the Local Government Act 1972 allows a local authority to enter into an agreement with another to place its officers at the disposal of the other authority, subject to consultation with the staff concerned and negotiation about any changes in terms and conditions. Additionally Section 1 of the Local Authorities (Goods and Services) Act 1970 enables a local authority to enter into an agreement to provide another local authority with goods and services, including administrative, professional or technical services.

- 5.7** At present there is ambiguity about how the Building Safety Regulator will treat 'TECKAL' companies that are owned by local authorities and are carrying out a full building control service. TECKAL is a legal precedent supported in The Public Contracts Regulations 2015 and allows for public contracts to be awarded to subsidiaries and jointly-owned companies without a call for competition. The provision of a full building control service would include both 'statutory' work such as enforcement and 'fee-earning' work such as plan checking. The concern at present is that were both authorities to jointly outsource or establish a new wholly-owned company then this would be treated as an AI by the Building Safety Regulator, a situation that would leave each authority still needing to resource and undertake 'statutory' work outside of the new entity.
- 5.8** Fylde and Wyre Building Control services are experiencing similar issues. Working together, officers have been reviewing options for future service provision. Uncertainty around the changing regulatory framework has been a key consideration in the decision to recommend pursuing a shared service approach. Longer term there may be an opportunity to consider establishing a Local Authority Trading Company.

Vision for the Shared Service

- 5.9** The vision for the shared building control service is for a resilient and efficient service that ensures the building regulations are complied with and enforced across Wyre and Fylde ensuring safe, healthy and fit for purpose buildings in our communities.
- 5.10** The shared service will have the skills and expertise to meet the emerging competence requirements from the Building Safety Act and provide an environment of constant learning and development helping our staff to improve their skills, gain sector-specific qualifications, adapt quickly to emerging requirements and give confidence to our communities.
- 5.11** The shared service will deliver an excellent level of customer service to both internal and external customers by ensuring that it can be responsive to customer demands and always exploring ways to develop and improve the service.

The Proposed Shared Service

- 5.12** The proposal is to explore merging the Building Control services of Fylde Council and Wyre Council. The intention at this stage would be for Wyre Borough Council to become the host or employing authority for the shared service.
- 5.13** In addition to carrying out the Building Regulation function, the service will also undertake other associated statutory functions such as dealing with dangerous structures, demolitions etc.

- 5.14** It is anticipated that there would be a transition period, where each authority continues to operate in their current way, such as ICT, email addresses, office location etc. The ambition would be to work towards implementation of a shared service by 1 April 2025 at the latest.

Staffing resources and structure

- 5.15** Bringing together the two building control teams should bring about an improvement in resilience, which is a key driver for the two authorities, however simply combining the existing teams without considering capacity, competency and succession planning is likely to result in the creation of a larger team with exactly the same problems as at present.
- 5.16** Both teams benefit from experienced technical officers, able to deal with the full range of work likely to be submitted to their authority and support staff who are capable and experienced in dealing with all aspects of technical support for the building control service.
- 5.17** A new structure needs to provide sufficient resilience to enable all core functions to be effectively and safely undertaken and enable focus to be given to promoting the service, maintaining existing and developing new customers as well as ensuring the 'new team' is best placed to support a growth agenda. Creating a hierarchical structure with career graded posts will enable the service to offer career development and progression and more flexibility with recruitment.

Financial and legal matters

- 5.18** Local Authority Building Control services operate on a cost recovery basis, essentially running at a breakeven position over a three year period. The service consists of fee and non-fee earning services, for example there is a fee for discharging compliance with the Building Regulations. However dealing with dangerous buildings or enforcement are non-fee earning. The regulatory changes outlined in this report place a greater emphasis on enforcement activity for the Local Authority and the implications of this can only be fully understood from April 2024.
- 5.19** The ambition for the shared service is that it should be able to operate on a cost recovery basis, essentially breaking even over a rolling three year period. However there is a considerable amount of work for finance teams at both Fylde and Wyre to be undertaken as part of this project to establish the position.
- 5.20** Much of the operation of the shared service will be set out in a Shared Service Legal Agreement, this will involve considerable work for both legal services teams which can commence following this decision.

5.21 Next steps

The Corporate Director Communities will begin working with officers at Fylde Borough Council. This will include the establishment of a project team consisting of officers from both council's, the production of a detailed project plan and programme of activity as well as the drafting of a legal agreement which will set out the proposed governance structure.

6. Alternative options considered and rejected

6.1 All alternative options will be set out in detail in a subsequent report to Cabinet.

Financial, Legal and Climate Change implications	
Finance	<i>There are no financial implications at this stage.</i>
Legal	<i>There are no legal implications at this stage</i>
Climate Change	<i>There are no climate change implications at this stage.</i>

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
health and safety	x

risks/implications	✓ / x
asset management	x
ICT	x
data protection	x

Processing Personal Data

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a 'privacy impact assessment (PIA)' is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a third party) a PIA will need to have been completed and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

report author	telephone no.	email	date
Steve Smith	01253 887243	steve.smith@wyre.gov.uk	12/01/2024

List of background papers:		
name of document	date	where available for inspection
None		

List of appendices

None