

BRECKLAND DISTRICT COUNCIL

Report of: Sarah Suggitt, Executive Member for Strategic & Operational Planning, and Rob Walker, Deputy Chief Executive

To: Cabinet: 13 March 2023
Full Council: 23 March 2023

Author: Rob Walker, Deputy Chief Executive and Andrew Holdsworth, Assistant Director Economy & Growth

Subject: The future of Planning and Building Control Services

Purpose: To consider the future delivery model for Planning & Building Control Services at the culmination of the contract with Capita in June 2024.

Recommendation(s):

That Cabinet recommends to FULL COUNCIL that: -

1. Upon expiry of the initial contract with Capita for Planning & Building Control Services in June 2024, that these services should return to the Council.
2. The Deputy Chief Executive, in consultation with the Executive Member for Strategic and Operational Planning, is given delegated authority to take the necessary action to formalise the end of contractual arrangements with Capita for Planning & Building Control Services.
3. The Deputy Chief Executive, in consultation with the Executive Member for Strategic and Operational Planning, is given delegated authority to take any necessary actions for the return of Planning and Building Control Service to the Council and associated changes in budget and establishment.

1.0 BACKGROUND

- 1.1 The current 15-year Capita contract for Planning & Building Control Services comes to an end in June 2024. Within the contract, the Council has a unilateral right to extend the agreement by a further 5 years if it wishes, but to do so it must provide confirmation 12 months in advance.
- 1.2 Given this represents a potentially landmark opportunity to review one of the Council's largest and most impactful areas of service and spend, an exercise has been carried out - including extensive engagement with Capita - to establish the options available to the Council from June 2024.
- 1.3 The benefits of the forward-thinking decision taken by the Council in 2009 to outsource Planning & Building Control Services have been numerous and include: the full delivery of the financial efficiencies identified at the time and over the life of the contract (c. £3.7m); addressing identified areas of poor performance and Member dissatisfaction with service quality at the outset; and service resilience through a national framework of similar contracts and operations. In contrast, the contract assumed a level of third-party business growth and associated profit share which did not materialise.

- 1.4 Whilst over the full life of the contract to date there have been periods of difficulty and challenge, as there would be with any contract of this length, Breckland is currently notable for the resilience of the service, good achievement of KPIs, an improving reputation locally and nationally, and strong recruitment, retention, and development. This is in no small part testament both to the local management and leadership within Breckland, and the support the Capita teams centrally have provided [in particular] over recent years.
- 1.5 Some 14 years after contract commencement, the appetite for outsourcing services in local government remains a mixed picture. Some services, such as Waste Collection and Leisure, are still overwhelmingly outsourced. Others, like Planning & Building Control, remain largely inhouse. The number of outsourced Planning & Building Control contracts has reduced dramatically over recent years, with most returning the services to their respective authorities. Capita is the only major provider operating within this outsourced 'space' for Planning & Building Control, with other providers focussing on capacity and resilience-building models.
- 1.6 The overwhelming majority of services that Capita provide the Council are operated from within Breckland's geography, which would be a key factor [under all options] moving forward and would minimise disruption if the service was brought in-house.
- 1.7 The base contract for the service is £2.8m. This is based, largely, on the specification agreed 14 years ago with inflation applied annually. The nature of the arrangement means real costs within this are not easily identifiable within the contract, as the Council pays for services and outputs based on a block contract price (largely Full Time Equivalent (FTE) based).
- 1.8 Support services, including IT, accommodation, Democratic Services, printing, Finance, and Communications are all provided locally by Breckland to Capita.
- 1.9 Nearly all Planning and Building Control fee income is retained by Breckland; the only exception being fee income for major applications. The volume of major applications each year has been routinely over the contract threshold of 40, which has led Breckland to share some income with Capita due to the greater resource ask. To give some further context on value, over the last three years £155k, £74k and £145k in fee income has been shared.
- 1.10 Within the Council's EVOLVE programme there is a 2024/25 target to reduce costs annually on contracts by £300,000 in order to keep in line with the Council's Medium Term Financial Strategy. Whilst this target was set based on outline analysis that pre-dates the work on Planning & Building Control, it was constructed on the assumption that some savings would be appropriately sought from a business area which had not historically been able to provide them beyond the initial savings achieved through the contract.
- 1.11 For the duration of the contract, decision making authority, either through Planning Committee or delegation, has been retained exclusively by the Council.

2.0 **OPTIONS**

- 2.1 At the expiry of the initial contract with Capita for Planning & Building Control Services in June 2024 there are a number of options available to the Council, namely: -
1. To extend the contract for a 5-year period.
 2. To tender for a new supplier and retain the outsourced model.
 3. To share services with another local authority.
 4. To let the contract expire and bring the services back in house.

2.2 Options analysis has been conducted on all of these. The table below summaries the headline position on each of the options available:

Option	Financial Impact	Service Impact	Other issues
5-year extension	No significant scope for financial efficiencies identified through negotiation without Capita, without significant change to service.	On the basis of 'near as is' extension there would be no material adverse impact to delivery. There would be scope for some innovation (potentially limited by procurement issue highlighted adjacent).	The Council is significantly constrained under procurement rules. Any significant variation to the initial agreement would likely trigger a need to retender.
Tender for a new provider	Potential to achieve savings if market delivers. Would incur significant one-off costs in exercise.	Likely some disruption due to potential complex transition and extended period of uncertainty.	Market research indicates very high risk of lack of suitable competition. The equivalent outsourced planning market is almost non-existent. We would not be confident of a strong position for the Council.
Shared service with another local authority	Unclear due to lack of viable identified interest.	Unclear due to lack of viable identified interest.	It is considered highly impractical to achieve simultaneously with an exit to the current contract, given the complexity involved.
In house solution / allow contract to expire	Identified £200,000 savings achievable without reducing service / staffing.	On the basis of 'as is' there would be no adverse impact to delivery, with scope for some innovation.	The staff returning to the Council would be protected under TUPE. As a result there should be no adverse experience in terms of pay or conditions, and restrictions on the Councils ability to apply significant immediate changes to the structure of the service model.

2.3 To some extent, the option of a 5-year extension under current terms is the most straightforward and least disruptive option. The current delivery model, contractual arrangements, and finances would remain largely unchanged. That said, this option would not generate any financial efficiency for the Council without impacting on services and is the least flexible – due to contract and procurement rules – regarding change and development.

- 2.4 As noted above, given that Capita is the only major provider within this market it would not be sensible to progress the re-procurement option when a straightforward extension is available. Furthermore, it would incur significant one-off costs and could present considerable value for money and service-based risks if there was only one potential tenderer.
- 2.5 Our neighbouring local authorities have been approached – at a senior officer level - regarding the potential for a shared service and there is currently no appetite for sharing planning services. The potential remains for sharing Building Control services locally, but this is not considered further as part of this report.
- 2.6 Returning the services to the Council at the end of the contract is the only realistic way in which the financial efficiencies that are required by our Medium Term Financial Strategy can be realised. This option also permits greatest flexibility in designing the future delivery model alongside those pre-existing requirements. The Council would be re-inheriting a strong and experienced team that would be well placed to meet the challenges that lie ahead, e.g. Nutrient Neutrality. Under this option the proposal would be to leave the structure unchanged and TUPE transfer the full staff team unchanged.
- 2.7 Some significant thought has been given to whether any of the above options can be developed as a hybrid model. To some extent, this is limited by the current contract and by contract and procurement rules. That said, there is a growing market for ‘capacity models’ from outsource providers (including, but not limited to, Capita). These enable Councils to draw down expertise and capacity on an as needs basis, and potentially enable a more dynamic approach to resourcing beyond the foundation staff within the authority to better cope with fluctuating demands over a period. Furthermore, the opportunity described above for sharing building control services locally can be explored further.
- 2.8 It is proposed that the ‘hybrid’ options are explored in a secondary phase to those recommendations made in this report with suitable businesses cases being brought forward if and as appropriate.
- 2.9 The preferred option of the report authors is to return the services to the Council at the end of the contract. Importantly, it should be noted that under these proposals the contract with Capita would not be terminated, rather that the services would return to the Council at the natural conclusion of the contract.

3.0 **REASONS FOR RECOMMENDATION(S)**

- 3.1 The return of services to the Council at the end of the contract with Capita will provide the Council with an annual revenue saving of £200,000.
- 3.2 The return of services to the Council at the end of the contract with Capita will provide the Council with the greatest opportunity and flexibility with regard to future service design and delivery models.
- 3.3 The contract is coming to an end and whilst Breckland has benefited from the arrangement over the last 14 years, now is the appropriate time to bring the services in house and ensure that they are ready to best meet the opportunities and challenges that lie ahead.

4.0 **EXPECTED BENEFITS**

- 4.1 It is recommended that: -

Upon expiry of the initial contract with Capita for Planning & Building Control Services in June 2024, that these services should return to the Council.

The Deputy Chief Executive, in consultation with the Executive Member for Strategic and Operational Planning, is given delegated authority to take the necessary action to formalise the end of contractual arrangements with Capita for Planning & Building Control Services.

The Deputy Chief Executive, in consultation with the Executive Member for Strategic and Operational Planning, is given delegated authority to take any necessary actions for the return of Planning and Building Control Service to the Council and associated changes in budget and establishment.

4.2 The expected benefits are: -

- Financial. Breckland will generate an annual revenue saving of £200,000 and will receive all future income for major planning applications.
- Future proofed. Breckland will have the flexibility to develop and improve the service as it chooses and fully integrate planning and building control services as part of #teambreckland.
- Service Based. We will be able to provide confidence and clarity to potentially impacted staff working for Capita and provide maximum possible stability during a period of necessary transition.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Carbon Footprint / Environmental Issues**

5.1.1 In the opinion of the report authors there are no direct implications. However, the Planning & Building Control services will continue to be an important tool in our commitments to Breckland 2035. This change should strengthen our ability to leverage them.

5.2 **Constitution & Legal**

5.2.1 Legal advice has and continues to be sought as required, including on contractual, public procurement, consultation, and employment related matters, to always ensure that the Council acts lawfully.

5.3 **Contracts**

5.3.1 Dealt with in the body of the report.

5.4 **Corporate Priorities**

5.4.1 The recommendations set out in this report are consistent with the Council's priorities.

5.5 **Crime and Disorder**

5.5.1 In the opinion of the report authors there are no implications.

5.6 **Data Protection**

5.1.2 In the opinion of the report authors there are no implications.

5.7 **Equality and Diversity / Human Rights**

5.7.1 A 'TUPE transfer' happens when: an organisation, or part of it, is transferred from one employer to another. Employees will be protected by TUPE regulations as part of this process. No changes are proposed to the establishment as part of the report recommendations.

5.8 **Financial**

5.8.1 Please see the attached Proforma B. We are proactively managing the following financial impacts and risks as a result:

5.8.1.1 Support costs – the vast majority of all support costs are, in effect, already borne by the Council as recharges for IT, accommodation, etc. Additional costs will be borne in regard to a few 'corporate' services provided by Capita currently such as HR, but these are factored into the financial assumptions.

5.11.2 Pensions – A practical implication is that the Council will take on new pension liabilities for all incoming staff. The precise impact is variable depending on the makeup of staff at the point of transfer, however, the Council's Actuary has supported with detailed analysis and the increased costs are included in the financial assumptions.

5.11.3 Staff – a primary concern and risk is around retention and motivation of the staff, and the financial and service risks if they are not retained. Much of the planning market is extremely competitive for talent, and there is a significant risk that uncertainty or perceived risk could materially impact on service delivery. This is hoped to be mitigated by clear and consistent messaging in support of the staff and their output, in addition to the contractual protections and comfort which will be given to staff under the TUPE transfer.

5.9 **Health & Wellbeing**

5.9.1 In the opinion of the report authors there are no implications.

5.10 **Reputation**

5.10.1 This report and recommendations are likely to draw national attention given the involvement of Capita.

5.10.2 It is important to reiterate that the contract with Capita is coming to a 'natural' conclusion and is not being terminated. The recommendation to bring services back in house reflects the current financial context, the changes in 'outsourcing' over 15 years and a desire for the authority to have greater flexibility moving forward.

5.11 **Safeguarding**

5.12.1 In the opinion of the report authors there are no implications.

5.12 Staffing

- 5.12.1 A 'TUPE transfer' happens when: an organisation, or part of it, is transferred from one employer to another. Employees will be protected by TUPE regulations as part of this process.
- 5.12.2 There will be an increase to the Breckland Council establishment as a result of these changes. Reflecting the fact that 50 staff TUPE transferred out under the original contract, and the expectation is the same number will return at the end. However, no changes to the number of staff working for Planning & Building Control are proposed as part of this report.
- 5.12.3 A project team will be established to oversee the project and transfer of staff back in to the authority. The project will be prioritised with corporate resolve due to the EVOLVE saving and the impact on a large number of staff.

5.13 Stakeholders / Consultation / Timescales

- 5.14.1 Any proposals that involve the transfer of services from one provider to another will entail a statutory requirement to provide information and consult with staff representatives under TUPE. These requirements will be triggered once a decision has been taken.
- 5.14.2 A formal transition process would begin with Capita and staff from Summer 2023 onwards, with requirements on both parties to ensure a smooth transition process by Summer 2024.
- 5.14.3 Issues and options would be developed in conjunction with Planning & Building Control staff for future enhanced service solutions at a time period to be agreed, but provisionally from Autumn 2023 onwards. Some new elements may be practicably deployable alongside the final transfer, others may require longer lead in and wider changes to enable. All would be dependent on development of suitable business cases.

6.0 WARDS/COMMUNITIES AFFECTED

- 6.1 All Breckland Wards are affected.

7.0 ACRONYMS

- 7.1 TUPE – Transfer of Undertakings (Protection of Employment)
- 7.2 FTE – Full Time Equivalent

Background papers: -

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Key Decision: Yes /

Exempt Decision: / No

This report refers to a Mandatory Service / [REDACTED]