



Report to: Sustainable Economic Development

Decision Date: 25/09/2023

Portfolio Holder: Councillor Matthew Spoons

Director Lead: Matt Lamb, Planning and Growth

Lead Officer: Lisa Hughes, Business Manager – Planning Development x5565

<b>Report Summary</b>	
<b>Type of Report</b>	Open Non-key decision
<b>Report Title</b>	Partnership for the East Midlands Building Consultancy
<b>Purpose of Report</b>	To provide an update on: (a) the financial position for East Midlands Building Consultancy (EMBC) and NSDC (b) the ongoing building control work.
<b>Recommendations</b>	(a) To note the report. (b) To continue with EMBC operating the building control service for the Council for a period of 3-years with a review after 2-years.
<b>Alternative Options Considered</b>	None
<b>Reason for Recommendation</b>	To provide a sustainable Building Control service in partnership with South Kesteven District Council and Rushcliffe Borough Council.
<b>Decision Taken</b>	Approved as per the recommendations

## 1.0 Background

Previous reports have been presented to Policy & Finance Committee (P&F) regarding the partnership the Council entered into between South Kesteven (SKDC) and Rushcliffe Borough Council's (RBC) in 2016 to provide the Council's Building Control service. This partnership, the East Midlands Building Consultancy (EMBC), is delivered and hosted by SKDC. The contract with EMBC initially ran for 3 years, ending in April 2019. This was

extended by Members of the P&F on a rolling basis, subject to an annual review and an ability to exit subject to specific notice periods and defined actions.

Building Control is unique compared to many other services provided by the Council in that it has to compete for work against the market, principally other councils and [independent] approved inspectors (AI). The exception to this are the statutory functions that a local authority building control service has to provide, which cannot be undertaken by an AI, such as dealing with dangerous structures, applications relating to work for disabled facilities, emergency planning etc. Such work cannot be charged for and is typically referred to as 'non fee earning'.

The reasons for entering into the partnership were captured in a report to the P&F on 24 March 2016. They principally included:

- a) the inability of the service to reduce its strain on both the general fund and a substantial ongoing deficit; and
- b) issues with staff retention and recruitment given the attractiveness and pay of the private sector.

The partnership board is made up of a representative from each of the partner authorities being Newark & Sherwood District Council, Rushcliffe Borough Council and South Kesteven District Council. The board has primary responsibility for overseeing the operational management and delivery of the joint building control partnership and associated Business Plan. Alongside the partnership board is the Chief Executives Board, with the CEO from each authority attending to oversee the strategic direction of the partnership, ensuring key milestones are delivered, authorising any expansion of the partnership as well as changes to a Resource Availability Statement.

As previously reported, EMBC has successfully arrested the previous financial decline of the service. As is demonstrated by the tables below, within the Finance Section, the net costs of the service have been reduced. Critically, the deficit has been reduced such that in 2018/19 for both NSDC and SKDC that the deficit was cleared and this position has continued into 2022/23 where it can be seen the account 'surplus' had increased to £83,392 for NSDC. It must be noted that such 'surplus' cannot be absorbed by the General Fund. Rather, this is ring-fenced for the running of the service. In the case of NSDC this is effectively used to reduce the Council's general fund contribution to the service.

The report to P&F in November 2020 detailed that a review of the partnership had been undertaken which looked at [viable] options around the continuation and/or expansion of the partnership. There were 4 possible alternatives:

- Option 1: Business as Usual with Service Improvements;
- Option 2: Joint Ventures – Larger Informal Partnership with other Councils / Additional Partner with Private Sector Partner / Informal Partner Support;
- Option 3: Joint Authority Wholly Owned Trading Company (Teckal Company); or
- Option 4: Withdraw from the partnership.

Members of P&F resolved to continue the existing contract under Option 1 in 2020 and subsequently in 2021 for the financial year 2022/23.

## 2.0 **Proposal**

Minor service improvements have been introduced and it is proposed to continue with these. However, they have been limited due to the change in key personnel. As well as the retirement of the acting manager referenced above, the Assistant Director who oversaw the service at SKDC also retired (this post is now filled). There have been challenges in recruiting a full-time building control manager, which has now been recruited to on the third occasion (with market supplement). It is hoped that this appointment proves to be successful and improvements that all partners to the contract are looking for, can be provided.

Notwithstanding this, reports are provided regularly by EMBC to each of the partners which details, through customer surveys that users of their service are generally very satisfied with their work and response times. Additionally, a manager's report is provided which details that a trainee building control officer became fully qualified last financial year, like planning there has been a slight reduction in the number of applications being submitted in the first quarter of 2023/24, affecting income. The report from EMBC as at 31<sup>st</sup> May 2023 for year end indicates there is likely to be a trading deficit of approximately £62,000 by year end, shared between the partners. EMBC note that AI's are very active and permanently recruiting, adding to the challenge for EMBC and other local authority building control services to recruit experienced staff. It is of interest that another authority raised the question of whether the partnership might be willing for other authorities to join due to their challenge of recruitment. This will be an area for exploration by the manager and the partners to establish whether this will be beneficial or not over the coming years.

Due to the value of the contract for NSDC, as well as to ensure the best possible service provision is provided to residents and businesses within the District, a discussion has taken place with Welland Procurement (WP) to understand what, if any, reviews need or are required to be undertaken in relation to the partnership contract. They have confirmed, together with advice from Legal Services, that the service contract falls within the Hamburg exemption and, as such, it is appropriate to ensure that we are getting value for money with the contract and the current arrangements provide the most economically advantageous for the Council. As well as the financial aspect, it is also important to ensure the quality of the service is what we would expect for businesses and residents within NSDC.

### **Service Provision**

EMBC continues to perform well financially and secures repeat business, retaining a good market share. That said, the partners still want to continue to optimise market share, performance, and range of services offered. Work will continue in this regards once the recently appointed manager joins EMBC which will enable further development of a commercial strategy. NSDC will continue to support improved service and other strategies proposed as it will have benefit if the contract is continued.

Such strategies include (have included):

- Retaining existing staff - The Building Safety Act 2022 has a requirement for all surveyors to be registered (which includes a validation an competency test) with the Building Safety Regulator by November 2023, if they are not, they will not be able to operate. From speaking to building control officers, this validation is very

challenging and may have impact upon the overall building control service provided nationally. There is concern that a number of older, experienced officers will be likely to leave the profession rather than gain validation and competency verification.

- Review of performance targets (KPIs) – these have not been changed since 2017/18, the majority of which are met (easily) each quarter.
- Further strategies will be prepared, driven and delivered now the manager is in post which will likely draw upon the review undertaken in 2019/20.

A key consideration for the contract will be ‘are we benefitting from value for money’ in addition to ‘are our customers receiving the best service possible that a council can provide’? The latter is in the context that customers do have a choice of where they seek building control approval from (council or AI). One of the aims of the new manager will be selling the service and demonstrating to those undertaking building works, what the unique selling point of a council run service is compared to an AI.

It is noted that the Finance Implication section below details that the surplus we have accrued will be reduced over the coming years. The Fee Regulations are such that it is not lawful for a council to make a profit from the work that they do i.e. charges made can only cover the cost of providing the service. Whilst there has been a surplus of income over the last few years, this has been due to a number of factors, but principally due to vacant posts across EMBC. It is anticipated that this surplus will reduce following the appointment of the new manager, recruitment of temporary staff, staff training (in order to meet the new regulatory requirements), overall improvements to the service etc. In other words, the money will be reinvested.

In relation to continuing the contract, it is recommended that NSDC does so for a period of 3 years (i.e. expiring 2026/27) with a review after 2-years to ensure we are continuing to receive value for money and for residents and companies developing within the District, that they are receiving an excellent service. Bringing the service back within the Council will have a number of challenges, the most significant one being recruiting sufficient building control officers to provide the service. It can also be seen, with reference to the Finance section, that the service is being operated successfully albeit there are always measures that can be implemented to improve a service.

### **3.0 Financial Implications FIN23-24/5241**

NSDC payments to the EMBC partnership, are made up of the following elements:

- Management Fees, which include the contributions to and from the ring fenced ‘non fee earning’ reserve
- Administration Fees
- Con29 Fees.

Whilst the Admin fee and the Con 29 Fee have remained static in terms of Budget, there has been a very small increase in the Management Fee/General Fund Contribution, from the Original Budget of £83,239 to a revised Budget of £86,451, an increase of £3,212.

The position of the ring-fenced reserve is forecast to be at £62,843 at the end of 2023-24. This has reduced from the £83,392 opening year balance. Ideally, this balance is to

be as close to zero over a 3 year rolling period, which is why we see peaks and troughs in the balance, as this reflects the cost of service and levels of income.

For the purpose of this interim report, the table below shows the last 3 years, and current years, position of the cost to General Fund, and the position of the Ring Fenced Reserve:

	2020-21	2021-22	2022-23	2023-24
Net Cost to General Fund (£)	63,540	77,590	73,638	86,451

	2020-21	2021-22	2022-23	2023-24
Deficit/(Surplus) Ring fenced Reserve (£)	(57,340)	(75,430)	(83,392)	(62,843)

The net cost to the General Fund of £86,451 for the current year is broken down as follows:

<b>Management Fee (NSDC)</b>	<b>£</b>
<b><u>Building Control</u></b>	
Gross Income	(231,433)
Gross Expenditure	338,433
Transfer to/(from) the Ring Fenced Reserve	(20,549)
<b>Net Cost to NSDC General Fund</b>	<b>86,451</b>
<b><u>Administration Fee</u></b>	
£20,000 Payable by NSDC General Fund	£20,000
<b><u>Building Control Con 29</u></b>	
£7,570 Payable by NSDC General Fund	£7,570
<b>Total Building Control Service Cost</b>	<b>£114,021</b>

It is anticipated that the current ring fenced reserve surplus position will slowly reduce over the next three years in line with the fee regulations. As per the most recent forecast as shown in the table below:

	2023-24	2024-25	2025-26
Deficit/(Surplus) Ring fenced Reserve (£)	(62,843)	(45,091)	(31,331)

### Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

None