

REPORT OF THE SERVICE DIRECTOR OF GREEN GROWTH, INVESTMENT AND ASSETS

PROVISION OF A SUSTAINABLE ESTATES PRACTICE SERVICE

Purpose of the Report

1. To consider the options for the future delivery of a long-term sustainable Estates Practice service for the Council and to approve the transfer of professional estates services to Arc Partnership.
2. This is a Key Decision as it involves expenditure more than £1,000,000 and was published on the Council's Forward Plan on 16 May 2024.

Information

3. The Estates Practice team within Property Asset Management provides a professional property management and valuation service for the Council with key work areas as follows:
 - i) General estate management
 - ii) Agency and lease management
 - iii) Disposals programme/development
 - iv) Valuation services
 - v) Rates management
4. Considering only the in-scope roles and activity of the team, the staffing establishment of the Estates Practice team includes 11 FTE posts, of which four are currently vacant. In addition, the function is currently being supported by two agency development surveyors, who are ostensibly in position to support delivery of the capital receipts programme, but also provide support to the wider team alongside the Group Manager (Head of Service from July) during periods of peak demand. The team vacancies and the use of agency resources are long term arrangements. Notably the Team Manager role has been vacant for approaching three years and is currently out for recruitment.
5. The function is also currently supported by an outsourced contract for Business Rates advice (with Gerald Eve) and a DPS solution for ad-hoc services including independent valuations and estates agency (marketing) for sales. Arc Partnership also provide downstream support to the delivery of development projects and maintenance/site management of vacant property.
6. Demand for the professional support from the estates team is rising. Specifically, there is a significant pipeline of vacant land and property to be disposed of to bring in capital receipts aligned to the Medium-Term Financial Strategy (MTFS) projections, with there also being a

commitment to review some of the small, low value sites which are problematic in communities. There is also an increasing throughput of Academy school conversions. This increase in demand is alongside a need to maintain the continuity of what is regarded as a highly competent and respected valuation function.

7. The Council has been unable to recruit to fill the vacancies with permanent professional staff, reflecting pay and reward constraints in the local government sector compared to an apparent shortage of professional staff in the wider marketplace. There is also a significant risk of flight/expectation of retirement of key staff in the coming 12-24 months. Two of the members of the team left at the end of March. It is therefore important to act early to ensure risks to the current quality of service are mitigated and that the rising demand described can be managed successfully.

Options Considered

8. In the light of this position the Council has considered options to address these ongoing challenges to see how a sustainable future can be forged for the service. It is to be noted that this is undertaken at a time of increasing pressure on Council budgets, and it would be intended to keep costs within the existing budget envelope which reflects the cost of the current permanent and agency staffing.

- a. Remain as is with increased commissioning, the Council could choose to leave the service delivery method unchanged and seek to deal with resourcing difficulties by continued readvertising vacant posts, continued reliance on existing and additional agency staff and commissioning of more services through DPS. However, it is considered that this continued operating model is not viable. This review has established that:
 - i. demand for service exceeds the available staffing resource.
 - ii. there are critical risks in respect to maintaining a functioning in-house professional workforce to deliver the service, noting impending retirements, agency arrangements and challenges to recruitment due to local authority salary structures.
 - iii. it would appear that this approach would take cost outside of the existing budget envelope.

- b. Retain in house with increased investment

The Council could, if permitted make exception to pay and reward structures to modify roles to attract external talent. However, without stepping significantly outside current local government pay awards/Hay banding structure, it is not considered viable to expand the in-house team. This approach would be at increased cost and is not considered a viable option for consideration.

- c. Outsourcing to new provider

The Council could outsource the function in a traditional way, identifying packages of service that could be outsourced (or take a holistic view and seek a new partner for delivering estates activity). A suitably competent and capable supplier would be selected. It is unlikely it would be viable to outsource the service, even in components, via the Council's own estates DPS contract, as there are too significant staffing considerations. A new procurement (open market or use of a framework) would be required.

In any outsourcing approach, there will be common requirements to:

- establish a small client-side estates function; as noted previously to contribute to strategy, to instruct and manage commissioned activity and to oversee estates reporting and governance and relevant transactional finance activities (e.g. rent/service charges) and tenant/public enquiries, budget management.
- work up in detail processes for commissioning and managing externally delivered work.
- Address Transfer of Undertakings Protection of Employment Rights (TUPE) requirements and transitional costs; it is inevitable that a TUPE transfer will apply in any outsourcing option. This service is professional, and therefore based on people.

A key risk from traditional outsourcing via competitive tender (or indeed framework route) in this way is a loss of direct control over the way services are deployed, notably the valuations for statutory accounts purposes. It would be inevitable that this option would come at additional cost.

d. Outsourcing to Arc Partnership

The Council could add the estates practice professional function to the current Service Agreement dated 24 May 2016 with Arc Property Services Partnership Limited under clause 17.6 which enables additional functions to be added. This would be by virtue of:

- A continuation and extension of the use of the Teckal procurement exemption route deployed when setting up Arc Partnership.
- Commercially, a change request and priced response from Arc Partnership, to add additional services with ultimately suitable adjustments to the Service Agreement between the parties to address any new arrangements for commissioning and delivery of work and payment mechanism if necessary.
- Operationally, suitable changes to people and process arrangements.

This is the procurement and contractual mechanism used previously by the Council in 2019, enabling Arc to take on and successfully enhance the Compliance professional services.

The Council would need to undertake appropriate statutory consultation with the affected staff and their recognized trades union and provide the required employee liability information to Arc under TUPE.

Arc would need to satisfy itself through suitable due diligence that it is able to take on these additional services and agree to do so.

Arc would also have to take steps to establish itself as a registered and insured Royal Institute of Chartered Surveyors (RICS) Registered valuation practice. This would include:

- Appointing a Head of Estates Practice; an accountable RICS practitioner
- Registering the practice with RICS
- Obtaining a suitable adjustment to PI insurance cover

This option would develop the established partnership with Arc with a shared endeavour to manage the Councils properties effectively and retain greater control for the Council when compared to outsourcing to a new provider.

Report Analysis

9. In the light of these options the Council has worked with Arc to structure the option to put professional work to them and there is a developing proposal to achieve an expanded, sustainable service within the existing cost envelope.
10. At present the Estates Practice team have both professional staff (Member of the Royal Institute of Chartered Surveyors (MRICS) or working towards) and technical staff undertaking a range of functions. With the introduction of a corporate landlord approach to the governance and management of the Council's property in April 2022 the Property Asset Management service brought together officers undertaking property related activities. Some more technical functions have remained within Estates Practice, and these can be retained within the client function or be absorbed into the wider team. Therefore, the future service has been modelled on a transfer of professional activities to Arc.
11. It is therefore proposed that five posts (one currently vacant) are transferred from the Council to Arc. Arc will recruit additionally as required to meet workloads and in particular add pace to the flow of capital receipts. A client team comprising the currently vacant Team Manager position and 3 x Estates Technicians will be retained in the Council.
12. Furthermore, it is proposed that the Council will retain the necessary proportion of the existing staff budget to meet the costs of the retained staff, together with the cost of the (vacant) Team Manager post and utilise the balance of the existing budget presently covering staffing and agency as a service charge paid to Arc for provision of the transferring Estates professional services. Arc will then cover the shortfall in transferred budget to cover the transferred staff and additional staffing from their own resources and the ability to raise fees from larger projects. As such the proposal will be cost neutral to the Council.
13. As is important with all our work with Arc a strong client-side structure and processes are essential. Filling the Team Manager role is critical to this and has recently been readvertised. It is intended that all professional work will be commissioned to Arc including, but not as a definitive list, disposals and acquisitions, lease management, asset and insurance valuations, general valuation work, rent reviews, lease renewals, lettings, development management and property advice to support Council activities, together with management of any required professional supply chains in support of the same. Rent collection, approvals processes, instructions to Legal, budget responsibility, management of the academisation process will remain with the client side.
14. Initial discussions have taken place with staff across the service regarding the proposals. It is understood that formal consultation with affected staff and trade unions (TU's) would need to take place if the proposals are approved to transfer the service provisions to Arc.
15. In order to facilitate these proposals, an amendment to include these services in the Council's existing Service Agreement with Arc will need to be made. Pertinent considerations for the Council to address in this process will be the TUPE transfer of in-scope staff, the identification and confirmation of the specific scope of service to be operated by Arc, the manner by which Arc is commissioned and the specific terms of payment of the associated service charge.

Other Options Considered

16. Options considered are outlined in the main body of the report.

Reasons for Recommendation

17. The recommendations address the future workload faced by the service and have the potential to provide additional resource within a different method of service delivery.

Statutory and Policy Implications

18. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

19. The proposed transfer of professional surveying activities to Arc is proposed to be undertaken at nil additional cost to the Council with Arc funding the additional resources required from a variety of sources.

RECOMMENDATION

- 1) That approval be given to professional estates services being added as an extension of the scope of services under clause 17.6 of the Service Agreement between the Council and Arc Property Services Partnership Limited subject to agreement on the transfer with Arc and formal consultation being undertaken with affected staff on a transfer to Arc under TUPE.

Wayne Bexton,
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Constitutional Comments (GR 12/06/2024)

20. Pursuant to the Nottinghamshire County Constitution, the Cabinet Member has the delegated authority to receive this report and make the recommendation contained within it.

Financial Comments (PAA29 18/06/2024)

21. The financial implications are set out in paragraph 19 of the report. The 2024/25 employees' budget for Property and Estates Practice is approximately £0.74m. This includes £0.31m in respect of the staff anticipated to transfer to Arc which will form the service charge from Arc once the transfer has been implemented. As set out in paragraphs 11 and 12, once the transfer has been implemented then the Property and Estates Practice employees' budget will be reduced accordingly, and an equivalent budget set up for the service charge resulting in no additional cost to the Council.

22. The MTFS is supported by the generation of a number of capital receipts from the disposal of surplus land and buildings. Ensuring there is capacity to deliver these disposals will be important in delivering the MTFS.

HR Comments (AG 07/05/2024)

23. The proposal seeks to transfer aspects of the Estates Service to Arc. Where the provision of a service transfers from one employee to another, TUPE can apply to identified staff connected to the delivery of the service.
24. Based on the detail of the proposals, TUPE is likely to apply however, Legal advice should be sought to ascertain whether TUPE applies in this circumstance and determine any staff in scope to transfer.
25. If it is determined that TUPE applies, formal consultation would need to be undertaken with affected staff. The service will need to inform staff and TU's of the proposed transfer and consult regarding these proposals. The new provider (Arc) will also have an obligation to inform of any proposed measures/changes as part of the proposed transfer.
26. The service should also consult affected staff not 'in scope' to transfer if the proposals impact their roles.

Background Papers and Published Documents

- None.

Electoral Division(s) and Member(s) Affected

- All.