

Title of report: The Public Realm Future Operating Model

Meeting: Connected Communities Scrutiny Committee

Meeting date: Friday 14 October 2022

Report by: Interim Head of Transport and Highways

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards)

Purpose

To present the background and context of the council's current public realm services, and seek views relating to any Public Realm Future Operating Model to improve delivery of those services.

Recommendation(s)

That:

- a) committee note and comment upon the council's current model for delivery of public realm services;**
- b) committee note and comment upon the council's requirements for a Future Operating Model; and**
- c) committee support the establishment of a cross party Member working group to review the current model, and support with selection of a Future Operating Model for delivery of public realm services aligned with the council's long term objectives.**

Alternative options

1. The council continue with the current arrangements and contract for delivery of public realm services without undertaking a full review of delivery options, including maintaining the contract with Balfour Beatty Living Places (BBLP), granting further contract extensions subject to satisfactory contract performance potentially up to 31 August 2033. This is not recommended due to concerns regarding the current contracting arrangements, set out later in the report.

Key Considerations

Background

2. The council's public realm contract with BBLP was awarded in 2013, and delivered services including highways, traffic management, public rights of way, parks and open spaces, street cleaning and street lighting. In April 2022 the council negotiated with BBLP and brought the public rights of way and traffic management services back in house, as it was felt by the council these services which included some statutory duties would be better delivered by the council.

Procurement for the contract set out to achieve the following objectives:

- I. Ensuring our roads, public open spaces and streets are accessible, safe, clean and well-maintained*
 - II. Maintaining the delivery of essential services*
 - III. Achieving value for money, facilitated by process improvement and transparency through open book accounting*
 - IV. Achieving service delivery which is efficient and responsive to local needs and priorities*
 - V. Contributing to the regeneration of the economy and social capital in Herefordshire*
3. The contract commenced on 31 August 2013, with an initial term of 10 years. Single year contract extensions are subject to satisfactory performance under the contract. A one year extension has been granted by the council, which means the current end date for the contract is the 31 August 2024. A further one year extension is due, and another being assessed by the council, both of which if granted would extend the current contract to 31 August 2026.
 4. The maximum allowance for contract extensions was 10 years in total meaning the contract could be extended to 31 August 2033.
 5. The contract has a two year no fault termination clause which can be enacted either by the council or BBLP.
 6. The 2013 contract was heavily out-sourced with the council only retaining a small client and contract management function delivered by council staff.
 7. The contract is managed by council held roles as detailed in the organogram provided in Appendix A.
 8. Performance of the contract is measured via performance indicators and the August 2022 output summary is provided in Appendix B. The appendix demonstrates BBLP are meeting their requirements as set out under the contract.
 9. Due to satisfactory contract performance BBLP are due, under the terms of the contract, a further one year contract extension to 31 August 2025. A further one year extension is being assessed by the council, which if granted would extend the contract to 31 August 2026.
 10. Despite this the current operating model and contracting arrangements are not considered by Members to be delivering the council's service expectations. These concerns are generally fed back anecdotally, and often relate to individual service orders rather than the broader service itself. The contractor is also sometimes criticised for non-delivery of issues that are outside of the scope of the current service orders.

Concerns have been raised, and continue to be raised relating to:

- I. Client control
- II. Commissioning of works
- III. Planning of works

- IV. Assurance
- V. Quality or work
- VI. Responsiveness
- VII. Flexibility
- VIII. Value for money
- IX. Customer service
- X. Reputation

11. In terms of customer feedback the council participates in the annual National Highways and Transport Network (NHT) Customer Satisfaction survey. The NHT Network is a service improvement organisation providing a range of benchmarking services for the Highways and Transport sector, available on a subscription basis to Local Authorities and their delivery partners in England. The 2021 annual survey return places customer satisfaction with the Highway Service firmly in the bottom quartile, however this data does need to be considered in the context of the council's spend per km, also being in the bottom quartile of comparable local authorities in England.
12. Outsourced end to end contracts such as the council's 2013 contract with BBLP can be effective and provide VFM where Members and Officers are comfortable with the high level of control sitting with BBLP. For this model to be successful BBLP are required to deal directly with customers including Members, without cross referral to council officers. Where this form of relationships is successful and efficient a high level of trust and collaboration is established between the client and the contractor.
13. Audits of the public realm contract were undertaken by PWC and subsequently by Grant Thornton in Summer 2021 which resulted in concerns being raised regarding performance, contract management, compliance and VFM. In response to the audits a Major Contract Improvement Plan was developed by the service, and continues to be progressed to improve the current arrangements, and seeks to develop processes and procedures that can also be adopted in a Future Operating Model (FOM). The improvement plan is programmed for completion in 2022 and provided as a background document to this report.
14. To provide the council with increased control and assurance, some changes in the way the council interacts with BBLP have been introduced, set out later in the report.
15. In addition to the insourcing of the public rights of way and traffic management services mentioned earlier in the report, a Contract Management team has been established that is responsible for issuing service orders, early warnings, checking of the works and providing increased assurance for the contract performance of BBLP. Further a Highways and Traffic team has been established that is responsible for the setting of the service standards and budgets. The two teams work closely together to ensure that works are effectively commissioned and managed on the network. Previously the distinct split between commissioning and managing had been blurred by the functions being dealt with by a single team.
16. Additional interim resources have also been employed, the focus of their work being to provide the council with the assurance it seeks regarding the contract. This has seen the introduction of a more robust approach being applied to the council's relationship with the contractor. The additional cost to deliver this new function has been found from existing resources, but is not sustainable in the long term. The team of specialists will ensure that revised processes including those from the Major Contract Improvement Plan are applied to the existing contract, with these same processes are also incorporated into any new relationship.
17. The annual budget for the public realm services contract with BBLP are:
 - I. Revenue £5.84M
 - II. Capital £12.87M
18. It should be noted that the current budgets are considerably reduced from the budget that was intended

for the contact when it was awarded in 2013, which has led to some challenges relating to service delivery for both the council and BBLP. These challenges will be addressed in any FOM, or adaption of the BBLP contract going forward.

The Future Operating Model

19. As the current contract comes to its natural end and moves into the contract extension phase it is important that the council reviews its service delivery model to ensure that it is able to deliver the evolving council priorities in a manner that suits the way the council wants to work in the future.
20. Should the council decide to pursue a FOM, the public realm services must align with the council's objectives including a high emphasis on VFM, responsiveness, quality of work, customer satisfaction and aligned to the council's environmental and net zero carbon targets.
21. Following the design and introduction of the Major Contract Improvement Plan from 2021-2022, the learning and improved processes must also be incorporated into any FOM.
22. It is important that should the council proceed to procure new contracting arrangements to support a FOM, that they are attractive to the market generating competition and support local businesses/SMEs and supply chains wherever possible.
23. In 2013 the government promoted "Highways Maintenance Efficiency Programme" developed a procurement toolkit which aimed to deliver efficiency savings through the delivery of highway maintenance services procured by local highway authorities. The toolkit recommended the models provided in figure 1, below, should be considered by local authorities while considering service provision.

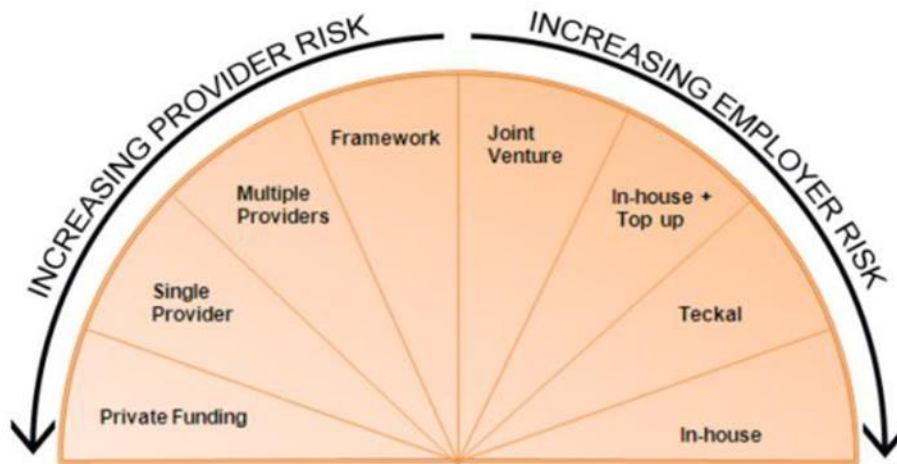


Figure 1 - Extract from the HMEP Toolkit

24. A link to the HMEP procurement toolkit providing more detailed information is provided in the supporting documents section of this report.
25. Aligned with national best practice the council propose to use this model as a starting position for any FOM, and design potential contracting arrangements that would best meet the council's objectives.
26. There are numerous contracting choices, or combinations of, that could potentially support a FOM including but not limited to:
 - a) Integrated sole supplier for all contracted services
 - b) Multiple contracts
 - c) Frameworks
 - d) In house delivery

27. Once the council's FOM objectives are agreed in principle, officers will narrow down the contracting models to preferred options, and propose to undertake an options appraisal to identify which contracting models will best support the FOM.
28. It is important that the council also reviews how it currently works and operates. Procurement exercises are expensive and time consuming, which include risks around cost and new relationships.
29. The council could choose to adapt the current BBLP contract so that it better aligns with the objectives of the council, which is likely to include a move to a more traditional "intelligent" client contractor model. This approach will necessitate the opening of dialogue with BBLP to understand how the current contract can be best aligned with the council's FOM objectives. It is proposed that this exercise will be run in parallel, and that any improvement opportunities are explored.

Key Issues

30. If the council were to consider completing the contract with BBLP, then adaption could potentially include for limited secondment or TUPE transfer of BBLP staff to the council, with accompanying council and BBLP organisational staff restructures to deliver a more traditional style contract providing the council greater control and assurance.
31. Adaption of the current contract with BBLP could be delivered in stages, however the council cannot operate unilaterally and adaption of the contract would need to be in agreement with BBLP.
32. External legal advice obtained by the council in 2022 advised that adaption of the BBLP contract would have its limitations, as adaption would be constrained by the original OJEU notice that set out the original contract framework in 2013.
33. Should the council decide adaption of the BBLP contract will not, or cannot due to the OJEU constraints, meet the council's objectives for the medium to long term, then the contract has a two year no fault termination clause which the council would need to enact.
34. There may be some adaption of the BBLP during the two year notice period, but again this would need the support and agreement of BBLP. It is important the council maintain a positive and collaborate relationship with BBLP in both scenarios.
35. Adaption of the BBLP contract or a move to a FOM supported by new contracting arrangements will require a council Project Plan including identifying the associated costs of project and programme management, internal expertise including procurement, legal, finance, HR and external and consultancy expertise over the period of the project.

Timescales

36. The Cabinet Members for Finance, Corporate Services and Planning, Commissioning, Procurement and Assets and Infrastructure and Transport are considering the options for development of a FOM.
37. Options will be guided and honed by the output of this committee as well as the findings of the cross party Member Working Group that is being established from October 2022. It is proposed that the FOM and supporting contracting arrangements will emerge via an options appraisal later in 2022.
38. Adaption of the current BBLP could commence as soon as the council make a Decision, and changes could be implemented in stages over the remaining term of the contract, which has the potential to be extended to 31 August 2033.
39. Should the council make a Decision to move to a FOM in early 2023, then a timetable for the implementation of the new style contract will need to be developed as part of that process along with development of a costed and resourced Project Plan.

Community impact

40. Public realm services are vital to communities as they include maintaining and developing infrastructure, maintaining green areas, providing effective drainage, lighting the highway and enabling safe and reliable travel by all modes of transport, and access for business and leisure.

41. The council priorities for this service area are:

County Plan 2020-2024

- i. **Environment** - Protect and enhance our environment and keep Herefordshire a great place to live
- ii. **Community** - Strengthen communities to ensure that everyone lives well and safely together
- iii. **Economy** - Support an economy which builds on the county's strengths and resources

Local Transport Plan 2016-2031

- i. **Enable economic growth** - by building new roads linking new developments to the transport network and by reducing short distance car journeys
- ii. **Provide a good quality transport network for all users** – by being proactive in our asset management and by working closely with the public, Highways England and rail and bus companies
- iii. **Promote healthy lifestyles** – by making sure new developments maximise healthier and less polluting forms of transport by delivering and promoting active travel schemes and by reducing short distance single occupant car journeys on our roads
- iv. **Make journeys easier and safer** – by making bus and rail tickets compatible and easier to buy and use, by providing 'real time' information at well-equipped transport hubs, by improving signage to walking and cycling routes and by helping people feel safe during their journeys
- v. **Ensure access to services for those living in rural areas** – by improving the resilience of our road network and by working closely with all transport operators to deliver a range of transport options particularly for those without a car

Herefordshire Transport Asset Management Strategy 2016

- i. **Major investment** targeted to fix roads that where in the greatest need of repair and have the greatest value to our local communities
- ii. **Sustained investment** over the whole life of the highway asset - an on-going programme of works that is targeted at treating roads as they are showing signs of deterioration, fixing roads before they need larger, more costly repairs, a "just in time" approach
- iii. **Reduce the need for reactive 'temporary' pothole repairs** as a response to safety defects. We will aim to deliver a high proportion of our routine pothole repairs using permanent fixes that not only make the road safe, but improve the condition of the road and extends its useful life
- iv. **Shift our routine resources further towards preventative activities**, such as the clearance of drainage. Well-drained roads decline at a slower rate and are more resilient to damage from severe weather
- v. **Provide the support that enables routine maintenance work to be delivered locally**

Herefordshire Delivery Plan 2022-2023

- i. Improve the sustainability, connectivity and wellbeing of our county by strengthening our communities, by creating a thriving local economy and by protecting and enhancing our environment
Connectivity

- ii. *We will boost different travel choices through new walking and cycling routes and widen other transport options whilst creating a long term travel plan for the county*
- iii. *We will continue to extend digital connection for households and businesses, and make the most of digital technology to improve service delivery options*
- iv. *We will support businesses and skills development to aid economic growth, along with investing in our town and city centres and promoting the county as a vibrant place to live, work and visit*

Environmental impact

42. Public realm services seek to meet the council's stated environmental objectives that will support the council meeting its net zero ambitions including:
- a) Improve drainage and increase flood resilience
 - b) Reduce the council's carbon emissions
 - c) Work in partnership with others to reduce carbon emissions
 - d) Improve the air quality
 - e) Improve residents' access to green space
 - f) Increase the number of short distance trips being done by sustainable modes of travel including walking, cycling and use public transport

Equality Duty

43. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
- A public authority must, in the exercise of its functions, have due regard to the need to –
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
44. The public sector equality duty requires the council to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty. However, wherever required and appropriate, our providers will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

45. Adaption of the BBLP contract or a move to a FOM will require a resourced Project Plan including project and programme management expertise, the internal expertise of procurement, legal, finance, HR and external and consultancy expertise over the period of the project. Once the council has a clearer view of what this may look like, a costed Project Plan including internal and external resources will be developed. The funding for this project will be growth bid for Full Council committee in February 2023.
46. Adaption of the BBLP contract or a move to a FOM, may involve the in-sourcing of some staff who currently work for BBLP. Once the council has a clearer view of how the FOM and contractual arrangements may look, this and any TUPE implications can be understood.

Legal implications

47. External legal Advice has been obtained regarding the contractual issues and options detailed in this report. Once the council has a clearer position regarding the FOM further legal and contract advice will be obtained to ensure any changes to contract with BBLP or move to new contractual arrangements do not put the council at risk.

Risk management

48. The following key risks have been identified that will need to be managed and mitigated during a move to a FOM:
- i. The Council does not agree and gain the necessary approval to support the FOM by early 2023.
 - ii. The outcome of local elections in May 2023 may result in a reversal of any Decisions.
 - iii. The one off funding required to develop and implement the FOM has not been identified or secured.
 - iv. Maintaining a healthy relationship and good performance from BBLP.
 - v. Without negotiation and agreement from BBLP, the Council are limited to the changes that can be introduced prior to the contract end date.
 - vi. Keeping existing council and BBLP staff engaged and performing during the period of change.
 - vii. Lack of interest from suppliers in any new contracting opportunities.
 - viii. The council fail to run a compliant procurement process and are unable to award new contracting arrangements.
 - ix. In house and/or new contracted services are materially more expensive than the current services provided by the BBLP contract.

Consultees

Cabinet Member for Finance, Corporate Services and Planning
Cabinet Member for Commissioning, Procurement and Assets
Cabinet Member for Infrastructure and Transport
Public Realm Services Future Operating Model Member Working Group (established October 2022)

Appendices

Appendix A: Contract management organogram
Appendix B: Contractor performance report for August 2022

Background papers

1. County Plan 2020-2024
www.herefordshire.gov.uk/council/herefordshire-council/3
2. Local Transport Plan 2016-2031
www.herefordshire.gov.uk/directory-record/5547/local-transport-plan
3. Herefordshire Transport Asset Management Strategy
www.herefordshire.gov.uk/roads-1/highway-asset-management-maintenance
4. HMEP Procurement Toolkit
www.theihe.org/wp-content/uploads/2020/07/Procurement-Route-Choices-Toolkit-PDF-90pages-147MB.pdf
5. Major Contract Improvement Plan
www.herefordshire.gov.uk/downloads/file/23747/major-contract-performance-improvement-plan

Report reviewers used for appraising this report:

Governance	John Coleman	Date 06/10/2022
Finance	Louise Devlin	Date 29/09/2022
Legal	Alice McAlpine	Date 26/09/2022
Communications	Luenne featherstone	Date 26/09/2022
Equality Duty	Carol Trachonitis	Date 29/09/2022
Procurement	Carrie Deeley	Date 30/09/2022
Risk	Kevin Lloyd	Date 26/09/2022

Approved by	Ross Cook	Date 05/10/2022
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Glossary of terms, abbreviations and acronyms used in this report:

Balfour Beatty Living Places (BBLP)
National Highways and Transport Network (NHT)
Public Realm Future Operating Model (FOM)
Small and medium-sized enterprises (SME)
Value for Money (VFM)