

Public Realm Services

Meeting: Cabinet

Meeting date: Thursday 25 April 2024

Cabinet Member: Harry Bramer, Community Services and Assets

Report by: Corporate Director, Economy and Environment

Report author: Interim Programme Director, Major Contracts

Classification

The report classification was fully exempt and was amended to open on 29 April 2024.

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Wards affected

All Wards

Purpose

A review has determined that the council's public realm services and contracting arrangements will not deliver the council's medium to long term aspirations. This report seeks agreement to terminate the current Public Realm Contract with the current provider.

Recommendation

That:

- a) **Cabinet agree to the termination of current Public Realm Service Contract with Balfour Beatty Living Places (BBLP) bringing the contract to an end on or before 31st May 2026;**

b) Cabinet delegates authority to the Corporate Director of Economy & Environment

- i. to serve the 2 year no-fault written notice on Balfour Beatty Living Places to bring the contract to an end at the end of the notice period; and**
- ii. To agree a different termination date of the contract if both the Council and BBLP are in agreement.**

c) Cabinet agrees that this decision will be published as an open decision and made public by the Corporate Director of Economy & Environment within 14 days of the notice being sent to BBLP.

Alternative Options

1. To vary the current contract. This is not an option as the variations required to the contract to meet the council's vision for a Future Operating Model are not permissible under the Public Contract Regulations 2015.

Background

2. The council's public realm term services contract with the Public Realm Service Contractor Balfour Beatty Living Places (BBLP) was awarded in 2013, and was scoped to deliver services including highways, asset management, traffic management, network management, public rights of way, parks and open spaces, street cleaning and street lighting.
3. The contract commenced on 31 August 2013, with an initial term. Single year contract extensions are subject to satisfactory performance under the contract. Evaluation of performance information has demonstrated thresholds have been achieved in accordance with the contract terms, leading to the contract being extended to the 31 August 2026.
4. The contract has a two-year No-fault Termination Clause which can be enacted by either party by serving written notice on the other party as long as there are 2 years left to run on the contract. At present the contract end date is 31 August 2026.
5. The 2013 contract was heavily out-sourced with the council only retaining a small client and contract management function delivered by council staff. Performance of the contract is measured via performance indicators and the January 2024 output summary is provided in Appendix 1, which demonstrates that the current provider is meeting their performance requirements as set out under the contract.
6. In 2021, a review of the public realm contract management arrangements was undertaken by Price Waterhouse Coopers and by Grant Thornton UK LLP, the council's external auditors, as part of their Value for Money work. These reviews identified concerns in respect of performance, contract management, compliance and value for money. In response to the audit recommendations a Major Contract Improvement Plan was developed to improve the current arrangements, and to establish processes and procedures that can also be adopted in a Future Operating Model (FOM).
7. An enhanced Contract Management Team has been established by the council during the last 2 years and it is responsible for issuing service orders, early warnings, monitoring the works, managing issues and providing increased assurance for the contract performance of the contract. Further, a Highways and Traffic team has been established, who are responsible for commissioning, 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.
8. Year on year annual savings and efficiencies are required from the public realm services, and discussions have been ongoing with council officers, the Public Realm Service Contractor and

Members annually regarding how best to realise this requirement, whilst minimising any impact on service delivery ahead of the new financial year.

9. Major capital infrastructure works have historically been delivered through the public realm contract. Moving forwards the council intend to use various options for these works including regional frameworks, the council Highways and Public Realm Scheme Framework which was procured in March 2024, and where appropriate project specific procurement.
10. To better understand the views of Members, and concerns with the current model, engagement took place with the Group Leaders, resulting in the establishment of cross party Member Groups from October 2022 until December 2023 capturing Members' views of the current services, and agreeing what Members would like to see and consider important in any FOM. A summary of these views is provided in Appendix 2.

Key Considerations

11. Despite the improvements to the public realm services, the council does not consider the current contracting model will deliver the services to the council's requirements.
12. The council's vision is to design and deliver public realm services that are fit for the future embracing technology, automation and digital innovation, a transition to electric plant, vehicles and new materials to meet carbon reduction ambitions, investment in our people that support development and innovation enabling the service to continually improve, maximising resources and opportunities to best meet the needs of local residents and communities.
13. In order to meet it vision, the council needs to terminate the current contractual arrangements with the current provider, refine the FOM and run a procurement exercise during 2025 that secures a new contractor to deliver the public realm services under the Future Operating Model from 1 June 2026.
14. The council is undertaking a cost and risk review, with the expectation that the council will be able to deliver the FOM and public realm services, at no greater cost than the current arrangements while delivering improved services. This assessment remains underway and the outcome will be reported in the FOM report scheduled for Cabinet on 27 June 2024. It is anticipated that the FOM will include the insourcing of technical roles to the Council and a new contractor to deliver the operational annual plan works.
15. Until the FOM and new contracting arrangement come into effect in June 2026, the council and the current provider will work together to deliver the public realm services and agree an exit plan to transfer the services over to the FOM from June 2026.

Implementation & Timescales

The programme demonstrates the new services will take until 1 June 2026 to be operational.

Activity	Start Date	Finish Date
Cabinet Decision to end current contract with BBLP	25 April 2024	
Cabinet Decision to approve FOM and delegate procurement	27 June 2024	
Effective date of 2 year No-Fault Termination Notice	31 May 2024	
Project planning	May 2024	June 2024
Develop specifications, contract & tender documents	May 2024	December 2024
Market engagement	September 2024	November 2024
Deliver procurement process (10 months)	January 2025	November 2025
Award contract	December 2025	
Sign contract	January 2026	

Deliver Demobilisation and mobilisation (5 months)	January 2026	31 May 2026
Contract with BBLP ends	31 May 2026	
New Public Realm Services Contract Goes Live	1 June 2026	

The programme will be subject to refinement and the soft market engagement process later in 2024 to ensure contractors bidding for the new contract are satisfied with what is proposed, to promote interest, participation and competition.

Community impact

16. Public realm services are a statutory function of the council and 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.
17. The Department for Transport has asked all local transport authorities to refresh their Local Transport Plans, this piece of work will be ready for implementation late 2024 or early 2025 and will inform future procurement for public realm services with an emphasis active and sustainable traffic measures.
18. The FOM will encourage wider engagement with community groups and parish councils to seek out efficiencies, and identify where local communities would like the service enhanced, the FOM will allow for top up voluntary and paid services to be provided within the scope of works.

Environmental Impact

19. The Public realm services FOM will be fully aligned to meet the council's 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*
20. Net Zero ambition aligned with the council's targets will be a requirement the FOM and procurement process.

Equality duty

21. 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 –

- I. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - II. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - III. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
22. The public sector equality duty (specific duty) requires the council to consider how it can positively contribute to the advancement of equality and good relations, and demonstrate that the council are paying ‘due regard’ in its decision making in the design of policies and in the delivery of services.
23. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine ‘protected characteristics’ (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have ‘due regard’ to the public sector equality duty when taking any decisions on service changes.
24. Serving the notice of termination does not have a material impact. The Future Operating Model, including design, procurement and implementation Decision, will be supported by impacts assessments as part of the June Cabinet report.

Resource implications

25. Work to serve the Notice of Termination will be undertaken by the council’s legal team at no additional cost to the project.
26. The 2024/25 approved revenue budget includes £1.2 million of one-off funding to support the Local Plan and provide resources and expertise to support the FOM and contractual arrangements with BBLP, of which a budget of £0.9 million has been allocated to deliver the FOM project.
27. Pending Cabinet agreement to terminate the current Public Realm Service Contract with BBLP, the existing FOM project will be revised to reflect the change in project scope and additional work identified to terminate the contract and support re-procurement of the public realm services contract.
28. It is estimated that the increased project scope will result in additional project costs of £1.0 million; increasing the initial estimated project costs from £0.9 million to £1.9 million. It is proposed that the additional funding required to deliver the project is sourced from Earmarked Reserve balances.
29. An analysis of the movement in project costs is detailed in Table 1 below. Table 2 shows the estimated spend and the corresponding allocation of funding in each financial year.

Table 1: Analysis of movement in project costs.

Expenditure Category	FOM Project: Contract Variation	Additional Costs	FOM Project: Contract Termination /
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			Re- procurement
	£'000	£'000	£'000
Project Management	313	38	351
Contract Expertise	-	270	270
Procurement	-	171	171
Legal & Depot Lease	80	120	200
HR, Change Management & Communications	175	272	448
IT	320	(37)	282
Demobilisation	-	203	203
Total	888	1,037	1,925
Funding Sources:			
2024/25 Revenue Budget (Approved)	888		888
Earmarked Reserves	-		1,037
Total Funding	888		1,925

Table 2: Analysis of expenditure and funding 2024/25 to 2026/27.

	2024/25	2025/26	2026/27	TOTAL
	£'000	£'000	£'000	£'000
Project Expenditure	507	783	635	1,925
Project Funding:				
2024/25 Revenue Budget (Approved)	507	381	-	888
Earmarked Reserves	-	402	635	1,037
Total Funding	507	783	635	1,925

Legal implications

30. The current contract allows either party to terminate the contract on a no fault basis where there is at least 2 years remaining on the contract term. The current contract term ends on 31 August 2026. The recommendation enables the Director to serve just over 2 years notice to end the contract on the 31 May 2026. The further recommendation enables the Director to agree a different date should this suit the Council and BBLP agree.
31. The recommendation allow this report to remain exempt until the notice has been served on BBLP and enables a further short period for BBLP to formally notify their staff before the decision is publicised.

Risk management

32. The key risks associated with serving the notice of termination are provided:

Ref	Risk	Potential Impact	Mitigation
1	BBLP terminate the contract with a 24 months Notice.	No public realm services provided by the contractor 24 months	Council have developed a programme to demonstrate the council can procure replacement

		after Notice is served by BBLP.	services within the 24 month notice period.
2	Relationship sours with current provider BBLP.	Service delivery performance reduces, and/or BBLP adopt commercial approach for last two years of contract.	Maintain the relationship with BBLP. Ensure appropriate contractual controls in place.
3	BBLP struggle to retain staff and operatives during the two year transition period.	Temporary service reduction, inadequate resources, loss of local knowledge, expertise and lack of resources.	BBLP and council deliver comms strategy with to provide assurance over future and TUPE rights. The council and BBLP do not actively encourage their staff and workforce to move to other parts of the business.

Consultees

The decision to terminate will remain confidential for a short period of time so that the Council has sufficient time to serve notice to terminate and that BBLP can adequately brief their staff as to the implications of the termination and next steps. There is a continued need for these staff both in the next 2 years and under the future arrangements. The process needs to be carefully managed with focussed communications and reassurance needed for both the staff and the public as recipients of the services.

These briefings need to be organised and done swiftly and confidentially. The notice will be served on 26 April 2024 and BBLP will have up to 14 days to brief their staff. This means that the decision under this recommendation must be implemented without any further delay including such involved with call-in. Under paragraph 4.5.75 of the Constitution, the chairperson of the Connected Communities Scrutiny Committee has been consulted on the recommendation and agrees that call-in at this point would not be appropriate.

The published notice of the decision will confirm that the decision was agreed as taken as a matter of urgency (para 4.5.76) and this will be reported to the next meeting of Council (para 4.5.77).

Appendices

Appendix 1- BBLP Contract Performance January 2024
Appendix 2- FOM Member Working Group Summary Views

Background papers

Cabinet Minutes 2 March 2023
<https://councillors.herefordshire.gov.uk/ieListDocuments.aspx?CId=251&MId=8905&Ver=4>

Connected Communities Scrutiny Committee Report and Minutes dated 14 October 2022
<https://councillors.herefordshire.gov.uk/ieListDocuments.aspx?CId=1157&MId=8824&Ver=4>

Glossary of terms, abbreviations and acronyms used in this report.

Balfour Beatty Living Places (BBLP)

Public Realm Future Operating Model (FOM)