

BBF/BTVLEP Closer Partnership Options

Suggested Legal Briefing

Black Radley

A graphic element consisting of several overlapping, curved, light blue lines that create a sense of motion or a stylized wave, positioned below the company name.

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1 Introduction

Buckinghamshire's two main business-led economic development organisations intend to work even more closely together. To support this partnership, they will need to reshape their governance arrangements and legal forms. They therefore require advice about the possible options for this **Closer Partnership**.

This document sets out what they may seek to achieve. It has been drafted by Peter Latchford of Black Radley to help expedite the process and to brief the legal advisors. It does not constitute the formal position of either organisation.

The two organisations are:

- Buckinghamshire Business First (BBF);
- Buckinghamshire Thames Valley Local Enterprise Partnership (BTVLEP).

2 Organisational Background

2.1 BBF

Buckinghamshire Business First is a private limited company by guarantee. It is a business-led, business-focused community for all businesses across Buckinghamshire. It provides its members with knowledge, support and opportunities for growth. It has a membership of over 11,000 (from a base of 34,000 businesses).

BBF was instrumental in setting up BTVLEP. The five LEP business board members are BBF nominees. BBF and BTVLEP have worked closely together from the outset.

BBF has approaching 50 staff split over Ngage Solutions and BBF payrolls and has the following subsidiaries:

- Ngage Business Services Ltd, a private limited company wholly owned by Ngage Solutions Ltd;
- Ngage Solutions Ltd, a private limited company wholly owned by BBF with a Public / Private Board chaired by Neil Gibson (Economic Development lead in Bucks County Council);

BBF also has a 20% interest In Buckinghamshire Advantage.

2.2 BTVLEP

BTVLEP is a Local Enterprise Partnership (LEP). In England, LEPs are voluntary partnerships between local authorities and businesses set up in 2011 by the Department for Business, Innovation and Skills to help determine local economic priorities and lead economic growth and job creation within the local area. They carry out some of the functions previously carried out by the Regional Development Agencies which were disbanded in March 2012. There are now 38 LEPs in operation.

Following its Industrial Strategy publication, government has reviewed its policy towards LEPs. LEPs were originally set up without heavyweight governance constraints. They have adopted varying corporate structures. The most common corporate structure is a company limited by guarantee (51% of LEPs), followed by unincorporated voluntary partnerships between private sector representatives and local authority leaders (41% of LEPs). A further 8% feature a variety of unincorporated arrangements and committees.¹ Some are part of a broader city-regional governance arrangement such as a Combined Authority, ensuring private sector strategic leadership on growth-related issues².

BTVLEP is unincorporated. It is directed by a board made up of five elected members, one from each of the Buckinghamshire local authorities, and five representatives of the private sector nominated from the Buckinghamshire Business First (BBF) board. BTVLEP is in a minority amongst LEPs in not having a balance of board members in favour of private sector representation although the Chairman is always from the Private Sector.

Buckinghamshire County Council acts as the accountable body for BTVLEP, ensuring the organisation makes decisions in line with the Assurance Framework³.

The BTVLEP delivery team comprises three core staff (all Buckinghamshire County Council secondees – Richard Harrington, Ian Barham and John Rippon) plus:

¹ <https://www.nao.org.uk/wp-content/uploads/2016/03/Local-Enterprise-Partnerships.pdf>

² <https://www.lgiu.org.uk/wp-content/uploads/2013/04/Local-Enterprise-Partnerships-an-LGIU-essential-guide.pdf>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/567528/161109_LEP_Assurance_Framework.pdf

- 6 staff seconded from BBF (Lorna Owers (Broadband), Karen Ironside, Luisa Clark, Marina Jackson, Ruth Dered (all skills hub). and Richard Burton (Marketing & PR));
- 4.5 other staff seconded from BCC (Rupert Waters (50% - Research), Anthony Sowden (Ent Zone), Fiorella Mugari (Finance), Jack Douglas (Broadband), Keerin Hossain (Skills));
- 2 significant Contractors (Jackie Campbell (Skills) and Mark Thompson).

2.3 Other Organisations

A number of organisations are part of the picture and need to be included in the new design. These are:

- Buckinghamshire Advantage: a private limited company by guarantee, ownership is 20% BCC, 20% AVDC, 20% Chiltern& Sth Bucks, 20% WDC and 20% BBF and Board is private sector majority;
- Enterprise Zone: currently unincorporated, AVDC is the Accountable body.

3 Opportunity for Change

3.1 Modernising Local Government

On 1 November 2018 the Secretary of State for Housing Communities and Local Government announced a single unitary authority for Buckinghamshire. All five councils in Buckinghamshire will be replaced with a single brand new unitary council for Buckinghamshire. This will simplify the public sector machinery with which both BBF and BTVLEP work. It also creates an opportunity to rethink ownership and representation on key initiatives/organisation as listed in the previous section.

3.2 Government LEP Review July 2018

Earlier this year, government commissioned a LEP review. This required that all LEPs incorporate, that controls are strengthened, and that business influence was further enforced. The required changes provide Buckinghamshire with an opportunity.

The relevant elements of the Review are as follows.

Roles and Responsibilities

- LEPs to sharpen their focus on productivity, as determined via Local Industrial Strategies and associated annual Delivery Plan and end of year report.
- LEPs core functions to be strategy, funds allocation, coordination, and advocacy.

Leadership and Organisational Capability

- The importance of the Chair role (including recruitment and competences).
- Private sector representation at least two thirds of the board.
- Board composition (gender and protected characteristics).
- Board secretariat independent of local government.
- An emphasis on evidence base and evaluation.

Accountability and Performance

- LEPs to have a legal personality (incorporation).
- Single Accountable Body per LEP.
- AGM open to public.
- LEPs to have clarity of **responsibility** (and processes to support), in particular for Chair, Board, Directors, and Accountable Body.
- The LEP must have appropriate **controls**, checks and balances including clear accountability, evaluation, scrutiny, peer review.

Geography

- Remove overlaps between LEPs by spring 2020.
- Mergers where appropriate (note: no mention of need for critical mass re population).
- Greater collaboration between LEPs.

4 Form Follows Function: The Specification

4.1 Purpose: Economic Growth

BBF and BTVLEP exist for one over-riding purpose: to grow the Bucks economy. The Closer Partnership design must be shaped by this.

Economic growth will come primarily from two sources: (1) growing the small businesses that make up much of the Bucks economy; and (2) step change improvements in the area's infrastructure in line with business needs.

The Closer Partnership's objects must therefore enable it to:

- Be business-led;
- Respond to government funding opportunities;
- Speak for business.

4.2 Core Processes: Engagement & Focused Business Voice

BBF has strong relationships with its business base. These relationships are a key asset: they enable BBF to deliver small business improvement. BTVLEP's approach has brought real business focus to infrastructure plans. Protecting and growing this network of relationships is therefore crucial to the purpose.

The Closer Partnership's core processes must therefore be:

- Business relationship management;
- Business-led strategic planning, funds allocation, coordination, and advocacy.

4.3 Financial Model: Leveraged Balance Sheet

The financial model for maintaining multiple small business relationships, and delivering business support through them, is not strong. Over recent decades, government has responded to the market failure for (small) business advice by providing subsidy. This is currently led by LEPs, and delivered in Bucks through BBF. BBF has been successful in leveraging its balance sheet to generate public funds for business support. The close BBF/LEP arrangement has been a key part of this. A step change increase in business support requires that the Closer Partnership: (1) strengthen the BBF balance sheet; and (2) further increase funds for business support.

The Closer Partnership's financial model must therefore:

- Build its balance sheet over time;
- Tap into business support funding.

4.4 Controls: Accountability, Capability & Assurance

Government is rightly concerned to ensure its economic development funds are supported by high quality business leadership and probity.

The Closer Partnership will comprise both funder and deliverer. A balance must be properly maintained.

The Closer Partnership's controls must therefore be:

- In line with government LEP requirements;
- Capable of allowing robust business focus on the imperatives.

4.5 Structure: Flexibility

Government's policy and practice change. BBF has succeeded by finding ways of tapping in to new public funds whilst maintaining long term business engagement. It responds to the particular circumstances of the day whilst keeping a clear focus on the long term objective of economic growth. BTVLEP has kept itself very lean, and avoided competing for profile with BBF.

Business engagement is crucial to the economic growth objective. There are opportunities to think on a wider geographic basis than just Bucks (e.g. the Growth Corridor, Oxford through to Cambridge), and to merge the four LEPs that comprise this area.

The risk is that such a large scale arrangement becomes distant from business. BBF's long term success is based on business engagement. The Closer Partnership approach is therefore "local + collaborative": the best way successfully to achieve sub-regional success is to collaborate with partners whilst staying deeply locally embedded. There may be value in exploring how Milton Keynes can be made core to our geography, but institutional focus should be on Buckinghamshire players.

The Closer Partnership structures must therefore:

- work within required government LEP parameters;
- ensure that any changes to government policy (e.g. LEP demise) do not result in the closure of the other parts of the Closer Partnership;
- allow for the Closer Partnership's future geographic expansion (or for some elements within it to do so);
- allow for the Closer Partnership's future geographic collaboration.

5 Options

5.1 Possible Options

The Closer Partnership could sit anywhere on a spectrum from arm's length to complete assimilation of the main two partners. For simplicity, this can be described as three options:

1. **LEP independent incorporation** – BTVLEP becomes an independent not for profit business and BBF continues as is;
2. **Cooperation** – BTVLEP and BBF establish a set of controls that allow for an agreed level of commonality of purpose and function;
3. **BTVLEP/BBF merger** – the two organisations become one.

On Tuesday 20th November BTVLEP & BBF representatives met to discuss the optimal long term BTVLEP/BBF structure. The meeting established a high degree of consensus.

5.2 Preferred Approach

The meeting determined that the preferred option would be one that:

- Acted with integrity (i.e. as one) across the suite of activity currently undertaken by the two organisations;
- Ensured that possible future changes in government policy (e.g. towards LEPs) would not be capable of fundamentally undermining the business-led governance and purpose of the organisation.

The meeting therefore determined that the preferred option would be a version of the Cooperation model that came close to the merger end of the spectrum. A wholly independent LEP would not achieve the desired level of asset building and influence. On the other hand, a complete merger could mean that any change in government policy would jeopardise BBF's strong engagement assets. The cooperation option would:

- bring the LEP into a family of incorporated organisations (including BBF, Bucks Advantage, the Enterprise Zone, Ngage Solutions), structured so that they simultaneously: (1) significantly increase support for business growth; (2) clarify

and address key infrastructure economic leverage points; (3) protect our long term ability to do both;

- be supported and enabled by a single executive team delivering BBF and LEP programmes.

To make this real, one option might be for the incorporated LEP to be a subsidiary of BBF. Another option would be for there to be a prescribed overlap in board membership, clearly delineated responsibilities, and a prescribed set of joint planning/control processes.

6 Legal Support

6.1 The Requirement

BBF and BTVLEP require legal advice setting out how the criteria set out above, and summarises below, can be met. We envisage this being an outline options analysis, with pros and cons. It should cover legal personalities/types, ownership, contractual interfaces, governance.

6.2 Closer Partnership Design Criteria

Objects:

- Be business-led
- Respond to government funding opportunities
- Speak for business

Core processes:

- Business relationship management
- Business-led strategic planning, funds allocation, coordination, and advocacy

Financial model:

- Build its balance sheet over time
- Tap into business support funding

Controls:

- In line with government LEP requirement

- Capable of allowing robust business focus on the imperatives

Structures:

- work within required government LEP parameters
- ensure that any changes to government policy (e.g. LEP demise) do not result in the closure of the other parts of the Closer Partnership
- allow for the Closer Partnership's future geographic expansion (or for some elements within it to do so)
- allow for the Closer Partnership's future geographic collaboration.

6.3 Competences Required

To advise the Closer Partnership on the possible ways of achieving our purpose, we require legal support that is familiar with:

- Local Enterprise Partnerships, particularly concerning their incorporation;
- The use of company law and multiple governance structures to support carefully balanced control and ownership objectives (for instance, in Public Private Partnerships).