



**Executive**  
17 February 2014

**Report from the Strategic Director of  
Adult Social Services**

Wards affected: ALL

**Accommodation Services for people with Learning Disabilities**

**Appendix A is Not for Publication**

**1.0 Summary**

- 1.1 There are 3 properties within the Borough that are leased to 2 providers under 5 year lease arrangements (Appendix A sets out the detail). Two of the leases end on 22/02/16 and the other ends 03/03/2016. The leaseholders, are also the providers of the residential care service for 10 service users.
- 1.2 In July 2013 the Corporate Assets Board agreed that all 3 leases be terminated and new leases be negotiated. This decision was made on the basis that the rental rate originally agreed by the PCT of a peppercorn is not a current fair market rental value.
- 1.3 This decision to terminate presents an opportunity for the Council, in line with the objectives in the draft Market Position Statement, to:
- a) commence a procurement to establish new lease agreements that have appropriate market rental terms associated with appropriate management arrangements, and, in parallel;
  - b) procure new on site care and support service agreements that deliver a Supported Living model of care, which maximises independence, in line with CQC guidelines.
- 1.4 This report therefore requests approval to invite tenders in respect of care and support services and also in respect of tenancy management arrangements with associated leases as required by Contract Standing Orders 88 and 89.

## **2.0 Recommendations**

- 2.1 The Executive give approval to the pre - tender considerations and the criteria to be used to evaluate tenders in respect of tenancy management arrangements with associated leases for the 3 properties located in Beechcroft Gardens, Kinch Grove and Manor Drive as set out in paragraph 6.1 of the report.
- 2.2 The Executive to give approval to officers to invite tenders in respect of tenancy management arrangements with associated leases and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.
- 2.3 The Executive to give approval to the pre - tender considerations and the criteria to be used to evaluate tenders for on site care and support services at th 3 properties located in Beechcroft Gardens, Kinch Grove and Manor Drive as set out in paragraph 6.1 of the report.
- 2.4 The Executive to give approval to officers to invite tenders in respect of on site care and support services at the 3 properties located in Beechcroft Gardens, Kinch Grove and Manor Drive and evaluate them in accordance with the approved evaluation criteria referred to in 2.3 above.

## **3.0 Background**

- 3.1 The changes proposed in this report are part of a wider strategy, outlined in the Council's draft Market Position Statement 'Care and support Closer to Home' to create a more diverse accommodation based care and support market. The aim is to ensure that the council is able to meet people's individual needs in the least restrictive environment, reducing the reliance on institutional care – residential and nursing care.
- 3.2 Residential and Nursing care is one of Adult Social Care's largest areas of spend, accounting for £39 million spend last year. It is expensive care option, and research also strongly suggests that Residential care often encourages dependence.
- 3.3 Supported Living provides service users with a tenancy, their own front door (self contained living environment) and encourages a different model of care and support which is focused on maximising the independence, choice and control individual service users have and, therefore, improving their quality of life.
- 3.4 Of the 3 properties referenced within this report, the property located in Manor Drive already has Supported Living status, and the 2 other properties are currently residential homes with proposals to convert them to Supported Living status. In order to deliver the new model of care and support, the residential homes would need to be de-registered with the Care Quality Commission (CQC). The new care and support provider would still need to be registered with the CQC, but not as a residential care provider. Throughout the de-registration process, the council would ensure that all activities are safe, ethical, professional and in line with the

following CQC criteria.

- 3.5 Whilst the proposed de-registration is taking place, two separate procurements will operate for tenancy management arrangements (with related leases) and for on site care and support services. The separation of accommodation and the provision of the care and support will be clearly defined within the tendering documentation. This is fundamental to the de-registration process.

#### **4.0 The services (current and future)**

- 4.1 Currently, Voyage Ltd. is the care provider at Kinch Grove. Over the forthcoming months it is proposed that the property will be de-registered and moved to Supported Living status for services to be provided to 4 service users. This may involve works on the property, some of which would be required even if the property was to remain a residential care home. If works were required, it may be necessary for the service users to move to different accommodation for a short period. The current cost of this service for 4 service users is £292,000 per annum whilst future lease revenue is estimated as £14,000 per annum.
- 4.3 Dimensions (ADP) Ltd. is the care provider at Manor Drive and Beechcroft Gardens. The former is already supported living accommodation, which for the 3 service users costs £104,000 per annum. Beechcroft Gardens is a residential care home. The cost for the service, for 3 service users, is £110,000 per annum. Each property is forecast to be leased out at £14,000 per annum. If Beechcroft Gardens is de-registered and becomes Supported Living, then minor works to the property may be necessary.
- 4.4 Subject to the approval of the recommendations of this report, leases for all 3 properties will be procured to include tenancy management arrangements and to secure fair market rates over a 10 year term. This 10 year term (with a 5 year break clause) is the standard suggested by property services. It is anticipated that service users will occupy the properties by way of a licence or an Assured Short hold Tenancy.
- 4.5 The future care services will be let under the Supported Living model where providers will need to give service users the opportunity to live as independently as possible. At the tender stage bidders will need to demonstrate throughout their proposals how they will achieve this outcome whilst ensuring that service users feel safe in the knowledge that care or support is close at hand to meet their needs. The eventual contract will be for 5 years to coincide with the break clause for the leases and to provide the Council with an option to review the market which is constantly evolving.
- 4.6 It is proposed to procure separate lots for each of the 3 properties for both care and support services and management arrangements, leading to the possible appointment of different providers for each lot.

## 5.0 Service User Consultation and Impact

- 5.1 The council has undertaken comprehensive reviews with all 10 service users. These reviews involved family and carers where appropriate and representatives from the current service providers. The outcome of these reviews has shown that all 10 service users' needs can be met in Supported Living accommodation, and that there are a range of opportunities to maximise their independence and quality of life that would be achieved by changing the service model.
- 5.2 In addition, the service users, their families and/or advocates were also invited to a consultation meeting about the proposed changes, which extended to a briefing on the tendering plans.
- 5.2 The consultations for Beechcroft Gardens and Manor Drive have been positive and the feedback from families, their advocates and/or service users was supportive of the changes while recognising the need for close communication and working through the period of change.
- 5.3 There has also been a consultation at Kinch Grove. The feedback here was less supportive. The family members of three service users were more anxious about the change to Supported Living as they are happy with the current provider and the current model, but they were open to the changes as long as we continue to work closely with them and ensure there is no adverse impact on the service users. However, one service user's family has continued to raise significant concerns about the change to a supported living model. All of the families raised concerns about people having to move as they have lived there together for 20 years. As the reviews have shown all the current service users' needs can be met in supported living accommodation, so there would be no need for any of the current service users to move - unless they chose to. However, as outlined above there is a chance that the change to supported living would require some works to the property and it may be necessary for a short term move to allow this work to happen.
- 5.4 The families have been reassured that the intention is to use these changes to identify additional opportunities, through the new model of care and support, to focus on the service users' individual needs, to maximise independence and improve their quality of life. However, given the varied feedback and desire for more information, further Kinch Grove consultation meetings will take place to work through the detail of the planned change and address the concerns raised.
- 5.5 As the changes take place and are implemented the service users will also be supported as follows:
- The Council will ensure that it works very closely to develop transitional plans. If a temporary move is required, then these plans will best match the service users

to local and similar facilities. If additional support is required, then this will also be available

- When moving into the supported living accommodation, support plans will also be reviewed to ensure they are tailored to individual need in the new service.

5.6 It is important to recognise that the new model of care and support (Supported Living) is designed to improve equality of opportunity between persons who share a relevant protected characteristic and others who do not share it by integrating the service users in to the community as opposed to confined to institutionalised model i.e. residential care. The detailed Equalities Impact Assessment (Appendix B) expands upon the consultation and the impact the proposed changes will have to the service users.

## 6.0 Pre tender considerations

6.1 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response
(i)	The nature of the service.	<p>Provision of:</p> <p>a) tenancy management arrangements with associated leases for 3 properties, located at Kinch Grove, Manor Drive and Beechcroft Gardens.</p> <p>b) on site care and support service arrangements for the 3 properties located at Kinch Grove, Manor Drive and Beechcroft Gardens.</p>
(ii)	The future estimated value of the contract	<p>a) The contract value for the 3 tenancy management arrangements is together estimated as £50,000 over 10 years. The lease element is revenue to the council estimated as £420,000 over 10 years.</p> <p>b) The 3 care and support services arrangements have together an estimated value of £2,530,000 across all 3 properties.</p>
(iii)	The contract term	<p>a) The tenancy management arrangements with associated leases will be for a 10 year period.</p> <p>b) The care and support services contract(s) will be let for a 5 year period.</p>

(iv)	The tender procedure to be adopted.	<p>a) The tenancy management arrangements with associated leases will be procured through a one stage or open tender process in accordance with the Council's Standing Orders.</p> <p>b) The care and support services arrangements will be procured through a two stage or restricted tender process in accordance with the Council's Standing Orders.</p>	
(v)	The procurement timetable	<p><b>a) Tenancy management arrangements with associated leases (open tender)</b></p> <p>Indicative dates are:</p> <ul style="list-style-type: none"> <li>• Adverts placed</li> <li>• Deadline for Expressions of Interest</li> <li>• Issue Invitation to Tender (ITT)</li> <li>• Deadline for tender submissions</li> <li>• Panel evaluation complete</li> </ul> <p>Operational Director Property and Projects agree any outstanding market rental leasing terms with bidders</p> <ul style="list-style-type: none"> <li>• Final leaseholder(s) selection</li> <li>• Report recommending Contract award circulated internally for comment</li> </ul>	<p>28th Feb 2014</p> <p>21st April 2014</p> <p>28 Feb to 21st April 2014</p> <p>22nd April 2014</p> <p>May 2014</p> <p>May 2014</p> <p>July 2014</p> <p>September</p>

		<ul style="list-style-type: none"> <li>• Executive approval to award contracts</li> <li>• New contract() commence</li> </ul> <p><b>b) Care and support services contract(s) (Restricted tender)</b></p> <p>Indicative dates are:</p> <ul style="list-style-type: none"> <li>• Adverts placed</li> <li>• Deadline for Expressions of Interest</li> <li>• Pre Qualification Questionnaires received</li> <li>• Issue Invitation to Tender (ITT)</li> <li>• Deadline for tender submissions</li> <li>• Panel evaluation complete</li> <li>• Report recommending Contract award circulated internally for comment</li> <li>• Executive approval to award contracts</li> <li>• New contract() commence</li> </ul>	<p>2014</p> <p>October 2014</p> <p>28th Feb 2014</p> <p>31st March 2014</p> <p>7th April 2014</p> <p>28th April 2014</p> <p>30th May 2014</p> <p>June 2014</p> <p>July 2014</p> <p>September 2014</p> <p>October 2014</p>
(vi)	The evaluation criteria and process	The procurement process for the tenancy management arrangements with associated leases and the care services arrangements will both be evaluated in accordance with the Council's Contract Procurement and Management Guidelines. The actual process will differ given the different tendering	

		<p>approach adopted for the two procurements but Stage 1 for both will require bidders to meet the Council's financial standing requirements, technical capacity and technical expertise.</p> <p>For Stage 2, the panel will evaluate the tenders against <u>Quality and Price criteria</u></p> <p>For both procurements, Tenders will be evaluated on the basis of the most economically advantageous tender and the contract awarded using the following criteria</p> <p>1. Quality: Quality will consist of 40% of the evaluation weightings. The quality assessment will be evaluated using a range of criteria:</p> <p><b>a) The tenancy management arrangements with associated leases</b></p> <ul style="list-style-type: none"> <li>• Approach to managing the property in line with lease.</li> <li>• Handling of overall property maintenance including day to day repairs and cyclical repairs.</li> <li>• How occupancy agreements will be managed including rent payments from tenants and/or their appointees.</li> <li>• Approach to working with external on site care providers.</li> </ul> <p><b>b) The care and support services arrangements</b></p> <ul style="list-style-type: none"> <li>• How experience in delivering similar services will be applied to the Service.</li> <li>• How the Service will be operated to lead to improved personal independence</li> <li>• How out of hours services will be delivered.</li> <li>• Staffing – skills, qualifications and experience and structure in order to meet the needs of those with LD/PD requirements</li> <li>• How the Service will be operated to achieve delivery of outcomes</li> </ul>
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		<ul style="list-style-type: none"> <li>How policies and procedures regarding equality and human rights will be applied specifically to this group of service users.</li> <li>How the Safeguarding policy will be implemented specifically to this group of service users.</li> </ul> <p>2. Price will consist of 60% of the evaluation weightings.</p>
(vii)	Any business risks associated with entering the contract	The lease holders may fail to adequately maintain the premises which may result in a potential breach of a maintenance obligation in the lease. Save as detailed elsewhere in the report, no other specific business risks are considered to be associated with agreeing the recommendations in this report.
(viii)	The Council's Best Value duties	The evaluation criteria are based on a model where cost and quality will be distributed to ensure that provider(s) are selected on best value. The tendering documentation will also specify how the agreements will be managed to ensure on-going delivery of the outcomes.
(ix)	Any staffing implications	See section 10.0 below
(x)	The relevant financial, legal and other considerations	See section 7.0 and 8.0 below

6.2 The Executive is asked to approve these proposals as set out in the recommendations and in accordance with Standing Order 89.

## 7.0 Financial Implications

7.1 The current annual care costs for each of the three properties are broken down as follows:

Kinch Grove - cost for 4 clients is £292,000

Manor Drive - cost for 3 clients is £104,000

Beechcroft Gardens - cost for 2 clients is £110,000

7.2 The future care services for these three properties are proposed to be let under the Supported Living model, which is more cost effective and gives service users the opportunity to live as independently as possible. Moving individuals to different care schemes may release savings, however as they are case dependent they can only be quantified once support plans have been reviewed and transitional arrangements agreed.

- 7.3 The future estimated annual value of the contract is made up of £506,000 of care costs, shown in paragraph 7.1, £5,000 tenancy management costs and lease income of £14,000. All expenditure is currently funded from existing budgets.
- 7.4 Any refurbishment costs incurred in changing the status of the property from a residential home to a supported living arrangement will be the new provider's responsibility. The costs for these works will be requested through the tender process and factored into the evaluation of their bids.

## **8.0 Legal Implications**

- 8.1 The care and support services contracts are Part B services for the purposes of the Public Contracts Regulations 2006 ("EU Regulations"), and are thus only subject to partial application of the EU Regulations to include requirements in relation to technical specifications and the need to publish a Contract Award Notice. The tenancy management arrangements are valued at less than the EU Regulations threshold for services contracts and thus the EU Regulations do not apply to this procurement.
- 8.2 The estimated single and combined value the future care and support services contracts are (including possible extensions) in excess of £250k. As such the contracts are High Value Contracts for the purposes of council's Contract Standing Orders and Financial Regulations and thus Executive approval is required to invite tenders and to evaluate tenders for the contract. The contracts for tenancy management are in fact Low Value Contracts for the purposes of council's Contract Standing Orders and Financial Regulations and thus Executive approval is not strictly required to invite tenders and to evaluate tenders for the contract although Members do have authority to grant such approval.
- 8.3 Once the tendering process is undertaken, Officers will report back to the Executive in accordance with Contract Standing Orders explaining the process undertaken in tendering the contract and recommending award.
- 8.4 In the present case, a number of contractors are currently providing elements of the service being procured. As a result, the Transfer of Employment (Protection of Employment) Regulations 2006 ("TUPE") may apply if the contract is awarded to a new contractor where immediately before the change of contractor, there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the Council and where the employees are assigned to that organised grouping. Subject to the right of the employee to object to transferring, the employee's contract of employment will transfer to new contractor.
- 8.5 The Care Homes Act 2000 ("the Act") provides the definition of a care home and a domiciliary care agency for registration purposes. Section 3, in so far as it is relevant, provides as follows:

“(1) For the purposes of this Act, an establishment is a care home if it provides accommodation together with nursing or personal care...”

- 8.6 In August 2002 the Department of Health issued guidance on registration of care homes which sets out how to distinguish between care homes and Supported Living arrangements. Essentially the distinction is between whether personal care is provided to an individual in an establishment or within their own home. This is a question of fact for the Care Quality Commission [‘CQC’] to determine. The guidance does state that it is not determined by whether the care element is provided by a different company from the accommodation provider. Rather what is required is that the service user has autonomy akin to those living in ordinary accommodation and that this will include a choice in the care provider.
- 8.7 Presently one of the three properties has successfully been de-registered and therefore CQC were satisfied that the arrangements for that property were for Supported Living. It is noted also that prior to any contract being awarded it is intended to apply to de-register the remaining homes so CQC will already have taken a view on whether the arrangements for the remaining two properties are such that they do not require registration as care homes prior to the letting of the new contracts.
- 8.8 The current cohort of service users are assessed as having cognitive impairments, therefore consideration will need to be given to the arrangements for both their accommodation and care arrangements to ensure that they do have genuine control. See section 5.0 for details of current Service User engagement and the future approach to be undertaken by ASC.
- 8.9 Members are referred to Confidential Appendix A in relation to the termination of care and support arrangements and leases with the current providers.
- 8.10 As part of the procurement of tenancy management arrangements with the associated leases, it is envisaged that the associated leases will be contracted out of the Landlord and Tenant Act 1954 so that the contractor will not have the benefit of the right to a new lease when the lease comes to an end.

## **9.0 Diversity Implications**

- 9.1 The proposed care contract(s) will require the provider(s) to deliver services which are:
- culturally sensitive by providing cultural awareness training for all staff, matching specific language requirements where possible and recruiting a local workforce which reflects the communities of Brent;
  - able to provide support and advice to service users with learning disabilities, and;
  - able to provide training for all staff in areas that will raise awareness of issues faced by vulnerable people from different ethnic groups.

- 9.2 The care provider(s) will be monitored to ensure they are complying with these requirements through checking of their records, regular review of services provided to individual service users where feedback will be sought from service users, monthly monitoring meetings and provision of quarterly performance information to the Council.
- 9.3 An equalities analysis has been completed (see Appendix B) in accordance with the Equality Act 2010.

## **10.0 Staffing Implications**

- 10.1 This services will be provided by external contractors and there are no direct implications for Council staff arising from tendering the contracts
- 10.2 There may be TUPE implications arising from the award of the contracts. The assumption is that TUPE may apply to those staff providing a service that will be included in the tender process. Such staff may transfer to a new employer under TUPE as a result of the proposed tendering process. Appropriate consultation with current employers will commence as soon as possible.

## **11.0 Public Services (Social Value) Act 2012**

- 11.1 The council is under a duty pursuant to the Public Services (Social Value) Act 2012 (the “Social Value Act”) to consider how relevant services being procured might be structured to improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the council might act with a view to securing that improvement; and whether the council should undertake consultation.
- 11.2 This duty applies to the procurement of the proposed contracts as Part B Services over the threshold for application of the EU Regulations are subject to the requirements of the Social Value Act. .
- 11.3 The market for care services whilst being nationally large is highly specialised to client needs and geographical locations which narrows the opportunities available to the Authority in terms of the requirements of the Social Value Act. However, officers will throughout the new procurement exercise take account of Social Value Act provisions and seek to implement these as appropriate.

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