



Cabinet
14 April 2015

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

For Action

Wards Affected:
ALL

AWARD OF CONTRACT FOR CARE PROVIDER SERVICES

Not for publication

Appendix 2 to this report is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"

1.0 Summary

1.1 The report concerns the commissioning of a new service delivery model for care services at a proposed new Extra Care facility at Park Royal in Brent. It seeks approval to progress with Direct Payments (DP) for all residents and an exemption from tendering in accordance with Contract Standing Order 84(a) to allow Officers to enter into discussions with the proposed provider and agree appropriate commercial and service terms leading to the award of a contract.

2.0 Recommendations

2.1 That Members approve an exemption from the usual tendering requirements of Contract Standing Orders in order for appropriate commercial and service terms for the Extra Care facility contract at Park Royal to be agreed.

2.2 That Members note that the final decision to award the contract for the 'shared' elements of the service at the Extra Care facility at Park Royal

will be subject to the approval of a further Cabinet report which will recommend that Mears Care Limited are awarded a contract with an initial term of one year with an option to extend for a further year.

3.0 Detail

Background – Extra Care

- 3.1 Extra Care is accommodation based care and support for people who can no longer live independently in their own home but do not need to or want to move in to a residential or nursing care home. It offers the independence of 'your own front door', and your own home but with the security of 24 hour flexible on site care and support and a community of friends and peers close at hand.
- 3.2 Brent has 176 units of Extra Care accommodation at the moment. This accommodation provides support to people who have relatively high care needs (over 14 hours of care a week). The current delivery model is for a registered housing provider to own and manage the building and for Adult Social Care (ASC) to commission the care for all residents separately as a single contract. The recently approved WLA Home Support Framework includes an Extra Care lot which was designed for this purpose.
- 3.3 The key strength of this approach is it creates an economy of scale in the care provision, which means the provider can always have care staff on site to respond to unplanned care needs and emergencies. The other key strength is that by separating out the care contract from the accommodation, it can be re-tendered on a competitive basis, periodically, in line with EU regulations. However, this can create challenges. Having different providers delivering different elements of the service make it more challenging to deliver economies of scale across the service and even with clear specifications, for both the housing management aspects of the service and the care and support services, there can be duplication of roles on a day to day basis. What's more, well designed care and support plans for individual residents can deliver personalised support in this model, but there is an argument that says ultimately the residents still do not have complete choice and control over their care provider.

New Accommodation for Independent Living Project

- 3.4 Brent Council Cabinet approved the ASC Market Position Statement (MPS) in February 2014 - attached at Appendix 1. The MPS set out the Council's vision of transforming the accommodation based care and support market in Brent and to develop more Extra Care and supported

living accommodation in Brent. (This is also reflected in the Council's 2014-18 Housing Strategy.) The overarching objectives of this approach are to ensure there are alternatives to residential and nursing care homes, which give people greater choice and control to live independently and improve their quality of life, while making the best use of public money.

- 3.5 To realise this strategy, ASC and Housing have embarked on a project; 'New Accommodation for Independent Living' (NAIL) to work with the care and housing markets to develop more local Extra Care and supported living accommodation. At the start of the project there were 136 Extra Care units of accommodation in Brent. The NAIL project is set up to deliver a further 340 units of accommodation by 2017-18. This is ASC's most challenging target and project.
- 3.6 The key challenges this project has been tackling in order to deliver the targets are:
- Identifying appropriate development sites locally due to land availability, suitability and cost in Brent
 - Ensuring providers have the confidence to invest in Extra Care and supported living facilities in Brent, given the costs associated with the planning and development process, the risk of managing void costs given the Council's exclusive nomination rights
 - Developing a new care model for this expanded market that not only is in line with procurement rules, but also delivers on the Council's commitment to give people choice and control over the care they receive.
- 3.7 The NAIL project delivered 40 units of accommodation at Willow House in February 2015, an additional 99 Extra Care units are in development by housing association ASRA Housing Group for delivery in early 2016. There are plans for three further sites in 2016/17 which will deliver an additional 100 units, but the challenges set out above remain, and the work described in this report is another important part of tackling those challenges, and delivering this project and the long term commissioning approach for the Council.

Plot 3 – Park Royal

- 3.8 This site was identified early on in the NAIL project as one possible site for the provision of a new, large (80-90 unit) Extra Care facility in Brent. It is located in Park Royal opposite Central Middlesex Hospital. It is also adjacent to the existing Victoria Centre Nursing home and another Extra Care scheme which is currently being built by ASRA Housing Group.
- 3.9 The Plot 3 site already has an extant outline planning permission for the development of residential care accommodation and a feasibility

study was undertaken at the end of last year in conjunction with the site owner, Montpelier Estates, to consider the suitability of the site for Extra Care housing. The feasibility study included consultation with a range of stakeholders and a workshop with service users. The study concluded that a well-designed and high quality Extra Care housing scheme that met best practice guidelines such as the HAPPI criteria (Housing our Ageing Population Panel for Innovation) could reasonably be developed to help meet increasing local needs for accommodation for older persons meeting the Council's eligibility criteria for ASC services.

- 3.10 After fully considering the outcome of the feasibility study, which is enclosed as Appendix 2, the NAIL project board agreed with Montpelier Estates that both parties would work together to explore the delivery of the new Extra Care facility.
- 3.11 Montpelier Estates own the site, but they needed to find a housing provider with registered provider status to purchase the site and build the new facility. Over the last few months Montpelier Estates have undertaken a dialogue with a number of prospective registered housing providers which the Council has been engaged in where appropriate. After exploring opportunities with a number of prospective housing providers, Montpelier Estates have confirmed that only one, Plexus, is in a position to deliver the new facility in line with their requirements as the site owner, with the tenure ASC require as commissioners and within the timescales ASC require to meet its NAIL targets.
- 3.12 Plexus is a housing provider with Registered Provider status with the National Homes and Communities Agency, the regulatory body for Housing Associations as per the Housing and Regeneration Act 2008, and forms the 'not for profit' housing arm of the wider Mears Group which is a publicly limited company. Mears are a provider of registered care services locally. The Council already commissions Mears to provide domiciliary care services in Brent and they were successful in being appointed to the WLA Home Support Framework in October 2014 to provide domiciliary care services. They were also successful in being appointed to the Extra Care lot on the framework and have therefore met the quality and price criteria required to be awarded a contract.
- 3.13 Following further dialogue between the Council and Plexus/Mears, they have confirmed that for them to build the new Extra Care facility they would want to provide the care and support service for the first 2 years alongside the delivery of the housing management service as landlord. The rationale for this is that they are planning to deliver the site purely through a private finance model (with no equity or public sector grants). They have advised the Council that the financial risks relating to voids and operational costs particularly in the first year of delivery as people move in are significant enough to make this request. In order to satisfy

its funders, Plexus/Mears are required to present a robust business plan which demonstrates there is an established position on the delivery of the housing management and care services element before entering into the funding structure, and this includes delivering the care in the first 2 years.

- 3.14 This creates an issue for the Council as this does not fit with the current Extra Care service delivery model in Brent, which currently separates out the accommodation/housing management services from the care and support service.

Proposed Solution

- 3.15 This situation provided an opportunity to rethink and test new ways of delivering Extra Care, which is a key part of the NAIL project transformation and deliver two of the Council's key priorities. The proposed solution is three fold:
1. Pilot a move away from a single contract for the delivery of all care and support services in the Extra Care accommodation to a Direct Payments model.
 2. To ensure the availability of a flexible and responsive 24 hour service to support the delivery of a direct payments model , with the 'shared' elements of the care and support service delivered and managed through a contract to deliver these elements of the service.
 3. To further test this new delivery model, by having a single provider delivering the shared element of the care and support service alongside the delivery the housing management service.
- 3.16 Every resident would be provided with a DP to purchase their planned care and support needs which would give them greater choice over who delivers their care. They could choose to have Mears deliver their planned care and support needs alongside the provision the 'shared' care and support service or they could decide to go to a care agency or they could choose to employ someone directly. This approach would mean that all residents would be given a DP. However some people will not want to or be able to manage their DP, they will want the Council to do it for them. Therefore, the Council will need to ensure that there is a managed account DP option, which gives the person control, but allows them to delegate the management of their DP. The Council already commissions a provider to support people to manage their DP so this support is already in place and available.
- 3.17 There would then be the need to contract for the "shared service" element of the care and support service that cannot be delivered through DP's. This would include the availability of on-site 24 hours a day staff presence to provide 'waking night' cover to support people

with their care needs at night and to provide an immediate and responsive services to meet any unplanned care and support needs that may arise at any time that cannot be predicated.

- 3.18 The day to day housing management of the scheme will be funded separately through housing benefit as would be the usual model (ASC are only responsible for paying for peoples care and support and are not responsible for paying any costs related to the housing management service – this will not change).
- 3.19 In order to deliver this solution, Officers need to secure the exemption from the usual tendering requirements to award a contract for the shared care and support service for a 2 year (1+1) period. This 2 year period would provide assurance to Plexus/Mear's financiers that the payback for the upfront scheme investment can be made, and would allow the Council to test a new DP's approach to delivery of Extra Care.
- 3.20 It is proposed that negotiations with the Plexus/Mears start immediately and are subject to guarantees that would subsequently be confirmed in the contract, on:
- Quality – clear quality standards are agreed, and there are clear processes for escalating quality concerns and for suspending or terminating the contract if these issues cannot be rectified
 - Cost – assurance that the cost is no more than the average cost on the WLA Home Support Framework including London Living Wage.
- 3.21 Agreeing this exemption, and setting out clear parameters for negotiation understood by both parties, will ensure that the planning and development work for the site can also start in parallel and ensure that delays in delivering the site are minimised and we are able to meet the challenging targets we have set as part of the NAIL project.

Risks and mitigation

- 3.23 Plot 3 is a unique site opportunity in the NAIL project. It offers a size and scale unlike any other opportunities we have identified so far. However, the Council needs to be assured that any decision that is made will deliver high quality care, is financially sustainable in the long term and offers value for money. Therefore a number of risks and issues need to be addressed relating to this proposed solution and the developing Extra Care market in Brent.
- 3.24 Brent Council has not delivered Extra Care through DP's before. The approach is clearly in line with the Council's' priorities, but it has not been tested. We do not know conclusively that the theoretical benefits of individual choice and control delivered on this scale will outweigh the operational benefits of a single contract managed by the Council for people with the most complex needs. However, we do already have a

managed account model for DP's, which will support those who cannot manage their DP, and perhaps more importantly while this model has not been delivered in Brent, it has been delivered successfully in other parts of the country, which we can learn from. We have also used a DP model in smaller supported living schemes for residents with learning disabilities with very high, complex needs and this has worked well.

- 3.25 The proposed solution potentially creates additional complexities in assuring high quality provision for all residents. There could be more than one provider on the site delivering planned care through DP's and through the single provider for the responsive 24 hours 'shared service'. This is not as simple as a single provider for the whole service, but it is no more complex than the arrangements across the home care and extra market as a whole. As we do with all providers, we will agree clear performance and quality standards that are robustly monitored and underpinned by contingency plans for any possible provider failure scenarios – this is a requirement of the Care Act from April 2015. This will include a clause in the 'shared service' contract setting out the Council's right to undertake a competitive procurement for the service at any time during the life of the contract should the quality of the service fall below what it expects and corrective actions have not been implemented effectively.
- 3.26 It could be argued that managing the costs would be simpler through a single contract for Extra Care from the current WLA Home Support Framework. However, not delivering the care through the Framework does not mean we cannot manage the costs by aligning them to the prices set within the agreement. The DP rate is set and provides efficiency savings against core home support rates, and as stated above, negotiations for the 'shared service' would be benchmarked against the average rate we currently pay for care and support in Extra Care, including London Living Wage, to ensure that costs are managed for the Council and there is no financial advantage for the provider against the those on the current Framework.
- 3.27 There is also a potential risk in how both elements of this service model (DP's and the 'shared service') is perceived by other current and future providers. Extra Care is a rapidly expanding market in Brent and across the country, which brings with it new providers (social care and housing) and new models of delivery. There is also a need to test new models of delivery in response to the changing demands of national legislation (Care Act 2014) and individual expectations for choice and control. This proposed solution responds to this changing context by responding to individual circumstances of this site (including the size and scale of the proposed development and the proposed financial model for development), and piloting a new approach which delivers on core priorities while clearly managing the risks. There will be clear quality and price conditions underpinning the negotiation of the 'shared service', reflected in termination and break clauses which will allow the

Council to change its approach if problems arise. And the piloting of this approach is clearly part of the NAIL project and will therefore be of clear benefit in developing the Council's long term response to the need for increased Extra Care and supported living accommodation.

- 3.28 In addition to the risks of implementing this new approach, there are also risks to not implementing the proposed approach. The key risk, if Cabinet decide not to agree the DP/shared care service model, is to the timescales for the development of the site. There are other ways forward, for example, refusing to negotiate on the current care delivery model forcing Plexus/Mears and/or Montpellier to change their approach, or even for the Council to buy the site and develop it. However, any variants of these options will lead to significant delays in delivering the Extra Care accommodation and a risk that it will not be delivered at all.
- 3.29 Therefore, it is proposed that the new service delivery model (for a maximum of 1+1 years and with a 'shared service' contract with clear price and quality conditions) is agreed as the alternative are not sufficient enough to outweigh the benefits of the proposal. Piloting a new approach in line with the Council's objectives and delivering much needed Extra Care accommodation will deliver significant benefits for people to live independently for much longer.

4.0 Financial Implications

- 4.1 The Council's Contract Standing Orders state that exemptions for supplies and services exceeding £172k or works contracts exceeding £250k shall be referred to the Cabinet for approval of the exemption and award of the contract.
- 4.2 The estimated value of this shared care service contract is £316k per annum. This is based on the anticipated level of activity for an 80 unit Extra Care facility and priced at an average LLW inclusive hourly cost from the Extra Care lot of the WLA Home Support Framework.
- 4.3 It is anticipated that the cost of this contract would be funded from the ASC Extra Care budget in line with the NAIL project model.
- 4.4 The NAIL savings in totality equate to £7.5m, which have been budgeted to be delivered throughout the coming 3 financial years. This site would potentially deliver £1.1m of these savings if fully utilised for 80 units of Extra Care accommodation.

5.0 Legal Implications

- 5.1 Contracts for the provision of care services fall within Schedule 3 of the Public Contract Regulations 2015 ("EU Regulations"). The estimated value of the proposed contract over its lifetime is less than the

threshold for Schedule 3 contracts of £625,050. As a result the procurement of the contract is not subject to full requirement of the EU Regulations.

5.2 Despite the procurement of the contract not being subject to full requirement of the EU Regulations, the general EU requirements for transparency, non-discrimination and equal treatment will normally require advertising and some form of competitive process before contract award even for below threshold procurements, especially if a contract is likely to be of interest to overseas EU providers. As detailed in paragraphs 3.10 to 3.14, officers have explored the competitive procurement of the shared services element to the care services but have been advised by housing provider for the proposed Extra Care housing scheme that it requires any 'shared service's element to the care services to be delivered by Mears Care Limited failing which the scheme will not be financially viable and the will not therefore be available to the Council. As a result there is effectively only a single contractor that can be appointed and therefore it can be maintained that the direct award of the contracts does not contravene these general duties.

5.3 The estimated value of the proposed contract with Mears Care Limited is such that it is classed as a High Value Contracts for the purposes of the Council's Contract Standing Orders. Contract Standing Order 96(a) provides that for contracts with an estimated value below the EU Procurement Regulations threshold, tenders shall be invited for High Value Contracts. However, Contract Standing Order 84(a) provides that subject to compliance with domestic and European legislation, the Cabinet may agree an exemption from the requirement to procure in accordance with Contract Standing Orders where there are "good operational and/or financial reasons". For the reasons detailed in paragraph 5.2 it is not considered there is a breach of domestic or EU legislation. Further, Officers consider that there are good operational and financial reasons for negotiating and awarding the contract directly to Mears Care Limited rather than carrying out a formal tendering process. These reasons are set out in paragraphs 3.15 to 3.21 of the report.

6.0 Diversity Implications

6.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

7.0 Staffing Implications

7.1 The proposed service is a new service it will be provided by an external contractor. As a result there are no implications for Council staff arising from the proposed award.

8.0 Public Services (Social Value) Act 2012

- 8.1 Whilst agreeing the terms of the final contract the requirements of the Public Services (Social Value) Act 2012 shall be considered i.e. how the services to be procured may improve the economic, social and environmental well-being of Brent. The service under this contract has as its primary aim, the improvement of the social wellbeing of some of the most vulnerable groups in Brent.

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