



Cabinet
27 July 2015

**Report from Strategic Director
Adults**

For Action

Wards Affected:
ALL

Tudor Gardens – Supporting Independent Living

1.0 Summary

- 1.1 In February 2015 Cabinet agreed to consult with residents, families and stakeholders on the proposal to deregister Tudor Gardens Residential Care home and re-provide it as supported living accommodation in line with the Department's objectives to support people to have increased choice and control to live as independently as possible.
- 1.2 The Council has now completed a twelve-week statutory consultation on proposed changes. This report outlines the responses to that consultation, the potential impact on the residents and resulting recommendations taking into account the feedback that has been received from service users, family members, advocates, staff and unions. A summary of the consultation process and outcomes is attached at Appendix A.
- 1.3 To deliver the supported living model a new provider(s) will be selected through a tender process to deliver on-site care and management services.

2.0 Recommendations

- 2.1 Cabinet to note the responses received during the consultation meetings over the 90 statutory consultation days between March and June 2015.
- 2.2 Cabinet to approve Officers start the process to de-register Tudor Gardens as a residential care home and the re-provide as supported

living accommodation for the reasons detailed in paragraphs 3.7 and 3.8.

2.3 Cabinet to approve the invitation of tenders for the on site care and support services at Tudor Gardens on the basis of the pre - tender considerations set out in paragraph 7.1 of the report.

2.4 Cabinet to approve Officers evaluating the tenders referred to in 2.2 above on the basis of the evaluation criteria set out in paragraph 7.1 of the report.

3.0 Background

3.1 The council has a statutory duty to provide, or procure access to, services and support for those people who are assessed as eligible. The council is also legally responsible for the key policies and guidance for people with learning disabilities that relates to the proposed changes and is required to consult on proposed change to residential care services.

3.2 The Care Act 2014 reinforces Brent Council's focus on what people can do, rather than what they cannot do and the importance of promoting independence, choice and control in order to make a difference to people's well-being. The Council's 'Market Position Statement' (MPS) and the New Accommodation for Independent Living (NAIL) project are focused on the creation of a more diverse accommodation based care and support market 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) and increasing access to other forms of accommodation such as supported living.

3.3 Residential and Nursing care is an expensive care option and often discourage independence. Supported living, on the other hand, 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 Changes to residential services are complex, particularly in circumstances where people have lived in their home for a long time and have built social networks and routines that are valued. This is an important consideration for the implementation of the recommendation and will be central to the way that changes are managed.

3.5 It is important to note that the council has a legal duty to continue to provide support to the residents of the services at Tudor Gardens,

based on an assessment of their needs. Within any recommendation for changes to services the council will continue to ensure that high quality care and support is available to all residents, based on an up to date assessment of the individual's needs and a support plan which meets these.

- 3.6 In February 2015 Cabinet agreed to consult with residents, families and stakeholders on the proposal to de-register Tudor Gardens. The results of the consultation suggest that relatives did not want change but supported the supported living model.
- 3.7 This report recommends to Cabinet to agree to deregister Tudor Gardens residential care home. The creation of supported living accommodation with tenancies for residents, who already live in studio flats, will provide the residents with greater security, and it also means they can access a wider range of benefits, including housing benefit. The ability to access housing benefit to pay for their accommodation also significantly reduces the cost of support for adult social care, which is set out in more detail in the Financial Implication section.
- 3.8 It also creates additional opportunities to work with the residents to identify new support and services tailored to their individual needs to enable them to be as autonomous and independent as possible. In order to do this Officers will work with the current residents and their families, carrying out individual reviews of needs and support plans, and working with the residents and their families as groups, to co-produce the revised service and support needs. This in depth understanding of individual and collective needs will ensure Officers are able to commission the right range of care and support to help people to live more independently.

4.0 Tudor Gardens: the service

Current and future

- 4.1 Tudor Gardens is a relatively new residential care home, which replaced Melrose House four years ago. Most of the staff and residents moved from Melrose House to Tudor Gardens. It's the one remaining in-house, directly provided residential care home. It currently provides support to 14 people who have a learning disability, but it has the capacity for 15 residents. There are 24 staff that provide support.
- 4.2 The home was built in partnership with the housing department under a PFI scheme and comprises three separate buildings, each containing 5 units.
- 4.3 Each of the buildings is made up of self contained studio flats. Each studio flat has an en suite bathroom, kitchenette and living and sleeping area. Each building also has a shared bathroom, laundry

room, communal area and kitchen. In other words, the building and accommodation is ideal for supported living.

- 4.4 The levels of need and support vary across the 3 buildings, but only one of the buildings supports residents who have relatively high care needs and require 24 hour care support. The service is well regarded by residents, relatives and commissioners and has been inspected by the Care Quality Commission on a number of occasions and has always met all standards.

5.0 The Consultation Process and Impact

- 5.1 6 meetings have been held over a statutory 90 day period aimed at service users, relatives and staff. More meetings had been scheduled, however, at the request of relatives this was reduced as many of them live outside London. Relatives also requested to have joint meetings with residents, which was done.
- 5.2 For all service users' meetings there was a Makaton signer, an advocate and a note taker. For all relatives meetings there was a palentypist who transcribed a verbatim record of what was being said. The joint resident and relative meetings were extended to take into account the level of understating of resident and the need for Makaton translation.
- 5.3 One of the consultation meetings commenced with a visit to two other supported living homes - 167 Willesden Lane and 2 Lyndsey Drive in Wembley. Both of these establishments gave relatives a detailed overview of how a supported living establishment operates and provided relatives with the confidence to know that people with all levels of needs can successfully be supported within a supported living environment.
- 5.4 Other consultation meetings had highlighted concerns about social work practice, the procurement process and de-registration, so the relevant people were invited to attend the final consultation meeting to talk through all of these concerns: the social work team manager for Learning Disability, a procurement representative and a manager from a supported living establishment.
- 5.5 Residents were primarily concerned about 3 issues. They:
- wanted to keep the existing staff, specifically individual key workers. It was stressed that this may be possible through TUPE but could not be guaranteed
 - 1 resident wanted a better understanding of 'the money' (benefits)
 - did not want Tudor Gardens to close down, and it was confirmed that the proposal was not to close Tudor Gardens down, just to change the way it works.

- 5.6 Relatives concerns focused on the following. They:
- had concerns about the quality of the assessment and support plans (for example, a number of residents had been previously identified as being ready to undertake employment and it was felt that residents did not have the capacity to work.
 - there was a desire to have a psychologist to undertake the assessment and not care managers. These issues were explicitly addressed when the Learning Disability social work team manager attended the final consultation meeting
 - had some concern that supported living would not meet the needs of the people who currently live in Tudor Gardens. It was explained that supported living can meet any level of need depending on how it is set up and this was evidenced through the visits to supported living accommodation, which those who attended the visit agreed
 - expressed a lack of trust in the Council and trust in the process and asked to extend the consultation period to 6 months as there was a feeling it was being rushed. It was agreed that after this 3 month consultation, the engagement and co-production would continue through the implementation phase as a way of continuing to build trust
 - Consistency of staff in the new service model. The preference was to have the existing staff group if TUPE applied, and as above it was confirmed that this may be possible, but could not be guaranteed.
- 5.7 Assurance was provided that the process would be open and transparent and that engagement with families was essential to ensure success. This helped to rebuild trust. Families were told that the council intended to continue to work with them throughout the three month consultation process and to engage with them over the next three months to identify additional opportunities, through the new model of care. The aim would be to work together to focus on the resident's individual needs, by way of the assessment process to maximise their independence and improve their quality of life and to make the change a success.
- 5.8 The staff consultation meetings were very much focused at HR issue with Unison in attendance. The main issue here tended to focus of future pattern of work and what will happen to those staff with fixed term contracts.
- 5.9 Members are referred to Appendix A for further details of the consultation. Following consideration of the consultation, Officers continue to regard deregistration of Tudor Gardens as appropriate.

6.0 The Deregistration Process

- 6.1 The Care Quality Commission (CQC) is clear that in supported living there must be a genuine separation between the provision of care and

the accommodation. The clearest response to this would be for the Council to contract with the independent sector for the regulated care and make alternative arrangements with regard to tenancy management arrangement. The future care and tenancy management arrangements providers will be selected through an Open procurement process. As the estimated value is above the relevant EU threshold, the tender will be managed in compliance with the Public Procurement Regulations 2015 as set out at 7.1.

- 6.2 The de-registration process takes up to 12 months from the point at which consultation on the proposed changes begin. Officers have already had initial discussions with CQC, who have confirmed that the strength of the current residential service is a good starting point for the de-registration. Subject to the agreement of Cabinet, an application will be made to CQC in August to de-register. This starts an iterative process where Officers will work with CQC and service users and carers to confirm the detailed plans for the new supported living service. Officers will need to ensure that the process progresses at the right speed to ensure service users and carers are kept informed and engaged, and that there is clear alignment with the procurement timeline (award in January 2016) and the planned go-live in April 2016. The de-registration process may not be fully complete by the time the contract for care and support services is awarded in January 2016, but it is possible to award subject to completion of the de-registration process.

7.0 Pre-tender considerations

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

Ref.	Requirement	Response
(i)	The nature of the service.	Provision of on site care and support service arrangements at Tudor Gardens.
(ii)	The future estimated value of the contract	The contract value for the care and support services arrangements is estimated as £3.3m.
(iii)	The contract term	The care and support services contract will be let for a 5 year period.
(iv)	The tender procedure to be adopted.	The care and support services arrangement will be procured through an Open tender process in accordance with the Council's Standing Orders.
(v)	The procurement timetable	

		<p>Care and support service contract (Open tender)</p> <p>Indicative dates are:</p> <ul style="list-style-type: none"> • Adverts placed • Issue Procurement documentation including the Invitation to Tender (ITT) • Deadline for tender submissions • Panel evaluation complete • Report recommending Contract award circulated internally for comment • Cabinet approval to award contracts • New contract commence • Service go live 	<p>1st September 2015</p> <p>1st September 2015</p> <p>2nd October 2015</p> <p>23rd October 2015</p> <p>9th November 2015</p> <p>14th December 2015</p> <p>2nd January 2016</p> <p>April 2016</p>
(vi)	The evaluation criteria and process	<p>The procurement process for the care services arrangements will be evaluated in accordance with the Council's Contract Procurement and Management Guidelines.</p> <p>Whilst an Open tender process is being followed, bidders will still have to meet the Council's financial standing and technical capacity requirements.</p> <p>The panel will evaluate the tenders against <u>Quality and Price criteria</u></p> <p>Tenders will be evaluated on the basis of the most economically advantageous tender (MEAT) and the contract awarded using the</p>	

		<p>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, namely:</p> <ul style="list-style-type: none"> • How experience in delivering similar services will be applied to the Service. • How the Service will be operated to lead to improved personal independence • How out of hours services will be delivered. • Proposals with regard to staffing – skills, qualifications and experience and structure in order to meet the needs of the client group • How the Service will be operated to achieve delivery of outcomes • How policies and procedures regarding equality and human rights will be applied specifically to this group of service users. • How the Safeguarding policy will be implemented specifically for this group of service users. <p>2. Price will consist of 60% of the evaluation weightings.</p>
(vii)	Any business risks associated with entering the contract	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)	Consideration of Public Services (Social Value) Act 2012	See section 12.0 below
(x)	Any staffing implications	See section 11.0 below
(xi)	The relevant financial, legal and other considerations	See section 8.0 and 9.0 below

7.2 Cabinet are asked to approve these proposals as set out in the recommendations and in accordance with Standing Order 89.

7.3 The current building management (maintenance) will continue to be provided through the PFI contractual arrangements. Officers are continuing to explore the most appropriate arrangements with regard to housing management. Given that Tudor Gardens is part of a PFI scheme, any housing management arrangements need to dovetail with maintenance arrangements and be consistent with the Council's PFI agreement.

8.0 Financial Implications

8.1 The 2015/16 Tudor Gardens budget in scope for this cabinet report is £872,000.

8.2 Based upon the latest modelling the expected saving from deregistering to a Supported Living facility is expected to be £300k. This would be achieved through operating efficiency through sourcing Care and Support from the external market and the receipt of a new rental income stream.

8.3 The additional rental stream would potentially generate £100k pa, which would be considered a saving for the department. This is based upon 14 units charged at £600 per month. This rental income would be in the form of Housing Benefit which cannot be claimed within a residential care home.

8.4 The full available gross budget for a new Tenancy Management contract and care and support service arrangements is £672k pa.

8.5 Based upon previous modelling the expected contract cost of Tenancy Management for 14 residents is expected to be £7k and the expected contract cost for all care and support services would be £665k. This equates to a full contract budget for five years of approximately £3.3m.

8.6 There is the possibility with the decision of this report that there will be one off redundancy costs incurred as a result. The council will therefore have to contain these one-off costs within its General Fund.

8.7 This saving forms part of the wider transformation of direct services initiative that has a full saving requirement of £755,000 over 2015/16 (£432,000) and 2016/17 (£323,000). It is expected that the contribution de-registration of Tudor Gardens makes to this saving is sufficient to make the whole saving achievable by the end of 2016/17.

8.8 Savings are monitored as part of the council's budget monitoring process and this decision would form part of that monitoring going forward.

8.9 As part of procurement process Officer will need to consider the liability in relation to any risk sharing related to TUPE implications

9.0 Legal

- 9.1 There is a need to be clear and precise about processes and to ensure the council acts in accordance with its duties under the Equality Act 2010.
- 9.2 Cabinet members are reminded that they are under a duty to have due regard to protect and promote the interests of persons with protected characteristics, to consider and analyse how the decisions they make are likely to affect those with protected characteristics and to remove any unlawful discrimination, or other protected conduct and to consider whether practical step should be taken to mitigate or avoid any adverse consequences. In addition Cabinet members must also take into account the necessity of providing cost effective and good quality services and these or other requirements may mean that those types of considerations ultimately justify a decision which does to some extent adversely impact on people with protected characteristics.
- 9.3 The impact assessments, including feedback from consultation or engagement where appropriate, is available at Appendices A and B in compliance with the 2010 Act.
- 9.4 The current CQC Guidance is very clear that the Council must be able to show that there is a clear separation between the provision of accommodation and the provision of care for the de-registration to be lawful, i.e.,
- that each resident is genuinely living in his or her own home,
 - that the community care needs and service required by each resident has been considered separately,
 - that each resident has been given a choice as to who provides these services, including the option to receive a personal budget or direct payments and to employ their own carer or to meet his or her needs in other ways.
- 9.5 The CQC guidance is not binding, however, it does state that it will consider this Guidance when considering an application to deregister a care home.
- 9.6 The estimated value of the future care and support services contract is in excess of £250k. As such the contract is a High Value Contract for the purposes of council's Contract Standing Orders and Financial Regulations and thus Cabinet approval is required to invite tenders and to evaluate tenders for the contract.
- 9.7 Care and support services fall within the social and other specific services listed in Schedule 3 ("Schedule 3 Services") of the Public Contracts Regulations 2015 ("EU Regulations") and as such are subject to a lighter touch regime. As the estimated value of this proposed tender is £6.3m, it is above the threshold applicable to Schedule 3 Services (currently set at £625,050) and will therefore need to be procured in accordance with EU Regulations, including advertising in the Official Journal of the European Union.

- 9.8 Once the tendering process is undertaken, Officers will report back to Cabinet in accordance with Contract Standing Orders explaining the process undertaken in tendering the contract and recommending award.
- 9.9 As this procurement is subject to the full application of the EU Regulations, the Council must observe the requirements of the mandatory minimum 10 calendar standstill period imposed by the EU Regulations before the contract can be awarded. If no challenge or successful challenge is brought during this standstill period, the Council can issue a letter of acceptance to the successful tenderer and the contract may commence.
- 9.10 The Transfer of Employment (Protection of Employment) Regulations 2006 (“TUPE”) will apply when 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 the new contractor. This is likely to apply to all 24 staff currently employed. Further details regarding TUPE implications are contained in the Staffing Implications.

10.0 Diversity Implications

- 10.1 The proposed care contract 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 residents 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.
- 10.2 The care provider will be monitored to ensure it is complying with these requirements through checking of their records, regular review of services provided to individual resident where feedback will be sought from residents, monthly monitoring meetings and provision of quarterly performance information to the council.
- 10.3 An equalities impact assessment has been completed (see Appendix B) in accordance with the Equality Act 2010. Overall the changes are neutral, but should have a positive impact by providing the tenants with

secure tenancies, and reinforcing the focus on individualised assessments and support plans which give them greater choice and control.

11.0 Staffing Implication

- 11.1 Any de-registration of Tudor Gardens would have significant staffing implications. TUPE will apply to approximately 24 council staff working in the centre likely to transfer to the new provider. Pursuant to TUPE the new provider will be required to meet its obligations under the legislation to former council staff. In particular, all contractual terms and conditions currently afforded to those staff will need to be sustained by the incoming provider at the time of transfer.
- 11.2 If the incoming supplier intends to make changes to the staffing contracts which Officers are aware of, the council will need to advise the staff of any known proposed changes at the time of advising the staff of the date of the transfer and the name of the successful bidder.
- 11.3 A specific requirement will be imposed on the provider to permit former council staff to continue to access the Local Government Pension Scheme (“LGPS”) if they wish by the provider becoming an admitted body under the LGPS or alternatively provide former council staff with broadly comparable pension provision. An admitted body under the LGPS will generally bear liability for any pensions’ deficit that may accrue. It is not considered to be in the council’s interest to place 100% of all pensions’ risks on the provider as the provider has no real control over such risks. Where the provider has to bear full pensions risks, its bid will generally be more expensive. As the council is setting a funding envelope for the contract, placing 100% of risks on the provider will instead translate into the provision of fewer services or a lower quality service. In the circumstances, Officers will seek bids on the basis that a pensions’ risk share agreement will be offered, with the standard form of pensions risk share agreement, agreed by the General Purposes Committee, issued with the Invitation to Tender.
- 11.4 It is probable that the staff who are on fixed term contracts will not have those renewed once the transfer has occurred. The council may need to consider the political implications of those job losses once figures are supplied as to the quantity of staff involved.
- 11.5 Trade Unions will be briefed prior to the start of any formal HR consultation process and Officers will work with trade unions to ensure staff understand the range of support that is on offer to them during the process. There is no statutory minimum period of time for consultation with staff and representatives although best practice is to start the

process as early as possible as the council may be found to be in breach of its duties if it fails to consult in a reasonable manner.

- 11.6 The council will supply all relevant TUPE information to prospective bidders in line with its established practices, reflecting the need for confidentiality and data protection.

12.0 Public Services (Social Value) Act 2012

- 12.1 The Council is under duty pursuant to the Public Services (Social Value) Act 2012 (the “Act”) to consider how the services being procured might 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. Officers have commenced engagement with a range of service users to understand their views of the current service and how the future contract may be shaped to meet economic, social and/or environmental needs.

- 12.2 The services being procured have as their primary aim improving the social and economic well being of some of the most vulnerable groups in Brent. They are specialist services with only a limited number of organisations who can meet the Council’s requirements. Nevertheless, Officers will endeavour to ensure the requirements of the Act are implemented as part of the procurement process.

- 12.3 Bidders will also be asked to submit pricing that includes the London Living Wage.

13.0 Background Papers

Report to Cabinet – 23 February 2015

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