

MUNICIPAL YEAR 2009/2010 REPORT NO. **253**

MEETING TITLE AND DATE:

Council – 31 March 2010

REPORT OF:

Director of Health and
Adult Social Care

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Agenda – Part: 1

Item: 10

**Subject: Honeysuckle House
Oakthorpe Road N13 5HY**

Wards: Palmers Green

Cabinet Member consulted:

Cllr Edward Smith

Report to be read in conjunction with Part 2

1. EXECUTIVE SUMMARY – [Part 1 Report]

- 1.1 Honeysuckle House is a registered Care Home built in 1995 and provides a 32 bed residential and nursing care home for older people with dementia. It was built on 0.36 hectares (0.89 acres) of land owned by London Borough of Enfield (LBE). The New River Health Authority (NRHA) provided Enfield Council with a capital grant to cover the costs of demolishing a previous building on this site and building the new care home.
- 1.2 The purpose of this report is to agree the acquisition of the remaining financial interest held by NHS Enfield (successor to NRHA) in Honeysuckle House Care Home.
- 1.3 NHS Enfield have maintained a beneficial interest in the site since 1995 and have sought over a number of years to work with the Council to realise the value of their financial interest through an agreement to share any proceeds from a sale, should such ever take place. This report, and in consideration of government guidance which covers such situations, proposes to make a payment to NHS Enfield in full and final settlement of their interest in Honeysuckle House thus freeing up the Council to make arrangements to retender the Care Contract at best value.

2. RECOMMENDATIONS – To considered with the Part 2 report.

Cabinet agreed on 3rd March 2010, to recommend to full Council to:-

- i) Approve a capital payment to NHS Enfield as full and final settlement of all responsibilities in respect of the original contribution by the NHS in the Section 28a agreement of 1995; and

3. BACKGROUND

- 3.1 Honeysuckle House is a care home for elderly people in Oakthorpe Road, Palmers Green, Enfield. The Home is currently managed under contract to the Council by CareUK a third party independent sector care provider.
- 3.2 The Council entered into an agreement with the NRHA for the purpose of redeveloping Honeysuckle House in 1995. The NRHA provided a capital grant under S28a National Health Act 1977, to cover demolition of an old building and building a new 32 bed elderly persons care home, on a site owned by LBE of 0.36 hectares (0.89 acres) edged black on the attached plan. However, no clear documentation exists as to any defined split of the value of Honeysuckle House between the NRHA and LBE ,except clause 5 of an agreement dated xxx 1995 which provides that the provisions of Section 28A National Health Act 1977 apply, together with any prevailing Directions.
- 3.3 Section 28A is not much help in defining a division of value in these situations, as it simply refers to the repayment of grants in such circumstances as may be specified. More useful are the Secretary of State's Directions made under this section:-

Section 4(1) of the Directions provides as follows:-

“where...

- (a) a payment has been made under Section 28A ...” (i.e. the grant).. towards the cost of acquiring, or of executing works to, land or other property.. and

(b) the recipient-

- (i) disposes of the whole or part of the land..
.... The recipient shall repay the NHS body an amount equal to the proportion of the open market value of that land or other property (or the relevant parts thereof) as is attributable to the expenditure of the payment.”

- 3.4 The guidance then goes on to state the “open market value” should be determined by a suitably qualified surveyor (who might be the District Valuer) who shall determine the apportionment of the part of such value attributable to the expenditure of the payment (i.e. the grant)
- 3.5 While the wording is not as clear as it might be, it could be interpreted as being if the grant was paid for the building, what is the apportionment of the current market value of the property attributable to that building now?
- 3.6 It is clear that the NRHA provided a grant for the construction of the building but it did not own the land on which the building was constructed.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There are potentially 2 alternatives which could be considered. Firstly, the Council could choose to do nothing and continue to use Honeysuckle House for local residents. This means that NHS Enfield continue to have a financial interest in the home for which the Council is now responsible. It is maintained through Property Services at the Council’s expense.
- 4.2 Secondly, the Council could openly market the Care Home as a going concern now or in the future. In the event that a disposal is agreed then the Council would be required to repay to NHS Enfield an amount equal to the proportion of the open market value of the property attributable to the original building paid for by the NRHA.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The issue of the NHS Enfield interest in Honeysuckle House has been subject to considerable discussion over recent years, linked to the future commissioning strategies for Honeysuckle. Until the issue of ownership is wholly resolved decisions regarding Honeysuckle House will continue to be influenced by the NHS in ways which may not be in the best interests of the Council. In particular the Council needs to retender the care contract and it would be preferable to make decisions about this in isolation from NHS Enfield ownership issues, thus enabling the achievement of best interest and value for the Council. In particular the length of a care contract and the basis on which maintenance and repairing obligations could be transferred to the care provider all impact on best value.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 The Council and the PCT have been in discussions on the options for the future of Honeysuckle House as set out in the report. The preferred option is to buy NHS Enfield out of their remaining interest in the home.

6.1.2 This report outlines the following alternative options:

- Firstly the Council could choose to do nothing and continue to use Honeysuckle House for local residents, accepting that NHS Enfield have a financial interest in the home for which the Council is responsible.
- Secondly the Council could openly market the Care Home as a going concern, bearing in mind that it would need to repay the NHS for their share at the point that the sale was agreed.

6.1.4 The Council pays the cost of the block contract for 32 beds provided by an independent provider and would continue to incur the ongoing revenue costs. Capital outlay, repairing liabilities and future service provision all need to be considered in order to appraise which future option is the most financially beneficial to the authority.

6.1.5 The “do nothing” option would mean that the Council would continue to contract with a provider on a block basis, continue to be responsible for the repair and maintenance of the building and need to take any decision on the future of the building bearing in mind that the NHS would be entitled to its share of any proceeds resulting from the disposal value of the property. Whilst this option does not involve any capital outlay at the current time, the report identifies that it will restrain the Council’s decision making regarding the future of Honeysuckle House. It may for example be better for the Council to have the freedom to consider a different care contract and ownership model.

6.1.6 The preferred option would involve buying the NHS out of their remaining beneficial interest in Honeysuckle. This option would result in the Council owning the full value of the asset and being in a position to make a decision about future care provision and the future ownership of the asset (ie it may be possible to transfer the ownership of the asset when re-letting the contract). In the current property market, it would also be advantageous to purchase the PCT share.

6.1.7 The other option is to market the property as a going concern. This might appear to be advantageous at first sight. The Council and the

NHS would share the proceeds according to the basis as stated at 6.4. However, the Council will want to continue to block purchase the beds and therefore decisions about revenue savings verses capital receipts would be hampered by the remaining NHS interest in Honeysuckle House.

6.2 Key Risks

6.2.1 This report essentially delivers a financial transaction between the Council and NHS Enfield in exchange for full ownership and control of Honeysuckle House by the Council. The Council's legal team have made comments below and provided a legal framework within which this transaction can occur to safeguard the Council's best interests. There would therefore to be very limited risks relating to any legal and property transaction.

6.3 Legal Implications

6.3.1 As detailed in the body of this report the Council entered into an Agreement dated 12th July 1995 in which Clause 5 (repayment) states that the provisions of Section 28A of the National Health Service Act 1977 and any Direction shall apply, where it gives rise to liability on the part of the Council to repay the grant or part thereof. Under Section 28A, sub section 7(b) includes the requirement that, if specified the Council may be required to repay the whole of any part of a payment made or an amount representing the whole or part of the increase in the value of the property which has occurred since its acquisition. The Secretary of State issued clarification in the form of a Direction (Directions by the Secretary of State as to conditions governing payments by health authorities to local authorities and other bodies under Section 28A of the National Health Service Act 1977), where if a payment has been made under Section 28A towards the cost of acquiring, or of executing works, to land, etc and the recipient disposes of the whole or part of the land or other property or uses it or any of it for any other purpose other than that for which the payment was made, the recipient shall repay to the NHS body an amount equal to the proportion of the open market value of that land or other property (or relevant parts thereof) as is attributable to the expenditure of the payment.

6.3.2 The Council has not yet met the requirements under the Secretary of State Direction, i.e. disposed of the whole or part of the site nor used it for any other purpose. Therefore, if the NHS body were to accept the payment at this stage there is a requirement for them to waive their legal rights under Section 28A of the National Health Service Act 1977, which includes the Direction from the Secretary of State. Appendix 1 to the part 2 report is a legal agreement which could be entered into between the Council and Enfield PCT. This document will be subject to negotiation with Enfield PCT.

6.4 Property Implications

- 6.4.1 Property Services were asked in February 2010 to provide an opinion of the value of Honeysuckle House to enable LBE to consider the market value of the 32 bed care home, apportioning the value between land and the entirety property as at 1995 and as at February 2010.
- 6.4.2 It should be noted that the Property Services` s advice is provided for apportionment purposes with support from Pinders, consultant valuers who are specialists in the Care home market, to determine a basis of apportionment as at 1995 and 2010. It is also emphasised that internal historic documentation and s.28 of the National Health Service Act 1977 documentation is not clear. Research references and Secretary of State Directions are not definitive on the apportionment issue.
- 6.4.3 Pinders have provided a report for the Council to assess the value of the PCT interest as successor body to the NRHA, who paid a capital sum in 1995 . This sum included the demolition of the care home previously on site plus the costs of construction of a home for 32 former Enfield residents of the Claybury site. Pinders advise that the 1995 care home brief included a number of elements that did not add value to the property as indicated below. These include :-
- 4 no.bedrooms for rehabilitation;
 - more office space than standard;
 - a late contract variation to relocate a laundry room with expensive diversion of services.;
 - 24 person day centre
 - wider than standard corridor space for residents (who enjoyed spacious living arrangements at Claybury)
 - a training kitchen to support independent living.
- 6.4.4 Hence these elements would not be regarded as marketable attributes in 1995 or 2010 and have therefore been ignored in valuation terms. However, they did form part of the costs.
- 6.4.5 Analysing the market value of the home in 1995 as a modern fully equipped facility Pinders have assessed its value, despite the construction spend figure. Pinders have considered the Council` s interest (land value) of total market value.
- 6.4.6 Pinders have assumed a notional 5 year agreement being in place with a care provider, [currently CareUK], with the Council responsible for all repairs in accordance with the current arrangements.
- 6.4.7 Accordingly, the Interim Head of Property is prepared to certify the release of a capital amount to NHS Enfield rather than progressing the alternative to option 2 (the joint marketing of the home)

7. PERFORMANCE MANAGEMENT IMPLICATIONS

Not applicable to this report

8. COMMUNITY IMPLICATIONS

Not applicable to this report

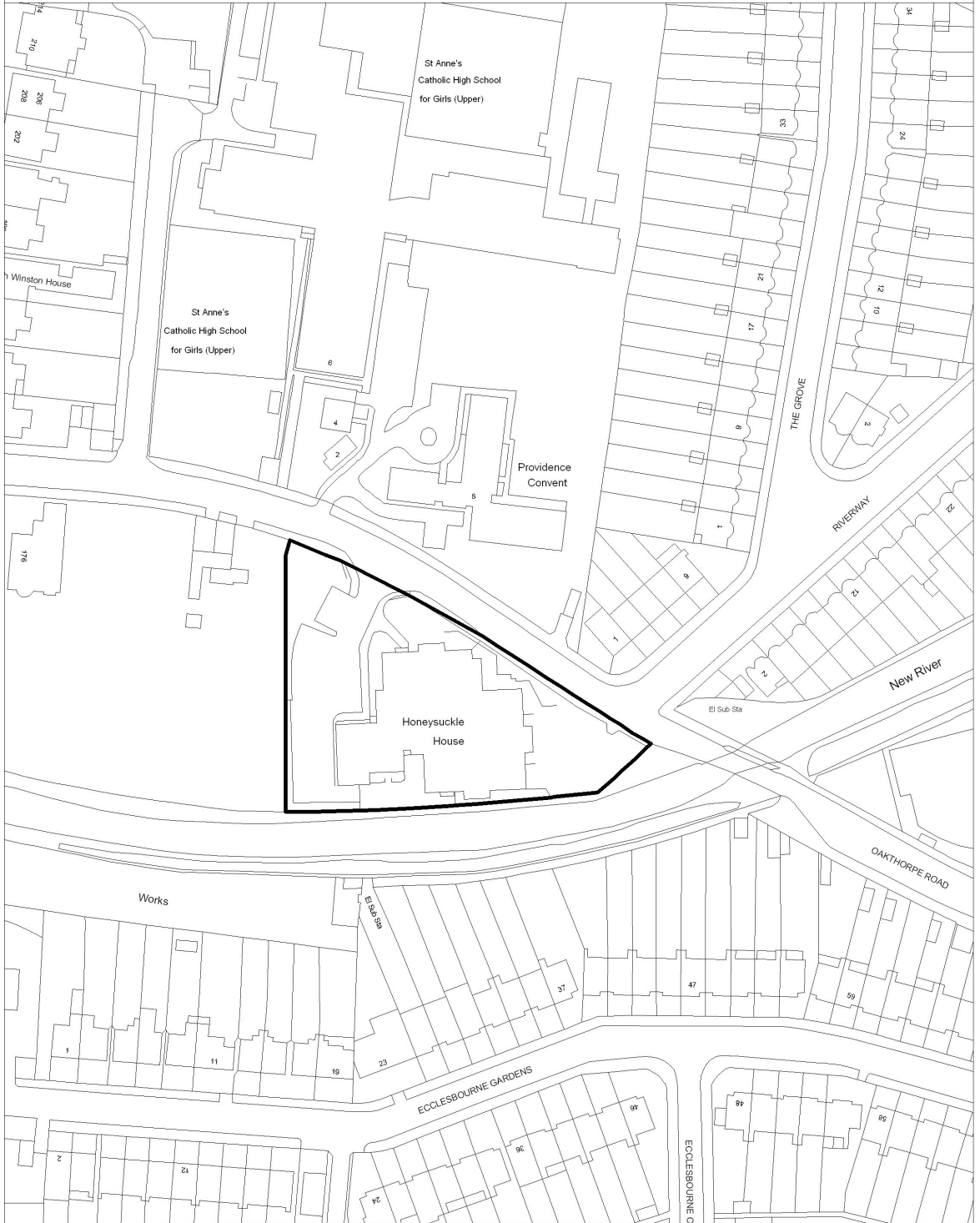
9. PUTTING ENFIELD FIRST

- Aim 4 A healthier Enfield where people are able to live independent lives
- Aim 5 Provide high quality and efficient services

Background Papers

Section 28a Agreement between LBE and New River Health Authority
Section 28A National Health Act 1977, together with any prevailing Directions.

HONEYSUCKLE HOUSE



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