

MUNICIPAL YEAR 2016/2017 REPORT NO. 178

MEETING TITLE AND DATE;
Cabinet – 18 January
2017

JOINT REPORT OF:
Director of Health,
Housing and Adult Social
Care and the Director of
Finance, Resources and
Customer Services

Agenda – Part: 1

Item: 11

Subject: Reprovision Project

Wards: All

Key Decision No: KD 4309

Cabinet Members consulted:

Councillor Cazimoglu, Councillor Lemonides

Contact officer and telephone number:

Jane Senior

jane.senior@enfield.gov.uk

020 8379 5719

1. EXECUTIVE SUMMARY

- 1.1 In July 2013, Cabinet and full Council agreed to commission the design and construction of a dual registered care home and to then procure the service delivery aspect separately through a tender process.
- 1.2 The new care home will be a 70 bed dual registered care home for older people, on the former Elizabeth House site in the East of the Borough, and is due to open in early 2017 (the “Home”)
- 1.3 The new facility will provide 70 beds of care and accommodation for older people initially catering for the resident population transferring from the two care homes Bridge House and Coppice Wood Lodge and following this to become a high need residential and nursing care facility.
- 1.4 The Council has undertaken repeated tender processes in relation to this Home. Two of these were based on a design, build, operate and maintain model (DBOM) and were undertaken without success between 2011 and 2013. A further tender process was launched in January 2016 for the nursing and care elements only, with the Council building of the Home directly through a standard building contract. At the close of that tender no satisfactory bids had been received.
- 1.5 Following further consultation with the market, Members and the procurement and commissioning hub, a final procurement was launched. The procedure adopted allowed for dialogue and negotiation with bidders. Unfortunately, this process also failed to yield any satisfactory bids that can be recommended to meet either the Council’s expectations of quality or value for money.
- 1.6 This report recommends now activating the Council’s contingency arrangements, which are to expand the role of the Council’s Local Authority Trading Company (LATC), Independence and Wellbeing Enfield, so that it can also undertake service delivery at the Home.

2. RECOMMENDATIONS

Cabinet is asked to:

- 2.1 note the contents of the Super Part 2 report detailing background information of the recent tender exercise and the decision to abandon the process;
- 2.2 award the extension of the management agreement for the new dual registered 70 bed care home to the Council's Local Authority Trading Company (LATC), Independence and Wellbeing Enfield subject to completion of due diligence jointly between the Council and the LATC in respect of the proposal, scope of services, management arrangements, mobilisation and agreed oversight arrangements.
- 2.3 note the due diligence to be undertaken and the delegation to the Director – Health, Housing and Adult Social Care, in consultation with Finance and Legal Services, to confirm a satisfactory outcome on behalf of the Council. The outcome of which is to be reported to the Oversight Board.
- 2.4 note the requirements set out in the legal implications regarding the LATC governance as detailed in section 6.2 of this report and subject to these actions being completed approve the implementation of the contingency arrangements.

3. BACKGROUND

- 3.1 Independence and Wellbeing Enfield, the Council's Local Authority Trading Company (LATC) commenced trading in September 2016, following approval by Cabinet in December 2015.
- 3.2 The purpose of establishing the LATC was to enable the Council to continue to deliver high quality independence and wellbeing services, and to pursue commercial opportunities, otherwise not permitted under the local authority regulatory framework.
- 3.3 The LATC currently delivers and manages a number of services, including:
 - Wellbeing services
 - Outreach services
 - ICES
 - Wheelchair Service
 - Safe and Connected
 - New Options

- Formont
- Community Link
- Park Avenue
- Rose Taylor
- Adult Placement Scheme
- Enablement Service

3.4 The LATC has been established in a manner that complies with the requirements of the exemption set out in regulation 12 of the Public Contracts Regulations 2015 (sometimes referred to as the Teckal Exemption). By complying with this exemption the Council is able to award the LATC contracts without the need to follow a procurement process. The requirements of regulation 12 in particular include that the LATC:

3.4.1 is controlled in a manner which is similar to the way in which the Council controls its internal departments;

3.4.2 does at least 80% of its activities with the Council; and

3.4.3 has no private sector participation in the share capital of the company.

3.5 Bridge House and Coppice Wood Lodge, which the LATC currently manages on behalf of the Council are residential care homes for older people. They have both been rated by the Care Quality Commission as delivering 'Good' services.

3.6 The LATC will be well placed to deliver the Council's contingency arrangements within the appropriate time frame, subject to approval being given to amend the current management arrangements.

3.7 **THE PROCUREMENT PROCESS**

3.7.1 In January 2009, Cabinet gave approval for the commissioning and procurement of a 70 bed dual registered care home for older people, on the Elizabeth House site, in the Eastern part of the Borough. In July 2013 Cabinet decision 3593 gave approval to procure the service element of this project.

3.7.2 The Council sought to procure the Reprovision Project twice without success between 2011 and 2013 based on a design, build, operate, maintain model (DBOM). This required a provider to enter into a long-term care service contract that included procurement of a suitable dual-registered care home facility, located on a Council owned site. The operator was expected to fund the construction of the new care home and then recoup the cost of the development from the service contract; at the end of the service contract the facility would revert to the Council. A significant stumbling block on this procurement route was

the inflation risk which made the offer unattractive to bidders. In addition the Feedback highlighted that the financial recession caused significant changes in market conditions, meaning that the contracts were less profitable and was perceived as higher risk.

- 3.7.3 Instead approval was sought from Cabinet in July 2013 (KD 3593) to approve the procurement of the Care Service provision as a distinct Contract. Approval to commence this procurement was given at strategic procurement board in September 2015 following submission of the business case. The Procurement was launched in January 2016. At the close of the tender period no bids were received. Feedback was sought from Providers who submitted an expression of interest to understand the reasons for this. A number of key factors emerged which Providers claimed prohibited them from submitting a compliant or competitive bid. These included;
- Concerns with the Pension and TUPE obligations
 - Uncertainty with the requirements
 - Service User Dependency Levels
- 3.7.4 Certain elements of the tender were pass/fail only – Providers suggested allowing “alternative” offers to be submitted would have enabled them to submit a bid response
- 3.7.5 The need to secure a compliant bidder to provide these services became a critical priority for the Council. Overseen by the Procurement and Commissioning board, officers initiated an appraisal of possible next steps and actions for securing an appropriately qualified Provider. The team considered a range of options and assessed the advantages and disadvantages of these. The team then held a market engagement event on 31st May 2016 to share the Council’s vision for the service provision, test the revised Procurement approach and seek feedback from the market as to how this tender could be shaped to ensure it presented an attractive opportunity to the market. In addition the Council offered individual surgery slots to all Providers; affording them an opportunity to feedback their initial thoughts in relation to the proposed service requirements and outcomes and to ask any further questions prior to the tender publication.
- 3.7.6 After consultation with the market, the procurement and commissioning hub, legal and members – it was decided to relaunch the Procurement utilising a procurement procedure that permitted mid-tender dialogue and negotiation with Providers. The project team where practical and appropriate addressed concerns flagged by the market in the tender documentation prior to publication.
- 3.7.7 The opportunity was advertised widely, using all appropriate communication mechanisms, including the London Tenders Portal and the OJEU. Invitations were also sent directly to all Enfield Suppliers along with local providers including Small, Medium, Enterprises

(SME's).

- 3.7.8 At the close of the tender process three bids were received. All three Providers were invited to participate in dialogue sessions and their tender responses were evaluated based on a ratio of Quality 60% and Price 40%. The sub-criterion for the evaluation was detailed in full in the tender documentation. A cross functional team of officers representing functions across the Council and with the requisite expertise and experience evaluated tenders. Providers were expected to deliver a high quality service meeting all requirements whilst providing value for money throughout the term of the Contract. All Providers have been formally notified of this outcome and the decision not to award the Contract to any of the bidders.
- 3.7.9 Following completion of final offers from bidders it was determined that none of the Providers were able to meet either the Council's expectations of quality or value for money. As a result the Council are seeking approval to activate contingency arrangements, which are to expand the role of the Council's Local Authority Trading Company, Independence and Wellbeing Enfield, so that it can also undertake service delivery at the new home.

3.8 THE MANAGEMENT AGREEMENT

- 3.8.1 As previously reported to Cabinet in KD 4194 (Setting up the Council's Trading Company) in December 2015 Cabinet approved a recommendation to establish a trading company. The LATC currently provides a variety of services (as set out in 3.3) which deliver support to people within their own homes, day centre based activities and support, community equipment and residential based services for people with dementia, including respite provision and end of life care with nursing support co-ordinated by the homes from within the district nursing service. The management agreement will now be expanded to include a requirement by the Council of LATC to directly provide, in addition to support for people with dementia in a residential care setting, nursing care and care for continuing healthcare patients. As this is a new venture for the LATC the Directors of the Company will need to resolve at a formal board meeting that they have considered this expansion of scope for the company and are satisfied they can meet the necessary requirements. At the time of writing this report Board Members have been consulted and agreed in principle to take forward this proposal subject to 3.8.2.
- 3.8.2 Further diligence will be conducted jointly by the Council and the Company to review and confirm the proposals, scope of services, management arrangements, and mobilisation and oversight arrangements before the scope of the management agreement is expanded to include the management of the new 70 bed care home. It is proposed that this is delegated to the Director of Health, Housing

and Adult Social Care in consultation with Legal Services on behalf of the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The procurement process has now been exhausted and no offers were received from bidders which met the quality and price criteria as detailed within the tender documentation and which were within the Council's financial budget envelope.
- 4.2 If no additional action is taken the new 70 bed care home would remain vacant and the Council would not be able to decommission the two currently owned local authority residential homes (Coppice Wood Lodge and Bridge House). These two homes fall below the current Care Quality Commission minimum requirements for residential based accommodation. The Council has a duty to ensure adequate affordable and good quality residential and nursing home care for local residents.
- 4.3 Expanding the scope of the LATC Management Agreement to include provision for the company to deliver the service at the Home will enable the Council to activate its contingency arrangement to deliver services in a new facility.

5. REASONS FOR RECOMMENDATIONS

- 5.1 Building works for the new scheme will be completed by late January 2017. Approval of the recommendation contained within this report means that the mobilisation plans, (that is to transition residents from Coppice Wood Lodge and Bridge House to the new care home), will be able to take place in a timely and effective manner. This will also reduce any risks associated with a leaving a new building empty for any prolonged period of time.
- 5.2 The Cabinet Report of the 15th July 2015 summarised the history and reconfirmed their intention regarding the "Reprovision project" The Reprovision Project remit has been to re-organise and improve care provision to older people through the Reprovision of two Local Authority run Care Homes (Coppice Wood Lodge and Bridge House) that in the future will not be suitable to be registered by CQC and to re-provide a high quality service within a single new purpose built building.
- 5.3 It is planned that the new facility, which is sited on the former Elizabeth House site, 1 Old Road, EN3, will provide care and accommodation for 70 bed spaces for older people initially catering for the transferring resident population from the two care homes, Bridge House and Coppice Wood. The home will be registered by CQC as a Care Home with Nursing. Staff from Bridge House and Coppice Wood Lodge will be subject to a TUPE transfer.

- 5.4 In the intervening time, residents, relatives and staff have been fully engaged and kept informed of the progress with regular engagement and briefing about the progress with the new care home build and attempts to appoint a contractor to manage the home going forward.
- 5.5 It should be noted that for some time, permanent admissions to both Bridge House, and Coppice Wood Lodge had been ceased given the impending transfer to the new home being planned. The decision detailed in the recommendations to ask the Local Authority Trading Company – Independence and Wellbeing to manage the new home, will certainly be welcomed in bringing to an end a protracted period of uncertainty.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

See Super Part 2

6.2 Legal Implications

6.2.1 The management agreement of the LATC may be expanded to include the provision of nursing and respite care as well as residential care as more particularly detailed in this report however the extension is subject to

6.2.1.1 The approval and adoption of new articles of association in a form approved by the councils legal services (the “articles”) and the filing thereof at Companies House subject to written resolution of the LATC;

6.2.1.2 the appointment of at least 3 directors of the LATC in accordance with the Articles

6.2.2 Until the above actions have been completed the scope of the management agreement may not be extended in the manner set out in this report additionally the Council will monitor the requirements of Regulation 12 as set out in paragraph 3.4 of this report on an annual basis to ensure that the exemption still applies

6.2.3 The Council has established the LATC to operate on a commercial basis and therefore will be relying on the powers under the Localism Act 2011 to expand the scope of the LATC

6.2.4 Section 1(1) of the 2011 Act provides that “a local authority has power to do anything that individuals generally may do”, often referred to as the general power of competence or GPOC. Whilst GPOC is not geographically limited, it is always subject to any pre-existing limitations

in legislation enacted prior to implementation of the 2011 Act and specific limitations in legislation post implementation of the 2011 Act.

6.2.5 However, it is important to note that there are limits on the utilisation of the GPOC when using it for a commercial purpose. If the GPOC is to be used by a local authority, then Section 4 of the 2011 Act provides:

“(1) The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.

(2) Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.

(3) A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.

(4) In this section “company” means—

(a) a company within the meaning given by section 1(1) of the Companies Act 2006, or

(b) [a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or deemed to be registered under] the Industrial and Provident Societies Act (Northern Ireland) 1969.”

6.2.6 Nursing services - Section 22 of the Care Act sets out the limits on what a local authority may provide by way of healthcare and so, in effect, sets the boundary between the responsibilities of local authorities for the provision of care and support, and those of the NHS for the provision of health care.

6.2.7 This general rule is intended to provide clarity and avoid overlaps, and to maintain the existing legal boundary. However, there is an exception to this general rule, in that the local authority may provide some limited healthcare services as part of a package of care and support, but only where the services provided are “incidental or ancillary” (that is, relatively minor, and part of a broader package), and where the services are the type of support that an authority whose primary responsibility is to provide social services could be expected to provide.

6.2.8 However, while the limits of local responsibility have not been changed, the Care Act 2014 does provide local authority and NHS organisations with more flexibility about how they integrate, cooperate and work in partnership on their respective responsibilities. Section 22(4) of the Care Act 2014 gives local authorities power to arrange the provision of accommodation which includes the provision of nursing care by a registered nurse (a term that is defined in section 22(8)), provided it

has first obtained the agreement of the relevant NHS body (the body that would be responsible for meeting the cost of that nursing element)

6.2.9 The relevant body will be Enfield Clinical Commissioning Group who have agreed to purchase 12 CHC beds. Further any additional patient placed at the home requiring nursing care will be eligible, subject to assessment, to receive an NHS free Nursing Care contribution and as such written consent from the relevant CCG(s) under section 22(4) of the Care Act 2014 will be received.

6.3 Property Implications

6.3.1 The procurement proposes that the liability to keep the external and structural parts of the property in good repair falls upon the council. The costs for this will need to be met from the corporate Repairs and Maintenance Programme over the period of the contract. The costs of the maintenance of internal and non-structural parts, including inspection, testing and maintenance of Building Services, are proposed to fall to the tenant.

6.3.2 To protect the Council's property interests, the terms of the agreement for the Operator to occupy the premises must be in a form approved by the Assistant Director for Strategic Property Services. It is essential that the Operator's right to occupy is limited to only the period during which the Operator is supplying services to the Council.

6.3.3 The independent and well-being services transferred to the LATC from 1st September. The properties within the trading company will continue to be used to run the same services but with the company running the services instead of the Council.

6.3.4 Elizabeth House will be provided on the basis of a short-term lease which is coterminous with the services agreement. As such the lease, would be on the basis of a period less than 7 years so it does not amount to a disposal for the purposes of section 123 and does not constitute State Aid

6.4 Procurement Implications

6.4.1 The tender exercise has been concluded, and suppliers have been notified that the tender process has been abandoned on the basis that the Council has not received bids which meet the Council's expectations on quality and / or value for money.

6.4.2 Details behind this can be found in the Super Part 2 report.

6.4.3 The Council will be utilising its contingency arrangements and expanding the role of the Council' LATC to undertake service delivery at the Home. The Council will do this in accordance with regulation

12 of the Public Contract Regulations 2015 as explained in paragraph 3.4.

- 6.4.4 As highlighted above the Council will need to ensure that the new articles of association are adopted in advance of the extension of the Management Agreement. Confirmation of the appointed directors will also be required before the management agreement can be extended.

7. KEY RISKS

- 7.1 Independence and Wellbeing Enfield (IWE) management team have and continue to manage both Bridge House and Coppice Wood Lodge Care Homes and therefore have a proven track record of delivering successful and high quality residential services for older people with dementia. Both care homes operated by IWE are rated by the Care Quality Commission as good. Current experience of delivering nursing care support does exist within the IWE through support sourced by IWE from the district nursing service for service users requiring that level of support. Within the new home provision (in terms of the cost and directly employed staff) has been included. This includes an appropriately skilled leadership team (Manager, deputy manager and clinical lead) as well as an appropriate whole time equivalent number of qualified nursing staff.
- 7.2 IWE will work closely with the Care Quality Commission to support timely registration of the new scheme and to ensure that the service meets regulatory requirements

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

Approval of the recommendation contained within this report will ensure the continued provision of high quality, affordable and accessible care services to all sections of Enfield's community. It will also provide a nursing home facility in an area where they are scarce, giving access to those who may live in this area the ability to remain in their community and close to family and local connections, improving the equality of access to services in the local area.

8.2 Growth and Sustainability

As a Local Authority Trading Company, Independence and Wellbeing Enfield may seek opportunities to pursue profit making activities. Any profits which are realised will be reinvested in the local community.

8.3 Strong Communities

The new service will contribute to the community by providing a quality service to vulnerable older people in the Borough, and enabling them to maintain family relationships by staying in the local area. The new service may provide employment opportunities to Borough residents and potentially be of benefit to other local businesses. Independence and Wellbeing will be required to demonstrate commitment to developing strong working relationships with local advocacy and community groups and access resources within the Enfield community. Carer, Resident and Local Community Advocacy Group representatives will be pivotal to working in partnership with the Authority to ensure that the service meets the diverse needs of the Enfield community.

9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 The service will be available to vulnerable older people who are Enfield citizens and require nursing or residential care. Staff will be recruited from the local area wherever possible, and will access the Council's diversity and equalities training.
- 9.2 There is an under-representation of nursing and residential provision in the East of the borough, where this new scheme will be located. The new scheme will address this under-representation.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

A new nursing residential dementia care unit will contain adequate contract provision to ensure that the required performance management measures are met to deliver quality provision and service user satisfaction to optimum effect. The additional capacity in the new care home will contribute to national performance indicators, including minimising delayed transfers of care (DToc).

11. HEALTH AND SAFETY IMPLICATIONS

- 11.1 Independence and Wellbeing Enfield will ensure that trained, registered nurses and a clinical lead are recruited to the team, to ensure effective oversight of the nursing element of the service. As part of the mobilisation considerations Independence and Wellbeing Enfield will factor in a lead in time for recruitment of specialist staff and whether agency staff will be required to support the mobilisation and start-up of the new service.
- 11.2 All staff will undertake appropriate training to ensure that they are fully aware of and adhere to approved health and safety standards in delivering nursing and residential care. The Management Team, including the clinical lead will be responsible for undertaking appropriate checks and ensuring the safety and wellbeing of residents.

- 11.3 The service will also be supported by the Council's Contract Monitoring and Quality Teams to ensure that the service operates to the highest standards.

12. HR IMPLICATIONS

Independence and Wellbeing Enfield will take appropriate legal advice to guide staff transfer and recruitment arrangements.

13. PUBLIC HEALTH IMPLICATIONS

There are approximately 40,000 adults over the age of 65 in Enfield with national data indicating that 58% of those aged over 60 have at least one long-term condition (LTC). Older people continue to need greater support with daily living tasks due to physical frailty, chronic conditions or multiple impairments including dementia which affects more than 3,100 people in the borough. Where practicable and safe the Council will always try to assist people with dementia to carry on living independently within their own homes. However, the demand for residential and nursing care for people with advanced dementia continues to increase and providing this very vulnerable group of people with an appropriate living environment and level of support is increasingly challenging due to shortages of residential and nursing capacity locally within the borough. The provision of a new residential/nursing dementia facility in the north east of the borough where there are currently capacity gaps is timely and will ensure that there are sufficient high quality placement options available to local people to ensure that where necessary older people's needs continue to be met within the borough.

Background Papers

None