

MUNICIPAL YEAR 2016/2017 REPORT NO. 222

MEETING TITLE AND DATE;
Cabinet – 15 March 2017

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

Agenda – Part: 1

Item: 12

Subject: Reprovision Project – Business plan

Wards: All

Key Decision No: KD 4309

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1. EXECUTIVE SUMMARY

- 1.1 In January 2017 Cabinet, having received a report on the reprovision, resolved as shareholder to write to Independence and Well-being Enfield Ltd (“the Company”) to update its business plan to incorporate operating a dual registered 70 bed care home and undertake necessary mobilisation ahead of any approval of the business plan
- 1.2 In addition Cabinet asked for the updated business plan to be brought to Cabinet for approval having undergone the necessary due diligence.
- 1.3 Cabinet as shareholder is also asked to note and approve the articles of association for the Company and the extension of the management agreement to extend the scope of the management agreement to include the operation of a dual registered 70 bed care home.

2. RECOMMENDATIONS

Cabinet is asked to:

- 2.1 Note the contents of the Part 2 report; and
- 2.2 activate the Council's contingency arrangements, which are to expand the role of the Company by extending the scope of the management agreement to include the operation of a dual registered 70 bed care home, so that it can also undertake service delivery at the Home; and
- 2.3 as shareholder note and approve the company Articles of Association; and
- 2.4 Delegate to the Executive Director of Health, Housing and Adult Social Care, in consultation with the Executive Director of Finance, Resources & Customer Services, the negotiation of the terms and the signing of the service, and management agreement between the Company and the Council.

3. BACKGROUND

- 3.1 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.
- 3.2 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”)
- 3.3 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.
- 3.4 The Company commenced trading in September 2016, following approval by Cabinet in December 2015.
- 3.5 The purpose of establishing the Company 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.
- 3.6 The Company 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
- 3.7 Bridge House and Coppice Wood Lodge, which the Company 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.
- 3.8 The Company 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.

3.9 THE BUSINESS PLAN

- 3.9.1 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 Company 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 the Company to directly provide, in addition to support for people with dementia in a residential care setting, nursing care and care for continuing healthcare patients. Such nursing care and care for continuing healthcare patients to be provided within the parameters set out in paragraphs 6.2.6 to 6.2.9 of the legal implications.
- 3.9.2 The Company –were formally asked to submit a costed proposal to the Council for running the new care home. This was reviewed by the Council's Commissioning and Procurement Hub and considered to meet the requirements for value for money. Cabinet subsequently agreed, as shareholder, to write to the Company asking them to update their company business plan to incorporate operating a dual registered 70 bed care home. The updated business plan for the company as a whole is attached at **Appendix 1**.
- 3.9.3 As this is a new venture for the Company the Directors of the Company at their board meeting on 25th January 2017 received a report and were asked to consider the business plan and resolve that they have considered this expansion of scope for the company and are satisfied they can meet the necessary requirements for including the additional service. The board gave approval to proceed with the business plan and proposal to run the new care home, on behalf of the Council.

3.10 COMPANY ARTICLES OF ASSOCIATION AND SERVICE AND MANAGEMENT AGREEMENT.

- 3.10.1 The Articles of Association (attached at **appendix 2**) define the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders exert control over the board of directors. Cabinet is asked to note and approve these as the sole Shareholder for the Company.
- 3.10.2 The Service Agreement and Management Agreements between the Company and the Council set out the range of services to be provided, the financial arrangements as well as other operating requirements the Council wish to see delivered by the Company, and the services provided by the Council to the Company. It is proposed that Cabinet delegate the

negotiation of terms and signing of these documents to the Executive Director of Health, Housing and Adult Social Care.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council has undertaken a number of procurements in relation to the provision project and these have not brought forward proposals which have been acceptable to the Council.
- 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 Company 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 EXECUTIVE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 A validation exercise was undertaken by Finance working with the Project Team in order to determine a fair and reasonable price for running and operating the dual registered home. This validation exercise reviewed staff complement and costs in line with expected staff mix and ratios and salary requirements including London Living Wage and contribution to the Local Government Pension scheme. The operating costs were also reviewed in line with industry standards. This exercise was undertaken with regards to the three external bids and the Council's contingency arrangements (IWE). With regards to the Council's contingency arrangements the cost breakdown submitted by IWE has also been reviewed together with the Project Team and is affordable as detailed below;
- 6.1.2 The current available gross budget for the delivery of the residential services that will be moved to the new premises stands at £2,480,300.
- 6.1.3 In addition, the council will be selling to Enfield CCG through a block purchasing arrangement, 12 Continuing Health Care (CHC) beds at £1200 per week. This will generate £750,800 per annum.
- 6.1.4 There is a budget reduction of £300,000 in 2017/18 which reflects the budget required in line with the fair and reasonable cost of running the new service and this was included in the Council's medium term financial plan. Therefore the total gross budget for 2017/18 is £2,931,100.
- 6.1.5 There is an income budget (fees and charges to Service Users) of £954,600 and the responsibility for these will remain with the Council.
- 6.1.6 Funded Nursing Care (FNC) income will be the responsibility of IWE as the provider.
- 6.1.7 The provider (IWE) submission will cost the council £2,926,965 (gross) in a full year, this being less than the gross budget of £2,931,100.

- 6.1.8 From the IWE perspective there will be a part year effect for the first year of operation as the nursing provision is phased in during the year. The cash flow and Income and Expenditure statements for the IWE submission reflecting this part year effect in 2017/18, followed by the full year effect in 2018/19 are shown at Appendix 3 annex 1&4 within the part 2 report.

6.2 Legal Implications

- 6.2.1 The Council has the power as shareholder to agree to expand the scope of the management agreement of the Company to include the provision of nursing and respite care as well as residential care and this is an area which the Company must obtain Council consent on as a reserved matter.
- 6.2.2 The Council has established the Company 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 Company.
- 6.2.3 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.
- 6.2.4 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.”
- 6.2.5 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.

- 6.2.6 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.
- 6.2.7 However, while the limits of local responsibility have not been changed, the Care Act 2014 does provide local authority and NHS organizations 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)
- 6.2.8 The relevant body will be Enfield Clinical Commissioning Group who have already 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 consent from the relevant CCG(s) under section 22(4) of the Care Act 2014.

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 Company 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. For the reasons set out in Part 2 to this report, the grant of the lease does not constitute State Aid.”

6.4 Procurement Implications

- 6.4.1 The Council will be utilising its contingency arrangements and expanding the role of the Company to undertake service delivery at the Home. The Council will do this in accordance with regulation 12 of the Public Contract Regulations 2015.

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

a. 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.

b. 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.

c. 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