

DITCHBURN PLACE – SIX MONTHS CONTRACT EXEMPTION

To: Adults Committee

Meeting Date: 1 December 2015

From: Adrian Loades, Executive Director: Children, Families and Adults Services

Electoral division(s): All

Forward Plan ref: 2015/063 **Key decision:** No

Purpose: To outline the case for the approval of a contract exemption for the provision of care and support in an extra care housing scheme (Ditchburn Place) and for permission to negotiate with Cambridge City Council to provide services in co-operation.

Recommendation:

- a) To approve an extension for six months until 23 July 2016.
- b) To approve the negotiation with Cambridge City Council to provide services in co-operation.
- c) To delegate the sign off of the agreements to provide services in co-operation to the Executive Director, Children, Families and Adults.

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1.0 BACKGROUND

- 1.1 Ditchburn Place is located just off Mill Road in Cambridge. The extra care scheme for older people consists of 36 extra care flats and there are an additional 15 sheltered housing flats within the same complex. People living in the extra care scheme benefit from a range of services including the on-site care and support team which is available 24 hours per day, 7 days per week. People can live independently and securely with the reassurance that help is at hand if they need.
- 1.2 Extra care housing is defined as specialist accommodation designed to maximise the independence of older people by providing a safe, secure and stimulating environment. People living in extra care have legal rights to occupy that are underpinned by housing law. This means there is a clear distinction between extra care housing and residential care. Living in an extra care environment enables people to retain the independence of having their own home and at the same time benefit from the availability of around the clock social care and housing support. Extra care housing is a cost effective alternative and produces better outcomes than residential care.
- 1.3 The current Care and Support contract for the extra care scheme is delivered by Cambridge City Council and expires on 24 January 2016. The annual value of the contract is £554,605. Based on service users currently living at Ditchburn Place this expenditure would be off-set by their contributions towards the cost of their care by £101,140.
- 1.4 Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will apply if the service is transferred to another provider. However, the terms and conditions of the staff mean that other providers in the independent sector will not in effect bid for the contract as the potential liability for staff redundancy costs and pension contributions make it uneconomic.
- 1.5 The service was last put out to tender in 2010. No successful bids were received apart from the current provider. After lengthy negotiations, the contract was re-awarded to Cambridge City Council.
- 1.6 Since the award of the contract, the City Council has worked with the County Council to make the service more economic. This includes contributing towards the cost of the two night staff at the scheme.
- 1.7 An unannounced CQC inspection carried out in May 2015 rated the service as 'good' across all domains.
- 1.8 The financial assumption is that this contract must be delivered within the agreed budget and the value of this contract is that it is lower cost than more expensive residential and nursing provision.

2.0 OPTIONS FOR THE CONTRACT

- 2.1 In order to achieve best value a number of procurement options have been considered These include:
 - Re-tendering the service

- A spot purchasing arrangement for care
 - Changing the service specification to reduce the likely impact of TUPE requirements
 - Maximising the value of the contract with Cambridge City Council.
- 2.2 In considering these options, of paramount importance is the County Council's duty of care to the service users living within the scheme. Additionally, in considering each of the options, account has been taken of the risks that each one presents. These are set out below.

2.2.1 **Option One - Re-tendering the Service**

- Procurement advice suggests that there will be little or no interest from the independent sector due to the potential TUPE liabilities.
- In order for a new provider to deliver the service, the County Council would in effect have to underwrite any additional costs that the provider would incur. This would mean that the County Council would be transferring a risk from the current employer to itself.
- The tendering process is lengthy and inevitably incurs a cost for the County Council and would not be likely to achieve a positive result.
- The landlord may object to a domiciliary care provider operating in their building and in effect 'taking over the service'.

2.2.2. **Option Two - Spot Purchasing Domiciliary Care**

- Without a block contract it is unlikely that domiciliary care providers will have sufficient flexibility in their capacity to meet all requirements. There may also be issues of inconsistency in the delivery of care.
- A number of service users require night cover and to provide this using spot purchasing may be difficult to achieve. It is also likely to be expensive.
- Service gaps could cause reputational damage to the County Council.

2.2.3. **Option Three - Changing the Service Specification**

- Given the nature of the service it may be difficult to change the service specification significantly enough to argue that there was a "technical" reason for the change and therefore TUPE would not apply.
- This approach may be considered unethical and risk reputational damage to the County Council.

2.2.4. **Option Four - Maximising the value of the contract with Cambridge City Council**

Whilst the City Council contributes towards the cost of the night cover, the current block contract arrangement is less flexible than contracts which exist in similar schemes. In order to ensure that the County Council is maximising the value of this service, it is proposed that the new contract would include a provision that hours not fully utilised within the scheme be utilised as domiciliary care to people living near Ditchburn Place. In addition it is proposed that the County Council works in partnership with Cambridge City Council to incorporate additional reablement flats into the new contract as this will be more cost effective.

The main risk is that the service could be more costly than comparable services in the independent sector.

3.0 ADVICE FROM LGSS

- 3.1 Discussions have taken place with LGSS Legal and Procurement about how we can comply with our obligations. They have advised that “Co-operation with other public authorities” is an option.
- 3.2 The rule allows *“contracts which establish co-operation between public entities with the aim of ensuring that a public task is carried out fall outside the public procurement rules insofar as such contracts are concluded exclusively by public entities and implementation of that co-operation is governed solely by considerations and requirements relating to the pursuit of objectives in the public interest”*.
- 3.3 There are criteria that have to be met to comply with the rule. Our advice is that these criteria could be met within the current arrangements and the approach should therefore be explored further with the City Council. The creation and detail of any arrangement will take further time and be dependent on observing both the County and City Council’s finance and procurement rules.

4.0 RECOMMENDED OPTION

- 4.1 Having weighed up all of the risks and potential benefits, officers have concluded that the most effective way to proceed is to maximise the value of the existing contract through negotiation with Cambridge City Council, the existing provider. By incorporating other elements such as reablement flats into the contract this will provide better value for money for the County Council.
- 4.2 As indicated previously, the City Council have contributed to the running costs of the service. They have also indicated a willingness to work flexibly to maximise the benefits of the contract and to support the County Council in its objectives of maintaining independence and reducing demand for institutional care.
- 4.3 A recent example of effective partnership working at Ditchburn Place includes the development of five reablement flats to support hospital discharge. The flats were initially financed through a central government grant. However they have been so successful that they are being retained in place of a more costly nursing home option. A proposal for further reducing the revenue implications involves the County Council relinquishing an interest in a redundant day service space for conversion into two rent free reablement flats.
- 4.4 The County Council’s legal advice has confirmed that co-operation between two public bodies of the type set out is an acceptable alternative to an open procurement exercise in these circumstances.
- 4.5 The exemption is being sought to avoid the danger of being without a contract and it is the maximum time envisaged to conclude the cooperation agreement.

5.0 ALIGNMENT WITH CORPORATE PRIORITIES

5.1 Developing the local economy for the benefit of all

5.1.1 There are no significant implications for this priority.

5.2 Helping people live healthy and independent lives

5.2.1 The following sets out the details of the implications identified by officers:

- Potential reduction in the use of residential care.
- Continued use of reablement flats will facilitate timely discharge from hospital.
- Reablement within a supportive environment with its emphasis on activities, daily living skills will increase people's independence enabling them to return home more quickly.

5.3 Supporting and protecting vulnerable people

Extra care housing schemes provide for the availability of 24/7 care to support independent living for some of the most vulnerable members of society.

6.0 SIGNIFICANT IMPLICATIONS

6.1 Resource Implications

6.1.1 There are no resource implications over the existing commitment set out in 1.3.

6.2 Statutory, Risk and Legal Implications

6.2.1 Advice has been provided by LGSS Law Limited concerning the County Council's compliance with its obligations under procurement rules. Their advice is that there is a type of contract entered into by public bodies which fall outside of the public procurement rules. This is found in Regulation 12.7 of the Public Contract Regulations 2015.

The Regulation allows contracts which establish co-operation between public authorities, such as the County Council and Cambridge City Council, which are both carrying out public tasks (in this case community care and housing functions) relating to the joint pursuit of objectives in the public interest.

6.3 Equality and Diversity Implications

6.3.1 There are no significant implications within this category.

6.4 Engagement and Consultation Implications

6.4.1 There are no significant implications within this category.

6.5 Localism and Local Member Involvement

6.5.1 There are no significant implications within this category.

6.6 Public Health Implications

- 6.6.1 There is a strong evidence base that suggests extra care housing improves health and well-being outcomes for older people.

| Source Documents | Location |
|---|--|
| Contract tender paperwork for the above service – this contains commercially sensitive business exempt information which is not to be disclosed to the public | Contract Team - Adult Social Care Octagon, Shire Hall, Cambridge |