

Meeting COUNTY COUNCIL

Date 22nd September 2011

agenda item number

8

REPORT OF THE CABINET MEMBER FOR ADULT SOCIAL CARE AND HEALTH

AIMING FOR EXCELLENCE - SALE OF RESIDENTIAL HOMES FOR OLDER PEOPLE AS A CONTINUING RESIDENTIAL SERVICE

PURPOSE OF THE REPORT

1. The purpose of the report is to:
 - a. advise Elected Members of the outcome of the recent procurement process to sell the Council's residential care homes as continuing residential care services
 - b. seek approval for the sale of 6 of the homes as continuing residential care services subject to the successful delivery of an implementation plan which will be overseen and monitored by the Council's officers
 - c. seek approval for the payment to the Primary Care Trust (PCT) following the early termination of the management agreement and resultant clawback of the PCT's investment contribution in relation to the Bramwell care home.

INFORMATION AND ADVICE

2. The report details the outcome of the procurement process which was approved by Cabinet on 14th July 2010 following approval to sell the homes as continuing care services. This decision had been previously agreed at a meeting of the full Council on 25th February 2010. This report makes recommendations about the potential next steps for the Council, following the receipt and analysis of the bids.

Background

3. Private residential care has been provided in Nottinghamshire for more than 50 years. In addition to the 12 residential homes currently run by Nottinghamshire County Council there are more than 160 homes in the county run by the independent sector. In total, Nottinghamshire County Council funds residential and nursing care services for approximately 2,900 residents in Nottinghamshire.
4. All homes in the county area are inspected by the Council to ensure quality of care is maintained. This inspection regime is over and above the inspections by the Care Quality Commission.

Summary of Procurement Process

5. The Council commenced a procurement process on 22nd September 2010 which was designed to sell each of its remaining 12 residential care homes for older people as continuing residential care services. Each home was offered separately for sale and the evaluation stage of this process has now been completed.
6. The Council's decision to sell the homes as continuing care services was taken to ensure that there is minimal disruption to the existing long-term residents. It will also ensure that there is ongoing capacity to meet the future service needs of our communities across Nottinghamshire. This approach will also result in existing staff transferring under TUPE to a new owner which is an important consideration in terms of continuity of care for existing residents. Selling the homes as continuing care services ensures that the local older people, and people in the wider community of Nottinghamshire, will benefit from the homes remaining open as well as benefiting from any future service developments at the homes.
7. It is widely acknowledged, both locally and nationally, that local authorities cannot compete with the independent sector in terms of providing the most cost effective residential care and this has been borne out by the reduction in the number of residential care homes operated directly by local authorities nationally over recent years. The revenue and capital resources that will be saved through the sale of the homes can be re-invested in other priority services, whilst the existing level of service to residents of the homes is also maintained. The Council had included in its budget plans from 2012-13 savings of £2.5m per annum in anticipation of the sale of all 12 homes. This represents the difference between the current operating costs of the homes and the cost of external purchase of the same quality rating and volume of care.
8. Part of the contractual agreement is that the homes will continue to operate as care homes for a minimum period of three years and that existing residents (those funded by the Council as well as those who fund their own care) will be further protected in terms of the fees they pay for this period. Included in the property contract is a clawback (sometimes referred to as overage) clause that will apply should any of the homes be closed beyond this three year period. This helps protect the Council and Council taxpayer on the basis of any particular chargeable events occurring subsequent to sale, such as planning permissions being obtained or disposal of the properties. The Council will have a right to a proportion of the change in value on a sliding scale post sale.
9. One of the homes to be sold is Bramwell. The Primary Care Trust (PCT) occupied parts of this building by way of a management agreement and a 25 year lease, both commencing in 2003. At the time, the PCT invested approximately £991,000, which was a contribution towards the construction costs. By terminating these agreements early, the Council is now required to make payment to the Primary Care Trust of £604,804.70 as defined in the management agreement and in addition the Council has agreed to pay £41,535 removals and disturbance costs for the PCT to relocate from Bramwell. The difference in the values being the years of occupation at lower than commercial terms that the PCT has enjoyed and depreciation of the building. Both of these payments are necessary for the authority to secure vacant possession of the building.

10. The Invitation To Tender (ITT) issued by the Council required Bidders to:
 - a. accept a transfer of the property and the business attached to each home and an ongoing care services requirement for each home in relation to existing residents.
 - b. guarantee security of occupation and cost in respect of existing residents for a minimum period of 3 years.
 - c. agree to and comply with the TUPE regulations (which would apply to each transaction protecting the terms and conditions of staff at the point of transfer).
11. The ITT also sought to evaluate bids under the following headings:
 - a. Price
 - b. Quality elements of the bid;
 - c. Human Resources and pensions responses; and
 - d. Implementation plan.
12. The ITT allowed the Council to reject bids or otherwise not award a contract in a number of circumstances. It also reiterated the statutory position in relation to accepting a consideration less than the best that can reasonably be obtained, in accordance with the Council's legal duties under Section 123 of the Local Government Act 1972.
13. It was acknowledged that a number of factors including the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would apply to each transaction and that this, and the other necessary conditions to protect staff and residents, could affect the values of bids.

Procurement Process

14. Following a pre-qualification exercise conducted to evaluate the suitability of prospective bidders, a short-list of 4 bidders was drawn up. One of these bidders withdrew from the bid process leaving 3 bidders who took part in workshops and site visits to the homes.
15. The Tender submission date was 16th May 2011 and the evaluation process has now been completed for all of the bids the Council received.

Outcome of the Procurement Process

16. Bids were received on the following 6 homes; Bramwell, Braywood Gardens, Maun View, Jubilee Court, Leawood Manor, Westwood. A single bid for each home was received and all bids were submitted by a single provider.
17. No bids were received on the following 6 homes; Bishops Court, James Hince Court, Kirklands, Leivers Court, St Michaels View, Woods Court.
18. The bidder is further committed to providing the ongoing care needs at the home under the existing rates of the local authority, therefore protecting the existing residents.

19. The Financial, Qualitative, Human Resources, Pensions and Implementation Plan parts of the evaluation for the 6 bids have been completed and the recommended bids have met the high standards required by the Council.
20. The final bids secured have followed negotiation at meetings in accordance with the Council's requirements to secure best consideration for the Council and the people of Nottinghamshire.
21. The Council is pleased to confirm that the preferred bidder for all 6 of the individual homes is Runwood Homes.
22. Runwood Homes are a reputable provider of care that has over 30 homes across the country. The homes in Nottinghamshire will be their first in the East Midlands. The organisation's business strategy is to provide high quality care in high quality buildings. The organisation has a good track record and experience of buying local authority homes to run as care homes and is committed to providing quality care in the long-term. The Council has been able to obtain considerable reassurance from the evaluation stage of the procurement process which looked at Runwood homes track record, references, business plans, accounts and public records.
23. Of the homes researched, 28 have been inspected by the Care Quality Commission and have received ratings of good or excellent with 5 being rated adequate. Eight homes are not rated because of the changes to the inspection process used by the Commission. All the homes are registered as required by the Care Quality Commission.
24. In addition, Runwood Homes portfolio of residential care homes are all registered for people with Dementia and they provide a range of other services at the homes including:
 - Interim Care
 - Reablement
 - Rehabilitation following hospital stays
 - Nursing Care
 - Nursing Care for people with Dementia
 - Day Care.
25. Runwood Homes are required to develop a full Implementation Plan which will include the TUPE Consultation, registration of the homes with the Care Quality Commission, communication plans with residents and staff, replacement of IT equipment, shadowing arrangements, finalising pension arrangements. There are no unconditional contracts until all of the necessary requirements are completed to the satisfaction of the Council.
26. All of Nottinghamshire's care homes provided Day Services for non-residents and following a separate comprehensive review of all Day Services it has been agreed at a meeting of the County Council on 30th June 2011 that these Day Services will be provided at multi-purpose Day Centres in the future.
27. As a part of its efficiency savings, the Council has reviewed its property portfolio which has enabled the development of multi-resource centres. As a result of this development the day service provision within residential homes was not required

and therefore provision was not made for this service within the terms of the sale of the homes. Separate arrangements for Day Services are being commissioned and will still continue to be provided with people receiving the same level of service at alternative venues.

28. Short Term, Respite and Intermediate Care has also been provided at some of the homes. In terms of the homes that are recommended for sale, four of them will continue to provide these services as required. This will be at the agreed rates for other care at the home until the Council has completed a competitive market and tender process. The homes concerned are:
- Bramwell
 - Braywood Gardens
 - Maun View
 - Westwood.

Legal issues

29. The officers of the Council have taken legal advice both from external solicitors and leading counsel in relation to the procurement process carried out and the discussions with the sole bidder. Officers are satisfied, as far as reasonably possible, that the process has been carried out appropriately. Although clearly any processes as complicated as this one will always have some risk of challenge, such risks are considered to be reasonably mitigated or small.

Best consideration

30. Section 123 of the Local Government Act 1972 requires that 'except with the consent of the Secretary of State, a Council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.' Further legislation, the Local Government Act 1972: General Disposal Consent (England) 2003, allows local authorities to dispose of land for less than the best consideration that can reasonably be obtained in specific circumstances.

31. The specified circumstances are:

"a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or any part of its area, or of all or any persons resident or present in its area;

- i) the promotion or improvement of economic well-being;*
- ii) the promotion or improvement of social well-being;*
- iii) the promotion or improvement of environmental well-being; and*

b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds)".

32. The Council is of the view that the sales benefit the residents for a number of reasons. These have been outlined in previous reports to the Council and reiterated in this report. The price obtained for the homes was (and was always

likely to be) significantly depressed (comparable to a sale of closed vacant sites) by the requirements that the Council was placing on the potential bidders to continue to provide care for the existing residents and the consequence of transferring staff under TUPE regulations. It is the case that higher capital cash receipts could potentially have been obtained without such conditions being placed. These conditions allow the residents to stay in their current place of residence and this process facilitates the procurement of their ongoing care.

33. The Council's intention and decision to sell was based on the view that the interests of the residents in the homes were paramount. Accordingly, the obligation to keep homes open as continuing care services (with caps on fees for all residents including self funders) is an important consideration in terms of the question of securing best consideration, given that it will play a large part in contributing to the on-going social-well being of the residents, as well as securing the employment of the staff.
34. Whilst the level of anticipated capital receipts may be diminished as a result of the Council's obligations to the residents of the homes, the ongoing revenue savings from selling the homes will be approx £900,000. This sum will be dependant on the mix of care of residents at the homes (for example paying for someone who has Dementia is more expensive).
35. However, regardless of the above, if a particular piece of land is sold for less than its value (an "undervalue") and that undervalue is more than £2m then the Council must seek Secretary of States permission to do so (the specific consent). If land is sold at an undervalue of no more than £2m then general consent is allowed and the Council can sell the land and does not need the Secretary of States permission.
36. In order to assess whether this condition is met, the Council must compare the unrestricted value of the land against the offer it is intending to accept, including the savings that it will accrue as part of the consideration. If the total consideration for a sale of land is £2m lower than the unrestricted value, the Secretary of State's specific consent is required.
37. The Council has obtained advice from legal counsel and independent valuers on this issue. The Council has been advised that each site can be treated as a separate sale for the purposes of the test. The unrestricted value, negotiated sale price, and the value of other considerations including annual savings for each home as determined by the independent valuer using the information provided, are set out below:

All figures £	Unrestricted Value (MV Vacant Possession)	Value of Cash Consideration	Value of Other consideration incl. savings	Undervalue / (Overvalue)	Restricted Value (Risk based going concern value)
	(A)	(B)	(C)	A-(B+C)	
Bramwell	3,750,000	359,000	3,857,522	(466,522)	652,243
Braywood Gardens	3,250,000	428,000	2,184,324	637,676	718,005
Jubilee Court	3,000,000	453,000	2,854,379	(307,379)	786,922
Leawood Manor	1,500,000	169,000	3,436,205	(2,105,205)	289,919
Maun View	3,900,000	592,000	2,959,630	348,370	1,001,847
Westwood	3,250,000	499,000	2,475,827	275,173	854,897
Total	18,650,000	2,500,000	17,767,887	(1,617,887)	4,303,833

38. Counsel's opinion to the authority on best consideration advised that the authority may apply the best consideration test on a basis which includes in its assessment the following items
- a. Savings from the difference between the price for care charged by the new provider and the higher cost of running homes internally
 - b. Savings from repairs and maintenance
 - c. Savings from not having to pay redundancy costs which would be incurred should the Council close the homes.
39. The total of these cumulative savings is shown in column C less the cost of the clawback discussed in paragraph 9. These have been appropriately adjusted to reflect the reductions in the value of money over time which is a standard economic and accounting principle. The values identified above confirm that the sale of each home at the negotiated prices meets with the requirements of the general consent i.e no individual home is being sold for an undervalue greater than £2 million and collectively the total consideration exceeds the market value. The Council is therefore able to proceed with the sales at the negotiated figures without having to seek the approval of the Secretary of State.
40. As required by the statutory guidance the Council has obtained a report by an independent valuer which is available as a background report. The table above reflects the independent valuer's findings on market value, under and over values and the restricted value. The independent valuer's views were sought throughout the bid process and counsel's advice was also provided to the valuer.

Decision to sell

41. The Council is advised to approve the sale for the following reasons:
- It will ensure continuity for the residents of the Homes and their families. As required by the Council the sale will ensure that residents can continue to live in their current locations for at least 3 years and the Council believes that the bidder is committed to residential care services beyond this.

- The current staffing teams will be retained, which in turn will ensure continuity of care in the specific homes as much as possible.
 - It will introduce a new quality provider into the market for residential and other care services to Nottinghamshire, increasing competition and choice for local people.
 - The Bidder has indicated that, at this stage, it plans to spend £500,000 per home over the next 5 years as part of a continuous improvement programme. As such the sale provides the opportunity for private investment into the homes structure and systems for the benefit of residents. These are resources which the Council can no longer afford and furthermore the Council's priority is to develop more community based services.
 - The Council will achieve long-term savings of at least £900,000 per annum which will be reinvested in front line services, and it will mitigate against future repairs and maintenance liabilities of each of the 6 homes.
42. Previous Council reports considered what capital receipts could be received by the Council on the sale of the Homes. As set out in paragraph 32, the Council will receive a capital receipt lower than has been estimated previously. However, the reasons behind this are set out in this report and the recommendations to sell the Homes at the values being offered take these factors into account.
43. If the recommendations in this report are accepted it is necessary that the Implementation Plans for each of the 6 homes to be sold are commenced and that the work is undertaken jointly by officers of the Council and Bidder. This is a requirement of the tender and contract documentation. The implementation process is there to allow for proper consultation with staff and to ensure a smooth transition of the business so that there is minimal disturbance to the residents living at the homes. Staff transferring pursuant to TUPE will continue to be engaged and specifically consulted within the process prior to completion of the sales.
44. It is the current intention that the remaining six homes will continue to operate as residential care homes as well as providing short-term and respite care services that will provide support to carers. Existing Council Policy in relation to Care Homes is unchanged.

STATUTORY AND POLICY IMPLICATIONS

45. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder and those using the service. Where such implications are material, they have been described in the text of the report. Members' attention is however, drawn to the following:

Human Resources Implications

46. As referred to in Paragraph 43 above, engagement and consultation with staff of the Homes pursuant to TUPE, including the appropriate Trade Union representatives will continue until transfer but consultation will be extended to

involve management/human resources representatives of the new provider. Employment information including liabilities, will be updated and at the appropriate time conveyed to the new provider as part of the County Council's obligations under the TUPE Regulations.

Financial and Pension Implications

47. It is estimated that the sale of 6 of the homes would achieve revenue savings of £900,000 per annum in a full year. Additional savings have already been achieved from the previous closure of 3 other homes and can release a further £400,000 providing a total saving of £1.3m. This contributes over half of the £2.5m overall revenue savings planned to commence from 2012-13 on the sale of all of the homes.
48. The sale of only 6 of the homes will not achieve the full level of forecasted savings and the Council will be considering options to replace the revenue savings in budget plans as part of the work above and ongoing medium term planning by the Council as a whole. A report will be brought back to the appropriate decision making body outlining these options as soon as practicable.
49. The sale is subject to various contractual and other requirements and included in this is the successful delivery of an implementation plan. The realisation of savings will be reviewed on confirmation of the agreed timescale for transfer and monitored through and after the process of transfer by the service.
50. Capital Receipts were not assumed from the potential sale of any of the 12 homes due to market conditions and the significant costs of TUPE affecting the attractiveness to the market place. Should Members approve the sales, the capital receipts will be included in the capital programme and appropriate adjustments made to capital and prudential borrowing.
51. A further consideration is the financial implications associated with the pension arrangements for the staff who would transfer to the successful bidder. The pension fund as valued now does not cover the total liabilities of the fund i.e. the scheme overall is in deficit, which is an issue which applies nationally (although the Nottinghamshire scheme is 84% funded which is higher than many other Local Government Pension Schemes). Nonetheless, the Council commissioned its Actuary to specifically examine the pension implications associated with the employees of Residential Care Homes who are active members of the scheme.
52. In terms of the existing pension deficit associated with the transferring employees the Council has the option of either funding any deficit itself, up to the point of transfer, or passing such deficit onto the new employer. The Council's general position adopted for other re-commissioning/outsourcing exercises currently being undertaken (e.g. Re-commissioning of In-house Supported Living Service and Partnership Homes Support Services) is to fully fund the deficit at the point of transfer.
53. The Actuarial assessment has estimated the total liability for the 6 homes at point of transfer to be £2.859m. If the Council funds the pension deficit itself, then the estimated increase in its employer pension contribution rate would be 0.06% of payroll. However, the actuary is unlikely to increase contributions by less than 0.1% and such an increase would equate to £268,000 per annum.

54. The Council has received a legal view that as the pension liability is an existing and ongoing liability faced by the Council, is one which the County Council has to bear in any event and that it relates solely to the period of employment of the staff group prior to the transfer, it is not a relevant cost to consider from the perspective of best consideration. However, even if the liability was applied and met in full on the day of transfer (which would not happen in practice as the costs are spread over a number of years), this would not impact on the best consideration decision as the net effect would still result in a cash consideration of less than £2m (both individually and collectively).
55. The recommended bidder has indicated as part of its bid submission that it has a broadly comparable pension scheme (as opposed to seeking admitted body status to the Local Government Pension Scheme). This means that no pension bond is required for protection of the County Council but acceptability of the comparable scheme will need to be confirmed as part of the implementation work.
56. If the scheme is acceptable, the transferring employees will be offered the opportunity to transfer their benefits earned in the Local Government Pension Scheme (LGPS) to the new provider's pension scheme. If employees elect to transfer their benefits, they have the cover of a 'bulk transfer' agreement and are offered benefits of equivalent value to the benefits transferred from the LGPS. In such situations, the LGPS must make a transfer payment to the broadly comparable scheme. For employees who are currently active members of the LGPS, the Scheme Actuary has calculated the potential bulk transfer value to be £8.287m. This would be a transfer of cash to the new employer's pension scheme, but would also remove the corresponding accrued liabilities from the Nottinghamshire pension fund. It has no bearing on the decision in terms of best consideration.

Equal Opportunities Implications

57. Public Authorities are required by law to have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation,
 - to advance equality of opportunity between people who share a protected characteristics and those who don't
 - to foster good relations between people who share protected characteristics and those who don't.
58. Decision makers must understand the effect of policies and practices on people with protected characteristics. Equality impact assessments are the mechanism by which the authority considers these effects.
59. An equality impact assessment has been undertaken and is available as a background paper and it is essential that members give due regard to the implications for protected groups in the context of their equality duty in relation to this decision.

Implications for Service Users

60. Residents living at the homes that are to be sold will be protected for a minimum period of 3 years and the amount that they pay for their care will not change with the exception of the increase agreed at a previous Council meeting on 31st March 2011. Contractual obligations will be secured with the future owner with regards to these obligations.

Human Rights Act Implications

61. The recommendations at this stage do not reflect a change in Council policy. Should any changes to the current Council policy be made following the review recommended pursuant to paragraph 6 Human Rights Act implications will need to be reassessed. However, Council officers will keep this under review and continue to consult service users as set out in Paragraph 25.

Corporate Property Implications

62. The savings used in the calculation of best consideration test (see paragraph 38 & 39) only include local minor repairs and maintenance budgets specific to the homes that are being sold and do not include any budget either from the homes that are to be retained or centrally retained repairs and maintenance budget.

RECOMMENDATIONS

63. It is recommended that:
- a. the 6 homes identified below are sold to Runwood Homes subject to the completion of the Implementation Plan which includes consultation with employees;
 1. Bramwell
 2. Braywood Gardens
 3. Maun View
 4. Jubilee Court
 5. Leawood Manor
 6. Westwood
 - b. that the sums of £604,804.70 and £41,535 be approved for payment as per the Management Agreement to the Primary Care Trust for the termination of the management agreement at Bramwell for disturbance and relocation in return for the early surrender of the lease by the Primary Care Trust.

COUNCILLOR KEVIN ROSTANCE

Cabinet Member for Adult Social Care and Health

LEGAL SERVICES' COMMENTS - (SSR 31/08/2011)

64. The recommendations set out in the report may be approved by Full Council.

FINANCIAL COMMENTS OF THE SERVICE DIRECTOR - FINANCE – PDS 3.8.11

65. The main financial implications of these proposals are set out in the report, with particular reference to the table in paragraph 37 and the comments in paragraphs 38 - 40 and 47 - 50.
66. The report demonstrates that the Council will not need to seek Secretary of State approval in terms of achieving best consideration for sale of the residential homes.
67. The savings in this proposal form an element of the Council's overall savings plans and alternative proposals will need to be identified if the savings cannot be delivered in full. Any shortfall in savings from not selling all 12 homes will need to be factored into the Council's Medium Term Financial Strategy.

BACKGROUND PAPERS AVAILABLE FOR INSPECTION

68. Full Council Report 25th February 2010 – Aiming for Excellence (previously published).
69. Cabinet Report 14th July 2010 – Aiming for Excellence (previously published).
70. Full Council Report 30th June 2011 – Day Care Service Review (previously published).
71. Lambert Smith Hampton - Independent Valuers Report.
72. Equality Impact Assessment.

ELECTORAL DIVISION(S) AFFECTED

73. Nottinghamshire.

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