

Forward Plan reference number: Not applicable

Report title: Award of care and support contract at Rosebank Park and Beaumont House	
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Date: 21 February 2022	For: Decision
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County Divisions affected: Tendring	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Everyone's Essex

- 1.1 Everyone's Essex sets out the strategic aim of health, wellbeing and independence for all ages. Within that aim is a commitment to helping individuals to live free from abuse and neglect and enabling independence through access to suitable accommodation and enabling an effective care market and strong domiciliary support.
- 1.2 One way to support this aim is through Extra Care Housing schemes. Extra Care Housing schemes are for adults who want to live in their own home with the peace of mind of on-site care and support 24 hours a day, 7 days a week, if they need it.
- 1.3 The purpose of this report is to seek agreement for the direct award of an Extra Care contract for the on-site care and support services at Rosebank Park and Beaumont House, existing schemes in Tendring, to the new provider for both schemes, Orwell Housing Association Ltd.
- 1.4 The proposals in this paper do not create any additional climate impacts, which is consistent with our net zero climate commitments set out in Everyone's Essex.

2 Recommendations

- 2.1 Agree to award a two-year contract, with the option to extend for a further three years, to Orwell Housing Association Ltd for the delivery of the on-site care and support services at the two Extra Care schemes Rosebank Park and Beaumont House. The standard Essex Extra Care contract will be awarded and the hourly rates for personal care and the Peace of Mind rates, detailed in the confidential appendix, will apply.

3 Background and Proposal

Context

- 3.1 The Council currently has contracts with the on-site care and support providers at fifteen Extra Care schemes across Essex at which placements are made by Adult Social Care.
- 3.2 Extra Care schemes are for people with eligible assessed care needs who would benefit from a home environment with 24-hour on-site care and support that enables their continued independence. This means living in a safe property, with self-contained apartments in a well-maintained scheme in the heart of the community, that is purpose built and tailored to the needs of residents. Extra Care schemes are a relatively small but important part of a wider accommodation pathway of care, support and housing solutions, enabling people to live as independently as possible, playing full and active roles in their local communities.
- 3.3 Increased flexibility in the eligibility criteria is being implemented across all Extra Care schemes in Essex in terms of both the care needs and the age of prospective residents, including people under 55, where Extra Care is deemed suitable to meet need. This is a positive progression of the Extra Care model in Essex.
- 3.4 There are two components to the on-site care and support provided within Extra Care Schemes:
 - 3.4.1 the provision of planned care for residents who wish to receive their personal care package through the on-site care and support provider; and
 - 3.4.2 the delivery of a 'Peace of Mind' service. This provides a 24/7 presence to respond to any unplanned care needs/emergencies. This service is available to all residents.

The schemes

- 3.5 Rosebank Park is a 70-unit Extra Care scheme in Harwich developed by Ashley Homes, who were subsequently acquired by Funding for Affordable Homes (FAH). In 2014 the Council awarded a capital grant of £1.163m towards the development of the scheme from the Independent Living Housing for Older People Capital Fund. The scheme then opened in 2017.
- 3.6 Beaumont House is a 60-unit Extra Care scheme in Walton on the Naze developed by Ashley Homes, who were subsequently acquired by FAH. In 2014 the Council awarded a capital grant of £892,500 towards the development of the scheme from the Independent Living Housing for Older People Capital Fund. The scheme also opened in 2017.
- 3.7 In exchange for the grant provided to FAH, the Council have received nomination rights to all of the rental units at both schemes. In addition, Tendring District Council also have nomination rights over these units. A

nomination agreement between the Council, Tendring District Council and FAH is in place for the period of 70 years. The Council is not liable for voids, which means the Council is only required to pay for planned personal care provided to residents nominated by the Council. The Council is not responsible for the payment of rent, service charges or Peace of Mind charges at any time. The nomination agreement permits the obligations of the landlord to be carried out by a housing provider on behalf of the landlord, provided the housing provider holds the lease for the units.

- 3.8 The freehold owner of Rosebank Park and Beaumont House, FAH entered into a lease with One Housing Group (OHG) (a national housing association) to manage the building and provide the landlord services as well as the on-site care and support services. OHG have provided these services since the schemes opened in 2017. OHG carried out a review of its geographical areas of operation and concluded that it wished to focus on delivering care and support services in its core areas of operation in London and the South East. OHG gave notice on 25 May 2021 to terminate Rosebank Park on 2 December 2021 and Beaumont House on 25 May 2022. It was subsequently agreed by both parties to bring forward Beaumont House and delay Rosebank Park so that both schemes would transfer to a new provider at the same time on 1 March 2022. Legal documents were drawn up and signed by OHG and FAH confirming the new termination dates. In light of this, FAH began the process of seeking a new lessee.
- 3.9 FAH employed Campbell Tickell (CT), an experienced consultancy company, to manage the process. CT produced a shortlist of potential providers, with the following assessment criteria:
- (a) a good track record in housing and care provision in Extra Care schemes;
 - (b) good CQC ratings;
 - (c) good Regulator of Social Housing ratings;
 - (d) work in or close to the borders of North Essex; and
 - (e) experience of working with an older client group and people with a learning disability.
- 3.10 FAH and CT met with six interested providers and following these meetings a shortlist of potential providers was drawn up. Following detailed negotiations and in-depth discussions with three of the providers, Orwell Housing Association Ltd was the preferred provider based on the assessment of the criteria detailed in paragraph 3.9.
- 3.11 Since they opened both schemes have held a large number of voids, which has caused some problems for the schemes. However, FAH felt Orwell Housing Association Ltd fully understood the challenges facing the schemes and has robust proposals to resolve. These proposals include increased flexibility on the age and care needs of prospective residents nominated by the Council, including the support of residents with planned care needs overnight and adults with disabilities as well as adults under the age of 55.

- 3.12 OHG's lease will cease on 28 February 2022, with Orwell Housing Association Ltd's commencing on 1 March 2022. Orwell Housing Association Ltd's lease is initially for two years with the option to extend by a further 20 years.
- 3.13 Orwell Housing Association Ltd is a registered provider with experience of providing Extra Care services in Suffolk and Norfolk. The Council has contacted Suffolk County Council, who have twelve Extra Care schemes led by Orwell Housing Association Ltd. There are no current Safeguarding concerns and Suffolk County Council work with Orwell Housing Association Ltd to ensure quality is maintained and improved. The CQC rating for all schemes led by Orwell Housing Association Ltd is 'Good'.
- 3.14 Further, Orwell Housing Association Ltd won the tender for the development of the new Extra Scheme at Coppins Court, Clacton, procured by the Council in 2019, which included quality questions for the on-site care and support service at the scheme. All responses were sufficient.
- 3.15 Although the Council has nomination agreements with FAH for Rosebank Park and Beaumont House, this does not enable the Council to require FAH/Orwell Housing Association Ltd to give the Council access to the non-communal areas and facilities or to the alarm systems to enable an external provider to operate the on-site care and support service effectively and provide a 24-hour on-site presence. The Council does not own these buildings and so is unable to access these areas.
- 3.16 Conversely, FAH/Orwell Housing Association Ltd cannot compel the Council to award a scheme-wide contract for the on-site care and support service but if it does not do so, then the Extra Care scheme will not function as designed.

The contract

- 3.17 It is proposed to award a two-year contract, with the option to extend for a further three years, to Orwell Housing Association Ltd for the provision of on-site care and support services at Rosebank Park and Beaumont House. This is the approach taken in other Extra Care schemes in Essex where the landlord has requested to provide the on-site care and support service, and the Council is assured that this approach provides best value and ensures a seamless service provision for residents.
- 3.18 A two-year contract, with the option to extend for a further three years (as opposed to a five-year contract, which is the standard contract term for Extra Care schemes in Essex), is proposed because Orwell Housing have entered into an initial two-year lease agreement with FAH. The intention is for the contract start date to align with the termination by OHG of their lease on 28 February 2022 and the commencement of the lease to Orwell Housing Association Ltd on 1 March 2022. Towards the end of the two-year contract period, the Council will review and consider the approach for ongoing on-site care and support service provision within this scheme and whether to enact the extension period.

- 3.19 Due diligence has been carried out to provide assurance of quality. Should Orwell Housing Association Ltd's CQC rating change from 'Good' then, an action plan would be agreed and must be implemented within a reasonable timescale by Orwell Housing Association Ltd.
- 3.20 Rates for the delivery of the on-site care and support service have also been negotiated with Orwell Housing Association Ltd. These rates are included in the confidential appendix. As well as providing the Housing Management service, Orwell Housing Association Ltd, as the on-site care and support provider, should allow for efficiencies to be gained across the service by using the staff at the scheme to provide care and housing activities as appropriate. It should also ensure that a seamless flexible service can be provided to residents.
- 3.21 The Council will require Orwell Housing Association Ltd to sign the standard Extra Care contract terms and conditions. The service specification and performance standards within the care and support contract will require that Orwell Housing Association Ltd, as a minimum, meets the Council's quality standards and adheres to the service delivery model for Extra Care. This will ensure high-quality service provision that maximises independence; with Rosebank Park and Beaumont House, as community assets, benefiting the wider community as well as the residents within the schemes; and with a strong ethos of social interaction and maintaining and developing relationships. There will be Key Performance Indicators and Management Information for Orwell Housing Association Ltd to report on and for the Council to monitor to ensure performance of the services is at a level that is acceptable to the Council.
- 3.22 The contractual arrangement for this on-site care and support service will not oblige the Council or residents to purchase care packages from Orwell Housing Association Ltd. Residents and the Council will still be able to choose another care provider or carer, as required. The provider of the Peace of Mind service will not be optional, however, and residents will have their Peace of Mind service delivered by Orwell Housing Association Ltd. This element of the service is integral to the scheme and economies of scale will be lost if individual arrangements are made. The payment for the Peace of Mind service will be collected directly from all adults living at the scheme by Orwell Housing Association Ltd; payment of this fee will be a condition of tenancy and living within the Extra Care scheme.
- 3.23 The rates for the on-site care and support service will be fixed for the contract period, although the Council will have absolute discretion to increase rates if it so wishes. This is consistent with the Council's general approach to increasing prices for care services delivered to adults.

4 Links to our Strategic Ambitions

4.9 This report links to the following aims in the Essex Vision:

- Enjoy life into old age
- Develop our County sustainably
- Strengthen communities through participation

4.10 Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030. We are working on wider improvements as part of our longer-term market shaping strategy which will have an impact on this ambition.

4.11 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- Health wellbeing and independence for all ages

5 Options

Option 1 – Do nothing (not recommended)

This approach is not recommended, as it would mean there would be no on-site care and support service for the 130 units for which the Council has nomination rights. The on-site care and support service must be in place in order for placements to be made; the alternative option for placement may be residential care.

Option 2 – Directly award the contract to the Landlord (recommended)

This is the recommended option because it reflects the wishes of Orwell Housing Association Ltd and FAH for the provision of the on-site care and support service and it ensures Extra Care capacity within the County. The Council is also assured of the quality of care that will be provided. It is the approach most likely to provide a seamless cost-effective service, as Orwell Housing Association Ltd will be the on-site care and support provider across the whole scheme at both schemes, as well as providing the housing management service. This option does not tie the Council or residents into having to purchase planned care packages from Orwell Housing Association Ltd. However, the provider of the Peace of Mind service is not optional and will be Orwell Housing Association Ltd, with residents paying Orwell Housing Association Ltd directly for this service as part of their tenancy agreement.

Option 3 – Undertake a single stage competitive tender for the onsite care and support contract (not recommended)

This approach is not recommended as FAH have indicated that they wish to appoint Orwell Housing Association Ltd to be responsible for the provision of

the on-site care and support service across all of the units in both schemes. The Council is unable to access the necessary on-site facilities without the agreement of the landlord. There would also be a very high risk of a failed procurement due to the level of voids currently in the schemes. Having a different landlord from the care provider has also been explored for previous tenders, but this model has never been taken forward as care providers, where they are not the landlord, have limited appetite to collect the Peace of Mind charge directly from the resident when there is no mechanism, outside of the tenancy agreement, to ensure that this is paid.

6 Issues for Consideration

6.1 Financial implications

- 6.1.1 The overall contract value over the two-year period is estimated to be **£1.5m**. This is included within the current Medium Term Resource Strategy (MTRS). Contracts are to start simultaneously to align with the termination of the current contracts with One Housing. This is to be funded from existing resources within the North Quadrant Care & Support Budgets.
- 6.1.2 Residents placed in these schemes would have otherwise received home care provision in their own homes or would have been placed in more expensive residential care placements. The cost of the Peace of Mind service will be paid directly to the Registered Provider by the residents.
- 6.1.3 The contract for personal care services will not guarantee the provider a minimum volume of care hours; actual volumes will depend on the needs mix of the adults placed within the scheme.
- 6.1.4 There are no savings within the MTRS associated with these two schemes as they are already operational and have been for some years. However, as mentioned in 3.11, the potential additional needs considered in these schemes may increase volumes and therefore cost but could also increase the cost avoidance from residential placements. This will be monitored as the contract progresses.
- 6.1.5 Requests for inflationary uplifts will be managed as set out in paragraph 3.23.
- 6.1.6 Rosebank Park
 - 6.1.6.1 The cost of personal care in the Rosebank Park scheme will be funded as set out in 6.1.1. These budgets already have provision for this scheme estimated at **£313,000** in 2022/23 and future years. This decision creates a pressure of £60,000 pa based on current volumes. This can be contained within the offsetting impact of Beaumont House.
 - 6.1.6.2 This scheme received a capital grant for the build in 2014 from the Council as mentioned in paragraph 3.5 of £1.2m. This capital investment in this scheme secured our nomination rights along with the nomination agreement.

6.1.7 Beaumont House

- 6.1.7.1 The cost of personal care in Beaumont House will be funded as set out in 6.1.1. These budgets already have provision for this scheme estimated at **£425,000** in 2022/23 and in future years. Based on current volumes, this decision has limited impact for this budget, but this service is currently operating at lower hourly volumes than were assumed at budget setting and therefore after this decision, this scheme will have a potential under spend of £60,000 which would offset the potential over spend at Rosebank Park.
- 6.1.7.2 This scheme received a capital grant for the build in 2014 from the Council as mentioned in paragraph 3.6 of £893,000. This capital investment in this scheme secured our nomination rights along with the nomination agreement.

6.2 Legal implications

- 6.2.1 Supported Living and Extra Care schemes are currently considered by the CQC to be Housing with Care, rather than providing accommodation with personal and/or nursing care, like nursing or residential homes. Providers are therefore required to register with the CQC for the provision of personal care only. There is some risk that the regulator may change its interpretation of the law. However, these are existing schemes, meaning that the risk is already borne by the Council and the Landlord.
- 6.2.2 Personal Care / Domiciliary Care services fall within 'social and other specific services' within Schedule 3 of the Public Contracts Regulations 2015 and the total contract value is estimated to exceed the threshold of £663,540. As a result, the procurement of personal care services within schemes where landlords have elected not to provide or commission the care themselves is subject to the 'light touch regime' of the Regulations.
- 6.2.3 The Regulations require the Council to publish its intention to award a contract for 'social and other specific services' by either a Contract Notice or a Prior Information Notice (subject to conditions relating to the contents of both the Contract Notice and Prior Information Notice).
- 6.2.4 In schemes where landlords have elected to deliver or commission Personal Care / Domiciliary Care services themselves, the Council is unable to procure these services by way of a competitive procurement process. The Council requires the permission of the landlord and owner of the building in order to do so.
- 6.2.5 Where the landlord is unwilling to give the Council such consent, the Council is required to commission services from the landlord or their commissioned subcontractor. As a result, it is arguable that the Council is permitted to negotiate such a contract directly with the landlord in accordance with the provisions of Regulation 32(b)(ii) on the basis that competition is absent for technical reasons.

7 Equality and Diversity Considerations

7.2 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.3 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.4 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The proposed recommendation will ensure that the two schemes are able to operate as Extra Care in which placements can be made by the Council, providing an alternative accommodation and support option to residential care or a domiciliary care package at home.

8 List of Appendices

Appendix A: Equality Impact Assessment

9 List of Background Papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date 21/02/2022
Nick Presmeg, Executive Director for Adult Social Care	

In consultation with:

Role	Date
Cllr John Spence, Cabinet Member for Health & Social Care	31/03/22
Executive Director, Corporate Services (S151 Officer)	15.2.22
Laura Davis-Hughes, Head of Finance, on behalf of Nicole Wood	