



City of Westminster

Cabinet Member Report

Meeting or Decision Maker:

Cabinet Member for Adult Social Care,
Public Health and Voluntary Sector

Date:

29 December 2023

Classification:

Part Exempt – the accompanying Part B report is exempt from disclosure by virtue of the following paragraph of schedule 12A of the Local Government Act 1972:

Paragraph Three: Information relating to the financial or business affairs of a particular person (including the authority holding that information)

Title:

Beachcroft Care Home Direct Award

Wards Affected:

All

Policy Context:

Fairer Communities

Key Decision:

Yes

Financial Summary:

The maximum contract value is £19,473,688.80. Further financial details of the decision are included in the Part B (exempt from publication) report

Report of:

Bernie Flaherty, Bi-Borough Executive Director for Adult Social Care and Health

1. Executive Summary

- 1.1. This report sets out the rationale for Directly Awarding a contract to Gold Care Housing (GCH) (Alan Morkill House) Ltd (08130202) for the provision of residential care services at Beachcroft care home.
- 1.2. The contract commenced on 17 December 2022 for a period of 27 months (2 years and 3 months) until 31 March 2025, with an option to extend for 12 months (1 year) to 31 March 2026. The rationale for the duration is explored in section 3. The proposed direct award is not compliant with PCR or the Procurement Code. The Executive Director of Adult and Social Care has approved a working at risk waiver for the initial term until the proposed contract is executed.
- 1.3. Beachcroft House is a Care Home situated within Westminster. Residents at Beachcroft receive accommodation and nursing or personal care as a single package under one contractual agreement for the provision of the care services. The care services at Beachcroft are currently delivered by GCH. The delivery of this provision is key to ensure WCC meets the legal requirements as set out within the Care Act 2014.
- 1.4. This service is currently operating at risk due to existing contract arrangements expiring on 16 December 2022. The proposed direct award will regulate the spend during the out of contract period and ensure continued delivery of services until 2025/2026 whilst the Authority considers the longer-term options for care provision within the care home.
- 1.5. As the incumbent supplier, GCH, has been identified without competition and is currently deemed to be the only organisation that can ensure continued delivery of care services at Beachcroft during the proposed contract period (see section 3 for detail).
- 1.6. The intention is to undertake a full review during the proposed contract period, which will determine if it is feasible to insource care service or if services should be re-tendered in the future, potentially alongside care provision at Forrester Court care home and Extra Care Provision at Carlton Dene.
- 1.7. The early indication from the Insourcing Programme Board is that Beachcroft & Forrester Court could be packaged together and either insourced as a joint service to ensure efficiencies or tendered from the market as a more attractive option. This will be fully explored during the proposed review within the recommended contract period. The service is funded via the ASC core budget and the service has the required budget to ensure delivery throughout the contract term.

2. Recommendations

- 2.1. That the Cabinet Member for Adult Social Care, Public Health and Voluntary Sector:
 - 2.1.1. Notes the expenditure from 17 December 2022 to 29 December 2023, for an amount of £4,993,253.54.
 - 2.1.2. Approves the Direct award for the delivery of the Beachcroft Care Services Contract to Gold Care Housing (GCH) (Alan Morkill House) Ltd (08130202) from 29 December 2023 to 31 March 2025 with the option to extend for an additional period of 1 year for an amount of £11,234,820.46; and a total contract maximum value of £16,228,074 (£19,473,688.80 including VAT, although VAT is not payable for this service).

- 2.2. That, following a recommendation from Commercial Gateway Review Board, the Executive Director of Adult Social Care and the Director of Commercial Partnerships, the Cabinet member for Adult Social Care, Public Health and Voluntary Sector approves a waiver request to directly award the proposed service contract to Gold Care Housing (GCH) (Alan Morkill House) Ltd (08130202).

3. Reasons for Decision

- 3.1. The current service is being delivered at risk due to contracts expiring in December 2022.
- 3.2. The options that have been considered (see Appendix 1 for further detail) are:
- Direct award to the incumbent supplier (recommended as per this report)
 - Direct award to an alternative supplier (not recommended)
 - Undertake a procurement exercise (to be fully considered)
 - Insource services (to be fully considered)
 - Do nothing (not recommended)
- 3.3. There is no option to formalise an alternative arrangement that can commence with immediate effect without significantly disrupting the care for elderly and vulnerable residents accessing the service. The only option to immediately mitigate the risk is to directly award a new contract to the incumbent supplier, Gold Care Homes (GCH).
- 3.4. The recommended initial term of 27 months has been devised to enable retrospect delivery from December 2022 until March 2023 (3 months) and to then run in parallel with the financial years for the remainder of the contract term April 2023 to March 2025 (24 months). An optional 1-year (12 month) extension period is also included to potentially enable the contract to run until March 2026.
- 3.5. The initial term will enable WCC to regularise the spend with GCH and provide sufficient time to test the market and to fully explore the option of potential insourcing. This will also provide an opportunity to further model other potential options (as noted above) following further market intelligence, engagement and understanding.
- 3.6. There is a political appetite for the insourcing of care homes. Sufficient time to ensure that this potential option is fully explored is required prior to considering a further formal market approach.
- 3.7. An optional 12-month extension period is also proposed to mitigate the risk of any delays with the review but to also provide an opportunity to extend the arrangement by 12 months to coincide with the expiry of other care home contracts.
- 3.8. Ensuring that contract terms of the care homes are coterminous enables the consideration of a potential joint tender i.e., include more than one care home within a future opportunity. This may be more attractive to the market and may improve the likelihood of a successful tender, particularly if it can assist with resolving some of the known issues i.e., the financial envelope and the cost of delivering a single service. This option will be fully explored as part of the review during the contract term.
- 3.9. The proposed duration may also provide an opportunity for market stability and the reduction in economic market pressure i.e., interest rates and inflation. These

pressures are prevalent at present but expected to recede in some form gradually from 2024. This will provide a better understanding of the future operational costs, which will assist with determining the desired future option of delivery.

3.10. In June 2022 council officers conducted a market engagement exercise, during which 117 care home providers were sent an information pack and asked to complete an online form to declare if the organisations were interested in finding out more about the Beachcroft House tender opportunity in Westminster. Unfortunately, the market response was lukewarm at best, with only five organisations expressing a positive interest. A further round of more focused market engagement took place in July 2022 with 44 care home providers operating in London or the southeast contacted directly by phone to determine who the responsible person in the organisation was to directly contact to share information about the opportunity. Again, interest was very limited, with providers either not responding or stating they were not interested at the time. Based on market feedback this would suggest that currently there would be a significant risk that a procurement would be unsuccessful. Some of the known issues are:

- The ‘operator only’ care homes market is immature offering a limited pool of providers and limited profit opportunities.
- Specification/contract issues – The proposed 6 months no fault termination notice was off-putting for two providers.
- One provider was concerned about deductions linked to KPIs.
- An annual uplift/indexation being at sole discretion of the council was another concern.
- The five-year block was not as attractive as expected.
- TUPE - The information supplied by the current provider was likely to be inflated.
- Price – Guideline average bed price was too low for some providers, despite the average prices including capital servicing payments not required for an operator of Beachcroft.
- Proposed legislative changes.
- Proposed contract duration and the difficulties for suppliers to accurately bid commercially.
- Suppliers interest in profit and a larger commercial envelope being more attractive, which is not currently feasible.
- Staffing costs represent a large proportion of the contract (65%) current market conditions result in this cost being inflated.

3.11. Whilst some of these issues could be resolved via amendments to the specification and terms & conditions further review, analysis and market testing is required to fully understand the feasibility of tendering for this service.

3.12. The aim is to have an agreed position on either tendering or insourcing by mid-2024, this should enable completion of the chosen option prior to the expiration of the initial contract term in March 2025, or if a joint tender is deemed appropriate by 2026. This work can be initiated and completed during the proposed term of the directly awarded contract by reaching the following high-level milestones:

Sept 23 to April 24:	Two workstreams: (i) market engagement on packaging the homes together for retendering and (ii) financial modelling and planning around an insourced or alternative delivery model.
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April 24:	Take options appraisal and financial modelling to the Insourcing Board.
May to June 24:	Take decision through stakeholders and Governance.
July 24 – March 25:	Retendering or insourcing activity

Out of scope:

- 3.13. These interim contract arrangements do not include the lease for Beachcroft House to GCH (Alan Morkill House) Ltd, therefore approval to issue a lease to the incumbent provider will be sought in parallel. The term of the lease will run in parallel to the contract. There is a currently a ‘Tenancy at Will’ in place.

4. Background, including Policy Context

- 4.1. The service is required to meet the Health and Social Care Act 2008 and (Regulated Activities) Regulation of 2014. This requires Registration status which is obtained by achieving the fundamental standards across a range of areas as determined, regulated, and inspected through the Care and Quality Commission. The current service is rated as Good following last inspection.
- 4.2. Beachcroft House is a care home which is registered to provide personal care and nursing care to up to 84 older people with physical disabilities, frailty and/or living with dementia. The house is purpose built over five floors and offers a range of communal areas and facilities. The building is owned by WCC with a separate lease agreement in place.
- 4.3. Beachcroft is currently accessed by 73 residents predominantly from WCC, as well as RBKC and two remaining LBHF legacy residents who entered the care home during the Tri-Borough shared service arrangements period. Beachcroft is one of three care homes commissioned for Older Adults in the Borough that ensures WCC has the capacity to meet the demand for residential and nursing care in the Borough.
- 4.4. 11 bedrooms on the lower ground floor (LGF) have not been accessible for a prolonged period as they are not considered safe to occupy following a significant flooding event. The entire LGF was flooded in July 2021 because of wider flooding in the Maida Vale area following a thunderstorm and extreme rainfall event. Until full assurance can be given that the risk of repeat events has been full mitigated and the risk of residents having to evacuate the LGF area are removed the capacity of the care home will remain at 73 beds.
- 4.5. The construction of Beachcroft was completed in July 2020 and GCH were awarded the care provision contract directly under Care Quality Commission (CQC) dual registration to operate the care home on an interim basis.
- 4.6. During the interim period WCC devised a procurement strategy to secure a long-term supplier (10 + 5-year term). A procurement exercise took place in 2021 and out of 32 interested suppliers only two bids for the services, one of them being GCH. The bids put forward were underwhelming and far exceeded the benchmark pricing, the tender was subsequently abandoned and a direct award for services was agreed as the best course of action.

- 4.7. On 24 June 2021, the key decision to direct award a care contract and lease extension until the 17 June 2022 with provision for a 3+3-month extension to GCH. In April 2022 it was agreed to utilise both extension periods until 16 December 2022. This decision was delegated to the Executive Director of Adult Social Care and Public Health.
- 4.8. The contract has since expired and both WCC and GCH have been operating at risk out of contract since December 2022. The key reason as to why the contract lapsed was due to protracted negotiation over the cost of the beds. It has taken considerable time to come to a mutual agreement, however, this negotiation has now concluded, and the value reflected within the recommended contract cost.
- 4.9. There have not been concerns with the quality of care and the inspection of services has upheld a Good CQC rating to date.

5. Current performance:

- 5.1. The care services contract is performing well. While the service quality is good, there are concerns about safety of residents as the resident group has become increasingly frail. ASC commissioning officers monitor the service closely to ensure concerns are picked up early and addressed through partnership working with other stakeholders. The last full inspection of the service by the regulator, CQC, in February 2021 rated the service as overall GOOD. The service was GOOD in 4 of the 5 key lines of enquiry and Requires Improvement in the Safe KLOE. CQC found some issues in relation to effectiveness of medication administration. GCH have addressed the improvements required by switching to electronic medication administration recording system, which has seen noticeable improvements since implementation.
- 5.2. While performance is rated stable, there were concerns of a risk of deterioration due to recruitment challenges. Additional recruitment has been authorised by the Council in December 2022 as it became clear staff turnover has been significant and there was a clear need to recruit into several different job roles. The provider has managed to recruit significant numbers of new carers and other job roles since January, which has alleviated concerns about service stability. Recruitment of domestic staff remains difficult, with gaps in this area covered by external agencies.
- 5.3. The provider has engaged positively with the ASC Care Design team on a resident and staff engagement study lead by the service designers on the Care Design side of the new ASC Commissioning structure. The engagement work aims to get a more in depth understanding of the user and employee experience of working in Beachcroft House. With the aim of understanding what is working well, what do residents enjoy doing, what could be better and supporting the service to make the improvements. Through this work ASC commissioners aim to increase connections with local community organisations and promote more personalised approach to care and support planning.

6. Value for money

- 6.1. As per the Care Act 2014 there is a legal requirement to provide access to the care provision and Beachcroft, under the operation of GCH, is currently rated Good by the Care Quality Commission (CQC). As per the CQC inspection report “people and their relatives were happy with the quality of care and support that they received” at Beachcroft.

- 6.2. The direct award to GCH will ensure that the established quality service continues with no impact to current residents. The direct award will also provide assurance of a service remaining in borough providing the local offer to residents. This supports the personalised approach and care close to home ambition, ensuring family and networks remain integral for residents, managing the risk of isolation, loss of relationships and connectivity which are integral to support managing transition and ongoing wellbeing for individuals already vulnerable.
- 6.3. The Direct Award will also support the sustainment of the service with assurance of funding in a fragile market where staff recruitment and retention is challenging. The Direct Award will enable stability and business continuity support to the provider and staff team. This will also ensure that WCC continues to fulfil the legal obligations.
- 6.4. The proposed cost of the direct award has been determined through extensive interrogation of the incumbents cost of care breakdown and benchmarking against equivalent services purchased elsewhere. The proposed cost of the service also includes rent and service charges that are payable to WCC which is approximately £647,500 per annum.
- 6.5. The average weekly bed cost during the life of the contract to date is £935 per person per week (including London Living Wage LLW). To compare with the market LLW has been removed as this is not standard in other payment terms, this reduces the average weekly bed cost at Beachcroft to £854 per person per week. When spot purchasing beds from the market the average cost in 2023 is £943.90 (excluding LLW). The cost of a bed with GCH at Beachcroft under the agreed terms currently represents best value in comparison to the cost of spot purchasing with alternative suppliers.

In addition to monetary value, the service has delivered social value through improving connections for residents with community organisations inside and outside the care home environment, including;

- One Westminster – volunteers attending the care home to lead an arts and crafts projects
 - Gardening for Dementia - engaging with residents in gardening activities twice a week
 - Music for Life project in partnership with Wigmore Hall
 - Age UK delivering a Maintenance Cognitive Stimulation Therapy (MCST) programme – aimed at engaging those who are often hard to reach. Plans to develop a dementia café in community room in the pipeline with Age UK.
 - Coop Nursery children aged 3-5 are booked to come in and visit residents.
 - Bike Works - the Side-by-Side 'cycle taxi with a difference'. A free service aimed at tackling loneliness through gentle exercise in the fresh air while carrying out journeys in their neighbourhood in a social group- all factors proven to be beneficial for physical and mental health.
- 6.6. There is current significant market pressure on residential placement costs, which are growing year on year, this is mitigated due to contractual terms being in place with the supplier, which enables planning and budgeting for both GCH and WCC under the terms of the contract. Inflationary uplifts are anticipated throughout the proposed term, however, there is no automatic right to an annual uplift and any annual inflationary uplifts will need to be mutually agreed.

7. Responsible procurement:

- 7.1. The Ethical Procurement Policy will be included within the newly awarded terms and conditions and commitments from the supplier will be sought as part of the contract award.
- 7.2. As per the current arrangements the supplier continues to invest and develop staff, which are residents within WCC. This will continue under the new contract terms and will be monitored throughout the duration of the contract.
- 7.3. The service specification will remain relatively similar to ensure the continued delivery of the provision, however, as part of this award the following will be included and will form part of the monitoring framework for the service:

Mandatory RP elements will include:

- Prioritised advertising of new job roles through Westminster Employment Service
- Requirement to meet Unison Care Charter (UCC) standards within a reasonable time period – with specific requirement to undertaking a mapping exercise, listing current adherence to the UCC standards and gaps, and a plan of how they are going to meet them within the period set by the council.
- Flexible RP elements – Suppliers will be asked to choose an option from each of the following themes:
- Employment & skills - Work experience placements, taster days, participation careers events etc.
- Inclusivity and staff motivation: Training programmes for existing staff (recognised qualifications, targeted to address ethnicity pay gaps amongst managerial tiers) additional flexible working offers etc.
- Community Engagement – expanding their existing social value/ community engagement deliverables, linking in and forging stronger and more varied relationships with community partners to provide said offers e.g., large tricycle exercise & wellbeing, dance events, schools performances etc.

8. Financial implication

- 8.1. The annual contract price is £4.95m and there is sufficient budget set aside to meet this commitment. Further details are in the exempt Part B report.

Anticipated savings

- 8.2. The service realised financial savings of £0.518m compared to the original contract price that was let in March 2020. The saving was captured as part of the 2021-22 medium term financial planning process.
- 8.3. The original saving target was £0.618m. Therefore, £0.100m residual saving is still to be realised. However, due to the direct award means that the service will look to negotiate a reduced price with the incumbent provider or find alternative savings.

Value for Money

- 8.4. The Commissioning team have done sufficient work to determine VFM for this contract.

Inflation

- 8.5. Currently, the contract price does not reflect any future indexation implications. Under the terms of the contractually mechanism the provider can put forward a claim which the service will need to evaluate and agree if a rate uplift should be applied. For any uplift that is agreed, a bid will be made to central finance for growth to offset this additional expenditure.

IFRS16

N/A

9. Legal and Governance Implications

- 9.1. The recommendation in this report is seeking approval to direct award a service contract to Gold Care Housing (GCH) (Alan Morkill House) Ltd for the provision of residential care homes services at Beachcroft House for:
- i. an initial term of 27 months commencing on 17 December 2022 with the option to extend for a further period of 1 year; and
 - ii. a total contract value of £16,228,074 (£19,473,688.80 including VAT*) (the Direct Award).
- 9.2. The services provided under the Direct Award that are the subject of this report fall under the category of 'Social and Other Specific Services' as defined by the Public Contracts Regulations 2015 (PCR 2015). The value of the Direct Award falls above the relevant PCR threshold of £663,540 and accordingly is subject to the 'Light Touch Regime' set out in the PCR 2015.
- 9.3. As a competitive process is not being proposed, a waiver of WCC's Procurement Code is required under paragraph 8.2. The waiver must be endorsed and recorded by the Procurement and Commercial Services Team. As the value of the contract exceeds £1.5m approval for the waiver and the proposed Direct Award is required by the Cabinet Member following a recommendation to approve from the appropriate Executive Leadership Team Member, the Director of Commercial Partnerships and the Commercial Gateway Review Board.
- 9.4. Further legal implications are contained in the exempt Part B report.
- 9.5. The Cabinet Member Terms of Reference delegate the powers of this decision to the Cabinet Member. In accordance with Paragraph 33.12 of the Council's Access to Information Procedure, this proposed key decision was entered in the Forward Plan on 11 September 2023 and the necessary 28 clear days' notice has been given. A period of five clear days - the call-in period – must elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

10. Information and Technology (IT) Implications

- 10.1. As Gold Care Housing (GCH) will be capturing and processing personal data of residents in the provision of personal and nursing care, the provider will need to provide evidence of applicable certification (e.g., ISO 27001, NHS DSPT, Cyber Essentials Plus) or complete the Council's Information Security Questionnaire and relevant

supporting evidence. This will be reviewed by the Council's Cyber Security team in accordance with the Council's Third-Party Assurance Framework. If any mitigations are identified, these will need to be put in place as soon as possible by the provider.

11. Data Protection Implications

- 11.1. A Data Protection Impact Assessment (DPIA) was previously completed and signed off for this contract. The DPIA is currently being refreshed to ensure it is reflective of any changes. From a data protection perspective, there are no issues or concerns anticipated at this stage.
- 11.2. Under the terms and conditions of the Council's standard services contract, the contractor is required to demonstrate how it will comply with the GDPR requirements including undertaking any risk assessments and their associated mitigations.

12. Approval route and next steps

Approval route and next steps		
Stage	Responsible	Date(s)
<u>Internal Governance</u>		
Contract award report (CGRB) – obtain recommendation to proceed to approval	Procurement	October 2023
Executive Director approval obtained	Commissioner	October 2023
Cabinet Member report – approval obtained	Commissioner	November 2023
<u>Contract Award & Mobilisation</u>		
Finalise contract terms / contract signing	Legal / Commissioner	December 2023
Publish Contract Award Notice	Procurement	December 2023
Contract commences / Go live	Service	December 22 (retrospect)
Mobilisation	NA	NA

13. Risks and mitigations

Risks/ Mitigations			
1.	Risk	Impact	Mitigation
	Challenge	Any legal or procurement challenge may involve a significant cost and potential reputational damage.	<p>The contract is being directly awarded to the incumbent supplier with the intention to either bring services in house or retender for the services following expiry of the new arrangements.</p> <p>Appropriate market engagement will take place to ensure clear messaging with the potential publication of a PIN.</p> <p>The risk involved with operating out of contract is higher, particularly in the event of an incident involving a vulnerable resident. The contract will be executed as soon as possible, with a letter of intent issued to cover the current working at risk period.</p>

	Value for money	Unable to test the market and ensure best value.	Options will be fully reviewed during the contract period; this will provide a better understanding as to what option will achieve the best value for the organisation.
	Length	A proportion of the contract length is being issued in retrospect. There may not be enough time in the proposal to undertake the review.	An additional 12-month extension has been proposed which can be invoked should unavoidable delays occur. This is a priority area for the service and a position on either insourcing or retendering must be established. The length of the proposed direct award should provide sufficient time to undertake the relevant reviews.
	Lease expiry: The proposed contract extension will run beyond the current agreed lease for Beachcroft	May result in the contract for services being unaligned with the lease for the building, this may cause issues with service delivery.	Corporate will regularise the occupation of Alan Morkill LTD (Goldcare) to align with the revised contract which is to be signed once this extension is approved. Essentially this will mean replacing the existing tenancy at will which has been protecting the property interest, be invoking the original draft lease, amending the original lease dates, to extend beyond that original intended date.
	Service quality issues	Complacency due to a contract award without competition.	GCH (Alan Morkill House) have achieved a 'good' rating following a CQC inspection in January 2021. The Quality Assurance Team and Contract Management will continue to work with the provider to support continuous service improvement.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Kevin Gormley Markets Team Manager (ASC) and Shazia Ghani Head of Care Markets (ASC)

APPROVED BY

Name and Title	Date approved
Zohaib Nizami, Finance	04/10/23
Kar-Yee Chan, Legal	29/09/23
Ailin Haacke, IT	01/10/23
Bridget Larsen, Legal	12/12/23
Maria Burton, Governance	15/12/23

APPENDICES

Appendix 1: Options Analysis

For completion by the **Cabinet Member for Adult Social Care, Public Health and Voluntary Sector**

Declaration of Interest

I have no interest to declare in respect of this report.

Signed: N. Butler-Thalassis Date: 18 December 2023

NAME: **Councillor Nafsika Butler-Thalassis**

State nature of interest if any:

(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Beachcroft Care Home Direct Award** and reject any alternative options which are referred to but not recommended.

Signed: N. Butler-Thalassis

Cabinet Member for Adult Social Care, Public Health and Voluntary Sector

Date: 19 December 2023

If you have any additional comment which you would want actioned in connection with your decision, you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.