



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for Adult Social Care and Public Health Cabinet Member for Finance and Smart City
Date:	18 th June 2021
Classification:	Part A – Public Part B – Private is currently exempt from disclosure see paras 1.6 -1.8
Title:	Grant a direct award of a care contract and a lease extension to the 17 th of June 2022 (with provision for 3+3 month extensions) to GCH (Alan Morkill) Ltd in relation to the Beachcroft House Care Home.
Wards Affected:	Maida Vale and Westbourne
Key Decision:	Yes
Financial Summary:	The total value of the contract is £4.732m, this includes the lease value of £570k per annum. The contract secures further financial savings of £0.200m. This would bring the total financial savings of £0.518m since the initial contract award in March 2020.
Report of:	Gareth Wall Director of Integrated Commissioning Adult Social Care and Public Health

1 EXECUTIVE SUMMARY

- 1.1 This report requests the approval from Cabinet Member for Finance, Property and Regeneration to issue a lease to occupy Beachcroft Care Home to GCH (Alan Morkill House) Ltd. This will enable them to continue to operate Beachcroft House whilst a new procurement exercise is conducted following an unsuccessful tender issued in January 2021.
- 1.2 This will enable a decision by the Cabinet Member for Adult Social Care and Public Health to directly award a care contract for Residential & Funded Nursing Care Services to GCH (Alan Morkill House) Limited.
- 1.3 The interim care contract did not include a provision to grant a lease for Beachcroft to GCH (Alan Morkill House) Ltd.
- 1.4 This report also requests the Cabinet Member for Adult Social Care and Public Health gives approval to the Executive Director of Adult Social Care and Health in order that she may make a direct award of a contract to GCH (Alan Morkill House) Limited, to provide the care at Beachcroft House care home from 17th June 2021 to 17th June 2022. The direct award will allow a new procurement exercise to take place, of a long-term care provider for Beachcroft House.
- 1.5 The Cabinet Member for Adult Social Care and Public Health acknowledges and agrees that the issuing of a lease will be undertaken by WCC Corporate property.
- 1.6 Part B – Private is currently exempt from disclosure on the grounds that:
 - (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972,
 - (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972; (iii) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2 RECOMMENDATIONS

- 2.1 This report requests the Cabinet Member for Adult Social Care and Public Health gives approval to waive the procurement code and for the Executive Director of Adult Social Care and Health to make a direct award of a contract to GCH (Alan Morkill House) Ltd, for the provision of Beachcroft Care Home from 17th June 2021 to 17th June 2022 for the value of £4.732m, to allow time to conduct a new procurement of a long term care provider.

- 2.1..1 The contract would include a provision for two 3 month extensions to provide assurance in case of any unforeseen delays in the new procurement exercise. The total value of the award if both 3 month extensions are used is £7,098m.
- 2.1..2 That the Cabinet Member for Adult Social Care and Public Health delegates approval to exercise each option to extend each contract to the Executive Director of Adult Social Care and Public Health.
- 2.2 That the Cabinet Member for Finance and Smart City gives approval to grant a lease to GCH (Alan Morkill House) Ltd for a period of 12 months from 17th June 2021 to 17th June 2022 including two 3-month renewals if necessary, to coincide with the contract extensions set out in recommendation 2.1.1 above. The lease would be on the same terms and rent as the existing lease which is due to expire on 17th June 2021.

3 DESCRIPTION OF SERVICES & PERFORMANCE

- 3.1 The construction of Beachcroft House Care Home was completed in July 2020 and GCH (Alan Morkill House) Ltd as the interim care provider successfully applied for Care Quality Commission (CQC) dual registration to operate Beachcroft as an 84 bedded care home from September 2020.
- 3.2 Residents live permanently within Beachcroft House with all their needs including, food, housekeeping, social inclusion care and support 24/7 being provided for.
- 3.3 The service users are predominantly older people with physical, and/or mental health needs.
- 3.4 Personalisation is at the heart of these services and each resident has their own person-centred care plan. There are both group and one to one social inclusion opportunities to reduce social isolation and improve wellbeing.
- 3.5 The services also provide support with those with physical and cognitive needs including dementia to enable each service user to maximise their independence and control of their own lives.
- 3.6 These services embed the Council's 'City for All' priorities regarding opportunity and fairness providing quality services that give people the support they may need and the provision of decent homes and prioritising those who need help the most.
- 3.7 The current contract with GCH (Alan Morkill House)Ltd is due to expire on the 17th of June 2021. A tender was issued in January 2021 to procure a long term care provider but for a variety of reasons set out in para 5.6 a decision was taken not to award a contract. A new procurement exercise is being developed by council officers. Further market engagement will help shape the

negotiated procedure and the timing of when a new tender is issued as the market recovers from the impact of COVID.

- 3.8 It is necessary to make a direct contract award to the existing care provider as the current contract expires on the 17th of June 2021. The current contracts provisions for an extension (3+3 months) were enacted by the council to extend the contract from its original end date of the 17th of December 2020 to the 17th of June 2021 and therefore, no further extensions can be made under that contract.
- 3.9 To date, Beachcroft House has not provided nursing care. The council has been quoted a cost of £401k pa by the care provider to employ nurses and associated costs in the provision of nursing care at Beachcroft House. The recent procurement included the provision of nursing care at Beachcroft House to meet an ambition to provide lifetime care for its residents wherever possible. Currently, no Beachcroft House residents require nursing care.
- 3.10 After careful consideration of all the factors involved and that the price quoted far exceeds the benchmark price for nursing beds, it has been decided not to proceed at this time. The new procurement will include the provision of nursing care at Beachcroft House from the 17th June 2022. Meanwhile, alternative nursing bed capacity is available whilst we monitor the post COVID demand for nursing placements and the position is kept under review.

4 REASONS FOR DECISION

- 4.1 The reason for granting an extension to the lease to occupy Beachcroft and offer a 12 month direct award of a care contract to GCH (Alan Morkill House) Limited is to ensure and secure immediate continuity of essential services to vulnerable residents. The Care Quality Commission also requires the care provider to evidence that it holds a lease that allows it to provide care on the premises. The direct award of a contract also allows time to procure a longer-term care provider.
- 4.2 The Council has a clear duty around service provision under the Care Act 2014:
- The Council has a duty to carry out an assessment of anyone who appears to require care and provide or organise support as required.
- 4.3 There are also several key national and local drivers informing the need for ongoing service provision, including:
- Prime Minister's Challenge on Dementia 2020.
 - England's National Dementia Strategy.
 - Bi Borough Health and Well Being Board Dementia Plan.
 - The Council's future plans for the commissioning and provision of high-quality and excellent residential care for our residents.

- City for All

4.4 The 12-month contract to 17th June 2022 will enable the Council the time required to prepare a new procurement of a long-term provider at a time when the market is less affected by COVID. The contract would include a provision for two 3 month extensions to provide assurance in case of any unforeseen delays in the new procurement exercise.

5. PROCUREMENT ACTIVITY

5.1 The Commercial Gateway Review Board RB agreed the proposed strategy to procure a care provider for Beachcroft House residential care home on the 22nd of Dec 2020 and the invitation to tender was issued on the 25th of January 2021 . The contract was planned to commence on 17th June 2021 for a period of 10+5 years. The total contract value for the proposed contract period was estimated to be £77,700,000.

5.2 The procurement was subject to the light touch regime (LTR) with the principles of an Open Procedure. The opportunity was advertised via the UK Find a Tender Service (FTS) alongside a Contracts Finder notice within capitalesourcing.

5.3 An open process was originally chosen due to the tight timescales for completing the procurement and starting the new contract from June 2021. The impact of COVID19 in 2020 had delayed the completion of Beachcroft House, the movement of residents from Carlton Dene and Westmead and reduced the original time available to undertake the procurement exercise,

5.4 The tender offer was shaped by market engagement that was undertaken in July 2020, and November 2020. The invitation to tender (ITT) was issued after assurances from the market that providers would be able to engage in the process despite COVID and any winter pressures. However, a lack of capacity to prepare a bid was a factor for some providers and the challenges faced by the market affected their appetite toward risk. Therefore, the formal public procurement exercise has just concluded without making a contract award because the tenders submitted did not demonstrate best value as the commercial element of these tenders were not viable when assessed against the budget allocated by the Council.

5.5 The **new procurement** using a negotiated procedure will be able to address the concerns expressed by providers during the tender exercise and allow the council to issue a tender later in 2021 with greater certainty of provider engagement, appetite to submit their bids and achieve better value for money.

5.6 Work is currently underway planning a market engagement event for July 2021. The event will be advertised widely on FTS, Contracts Finder and capitalEsourcing. Providers who have experience in delivering similar services will be asked to express their interest and register for the event.

- 5.7 All providers will be given the opportunity to feedback on various aspects of the service model, pricing mechanism, route to market and contract terms. The intention is to gather as much intelligence as possible during this planning stage to inform the approach commissioning and procurement take moving forward. It is envisaged these early conversations and workshops will address the concerns expressed by providers during the previous tender exercise and enhance market appetite during the retender. This will allow the council to issue a revised tender later in 2021 with greater certainty of provider engagement, appetite to submit bids and achieve value for money.
- 5.8 Currently being explored is the option to use the Competitive Procedure with Negotiation (utilising the restricted shortlisting process) although views with regards to the route to market will be obtained at the market engagement event. The proposed route, service model, and procurement timeline will be finalised and outlined as part of the procurement strategy report. It is anticipated this will be finalised towards the end of August 2021 with a view to going out to market in October 2021.

6 OPTIONS AND ANALYSIS

- 6.1 In determining the recommendations for the services, four key options have been considered:
- 6.2 **Option 1** - End Service Provision with termination of existing contractual arrangements.
- 6.3 This is not a viable option. These services are required. These are statutory services supporting highly vulnerable residents. There are no other services that could home residents in alignment with current arrangements.
- 6.4 **Option 2** – Undertake urgent Procurement Activity
- 6.5 This is not a viable option. It is not possible to undertake an urgent procurement exercise prior to the expiry of the current contract on the 17th of June 2021 and a loss of the continuity of service.
- 6.6 **Option 3** – Grant a lease to occupy Beachcroft for the duration of their contract to GCH (Alan Morkill House) and make a direct contract award for a further 12 months to 17th June 2022. The contract would include a provision for two 3 month extensions to provide assurance in case of any unforeseen delays in the new procurement exercise. Undertake a new procurement exercise as outlined in paras 5.5 to 5.8. The lease would be on the same terms and rent as the existing lease.
- 6.7 **Option 4** – Bring the service in-house for the council to provide the care. This option would keep the management and quality of service delivery within council control. The council would have direct control to change the configuration of beds at Beachcroft to meet local demand. Arrangements

would need to be made regarding the provision of nursing care and employing qualified nursing staff with required clinical supervision etc.

- 6.8 This is a more expensive option predominantly due to the pension costs that would be incurred by the council of employing the approx. 108 staff involved with Beachcroft House. The staff would be classed as new entrants to the Local Government Pension Scheme and a 25% rate of contribution is required from the council. There are only two staff who are currently members of the Local Government Pension Scheme.

This option would also have cost implications for any future subsequent tendering of the service.

- 6.9 **Option 3 This is the recommended option for the reasons outlined in the body of the report.** The provider is well established and specialises in the services required. GCH (Alan Morkill House) Limited effected a safe transition of residents from Carlton Dene and Westmead into it and has operated Beachcroft House since September 2020. This is the only option that can deliver service continuity whilst we run the required new procurement exercise to secure a long term care provider.

7 RISK MANAGEMENT

- 7.1 The risks are summarised below:

Risk	Mitigation	RAG
<p>1. Procurement Challenge Challenge from other providers regarding direct award.</p>	<p>It is a short-term arrangement and there are highly limited providers that can meet the immediacy and quantity of need.</p> <p>A formal procurement exercise has just been undertaken attracting few viable bidders and a new procurement is therefore being planned for later in the year.</p>	
<p>2. Service Quality Issues A short term contract does not deliver the outcomes and outputs required</p>	<p>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.</p>	
<p>3. Increased Costs Increase in cost of service. In actual and real terms. The service will move to London Living Wage this will impact costs.</p>	<p>Negotiations with the provider in September 2020 led to a 7.5% reduction in their fee level in recognition of the prospect of a 6-month extension to their contract to June 2021. Further negotiations with the provider for the 12 month direct award have secured a c5% reduction in fees per bed and without indexation costs being incurred since the outset of the interim contract in March 2020.</p>	

The time limited nature of the contact may lead to a price premium.	The new contract extension will enable the procurement exercise and the prospect of a more competitive price.	
<p>4. Covid 19 Covid 19 has impacted on the residential care market.</p> <p>The recent procurement has highlighted there might be fewer providers in the market who are seeking to expand or invest time in responding to tenders.</p>	The proposed new procurement would test the market in the lead up to a likely October invitation to tender during a period of anticipated recovery for the sector, and a greater capacity to engage.	

8 EQUALITY IMPLICATIONS

- 8.1 The Council has statutory duties in meeting the needs of adults. This provision of services will support the needs of vulnerable older adults and their unique protected characteristics promoting their health and wellbeing and in turn supporting the equalities agenda.

9 CONSULTATION

- 9.1 The Council's Senior Management Team and Chief Executive have been engaged in the development of this recommendation.
- 9.2 A full engagement programme will be undertaken with a wider group of stakeholders including the Local Account Group as part of the new procurement and the pre-procurement plan of activities.
- 9.3 A plan of engagement with residents of Beachcroft and their relatives will be part of the new procurement process for the long-term care provider.
- 9.4 A briefing note was issued to members of the Maida Vale ward. Any comments received will be reported verbally to lead members.

10 PRIVACY IMPACT ASSESSMENT & GDPR

- 10.1 GCH (Alan Morkill House) Limited is a known provider. All providers were required to submit GDPR compliancy documentation as part of a Council exercise in May 2018 and are required to maintain GDPR compliancy as per contractual terms and national legislative requirements. Privacy Impact Assessments will be undertaken as part of procurement and contract award activity.

11. LEGAL IMPLICATIONS

- 11.1 Local authorities are given powers under the Local Government Act 1972, subject to applicable legal constraints, to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease, or assigning any unexpired term on a lease, and the granting of easements. However, a disposal must be for the best consideration reasonably obtainable, as set out in section 123 of the Local Government Act 1972 (except in the case of short tenancies), unless the Secretary of State consents to the disposal.
- 11.2 A lease granted for a term not exceeding seven years is a short tenancy for the purposes of section 123 of the Local Government Act 1972. This report recommends the grant of a lease for a term not exceeding seven years. Therefore, the requirement to obtain the best consideration reasonably obtainable set out in the Local Government Act 1972 does not apply to the lease proposed by this report.
- 11.3 The lease proposed by this report is a business lease and the tenant will have a statutory right to a lease renewal at the end of the contractual term unless the landlord and tenant agree to exclude the security of tenure provisions of Part II of the Landlord and Tenant Act 1954 by following a statutory procedure before the tenant becomes committed to take the lease.
- 11.4 Unless the landlord and tenant agree to exclude the security of tenure provisions of the Landlord and Tenant Act 1954 the Council may only bring the lease to an end at the end of the term if certain statutorily limited grounds for doing so can be proven to apply. Otherwise at the end of the term the tenant will have the right to call for a new lease and the Council will be obliged to renew the lease.

Care Contract Award

- 11.5 The Council is proposing to make a direct award to the incumbent provider for a period of 12 months, with the provision to extend by (3+3) months.
- 11.6. The Council has statutory duties under the Care Act 2014 around service provision.
- 11.7. These Services fall under the light touch regime of the Public Contracts Regulations 2015 ("PCR's"). The value of the Services is above the PCR threshold of £663,450 and accordingly the full implications of the PCR's Part 2 apply.
- 11.8 Approval is required from the relevant Cabinet Member following a recommendation to approve from the appropriate Executive Leadership Team Member, the Director of Commercial Partnerships and CGRB to waive the requirements of the Council's procurement Code (the 'Code') to undertake a procurement process.

- 11.9 Approval is required from the relevant Cabinet Member following a recommendation to approve from the appropriate Executive Leadership Team Member, the Director of Commercial Partnerships and CGRB to directly award the contract.
- 11.10 Appropriate Contract award notices will need to be issued in accordance with the PCR's and the Code.
- 11.11. Legal input should be sought in the preparation of the contracts. Moreover, the contracts should be executed in accordance with the Code.
- 11.12. Further legal implications which are legally privileged and/or commercially sensitive are contained in Part B to this Report.

Legal implications by Christina Worrell, Solicitor (Contracts), Bi-Borough Shared legal Services.

12 FINANCIAL AND RESOURCE IMPLICATIONS

- 12.1 The revised annual contract price is £4.732m which will come into effect from the 17th of June 2021. This is £0.200m below the current price on per annum basis. There is sufficient budget to meet this commitment.
- 12.2 Adult Social Care put forward a financial savings of £0.618m as part of the financial medium-term plan of which, £0.543m was expected to be realised in 21/22 with the remaining balance of £0.075m in 22/23. This extension will mean that £0.518m will be realised however, this will leave a small residual gap of £0.025m which will be met from non-recurrent budget underspend in 21/22.
- 12.3 The launch of a new procurement next year will need to deliver £0.100m of recurring savings in 22/23 to meet the residual gap from 21/22 and the remaining commitment.
- 12.5 The incumbent provider also quoted a figure of £0.401m for nursing care which will be an incremental cost to the revised price. This will only be payable as a set cost if the Council wish for a nursing provision to be offered at Beachcroft for up to 20 beds. Demand for increasing the current nursing provision will need to be considered, to assess if the Council should avail this offer. If there is demand for nursing care at Beachcroft which cannot be met through other commissioned beds, the cost of the nursing provision would exceed the budget as currently set. The funding for this additional cost will partly be offset by additional income from health to fund nursing costs circa £0.191m with the remaining balance being funded from placement budgets.

13 PROCUREMENT IMPLICATIONS

- 13.1 The Commercial Gateway Review Board at its meeting on the 15th of June 2021 agreed to the strategy and recommendations outlined in this report.

14. PROPERTY IMPLICATIONS

- 14.1 Gold care currently occupy Beachcroft under a contracted-out lease which will expire on the 17th of June.
- 14.2 This is an internally repairing lease retaining and aligning with the original care contract and its subsequent changes, under which WCC via FM and Bouygues provide support e.g., lifts maintenance etc.
- 14.3 The Council has switched to a new Corporate Landlord Model which started on the 1st of April 2021 and as such Corporate Property holds the budget responsibility. The expectation was that the recent procurement exercise would identify a long term care provider that would hold a full FRI liability lease.
- 14.4 The current lease requires the Tenant to pay rent, circa £570K, however ASC have been paying for the associated service charges amounting to £75kpa directly, these relate to external common parts insurance reserves sinking fund and the CHP plant on site and include for the managing agents fees. FM costs have been paid by Corporate Property. In due course, the new Corporate Landlord model will determine if these FM costs are to be recharged to ASC during the proposed one year extension with the associated two three month additional extensions if required and or invoked.
- 14.5 The lease extension will be for two one years from June 17th 2021 to December June 17th, 2023, but determinable and with a break aligned to the actual contract, so that if the need for any additional three month extension is not forthcoming the extended leased will determine on the 17th of June 2022, and or at any date after that wherein the procurement is realised, and a new contract can be entered into.
The start date of the lease above is subject to the expire of an interim lease (short term) to cover the period between 17th June and approval of the principal contract.

PART B LEGAL IMPLICATIONS

Part B – Private is currently exempt from disclosure on the grounds that:

- (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972,
- (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972; (iii) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.