

	<h2>CHIEF OFFICER IN CONSULATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT</h2>
Title	Apthorp Care Home
Report of	Executive Director – Adults and Health
Wards	All
Status	Public
Enclosures	None
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Summary

On 18th March 2019, Your Choice Barnet (YCB), the social care trading subsidiary of The Barnet Group, was awarded a caretaker contract for three care homes and two day centre services (Apthorp, Dell Field and Meadowside) in compliance with public procurement rules.

The initial term of the contract was 2 years from 1st July 2019 to 30th June 2021, with the option to extend for a further period of up to 3 years. The contract came into effect following the termination of the previous arrangement with The Fremantle Trust.

Of the three care homes, Apthorp is the largest and has consistently had the lowest occupancy. It has had previous incidences of legionella. It has also had more than one 'inadequate' rating from CQC in the past. Prior to YCB taking on the contract the care home was due to be shut down by the Care Quality Commission (CQC) on 14 July 2019.

In March 2021 and May 2021 routine fire safety assessments, followed by additional building conditions surveys identified that significant and intrusive works would be required to bring the building up to standard. Indicative costs were estimated to be in the region of £2.7m. The

scale of works is extensive and completing them would cause significant disruption to residents of the home, including more than one move within the home whilst works are undertaken.

Due to the impact of the works on residents, combined with the ongoing issues in the home, this report seeks approval to work with the current residents of Apthorp and their families to identify alternative homes that will meet their needs and move them to these new homes.

Decisions

1. To commence work with the residents of Apthorp and their families to identify appropriate alternative placements and effect a safe transfer to the new home.

1. WHY THIS REPORT IS NEEDED

- 1.1 In 2019, the Council entered into a caretaker contract with YCB for the provision of three residential care homes (Apthorp, Dell Field and Meadowside) and two attached day-care services. The contract came into effect following the termination of the previous arrangement with the Fremantle Trust.
- 1.2 The initial term of the contract was 2 years from 1st July 2019 to 30th June 2021, with the option of extending for a further period of up to 3 years. This maintained service continuity and negated the requirement for an immediate and lengthy procurement exercise.
- 1.3 Prior to YCB taking on the contract Apthorp Care Centre was due to be closed by the CQC on 14 July 2019. Since taking over the contract YCB has worked closely with the CQC to improve the quality of the service and as a result of the work undertaken, various improvements saw the CQC rating for Apthorp move from 'Inadequate' to 'Requires Improvement' in October 2019. The most recent CQC inspection was in January 2021, and the service is still rated 'Requires Improvement'.
- 1.4 Of the three care homes under the contract with YCB, Apthorp is the largest and has consistently had the lowest occupancy figures. Apthorp was built to support 108 residents but is currently home to 27 people.
- 1.5 Due to the nature of the boilers and water system in the home, there have been consistent issues with reoccurrences of legionella. The Council took immediate steps upon termination of the contract with The Fremantle Trust to address this, commissioning expert assessment and the recommended remedial works, however due to the layout of the home and underoccupancy, leaving large areas of the home 'mothballed', this continues to prove difficult to wholly address.
- 1.6 In March 2021, Barnet Homes, on behalf of YCB, carried out a routine fire safety assessment of all three homes. The results of the survey revealed that urgent fire safety works were required across all three sites. A successful capital bid was made to fund statutory maintenance and fire stopping works to be completed at the three homes.

- 1.7** Whilst urgent work has been completed across the sites to maintain resident safety, Apthorp requires significantly more work than the other sites which would cause significant disruption and necessitate multiple moves for residents. Due to the risk of detrimental impact on the health and wellbeing of residents as a result of successive moves, and the enduring issues with legionella, Commissioners were asked to explore all options for Apthorp.
- 1.8** This report recommends that, to ensure residents' needs are being met appropriately, the adult social care team should work with YCB to support residents to move to alternative care homes by end November 2021. As part of this process, adult social care and YCB should work closely with the current 27 residents of Apthorp and their families, to identify their current needs and requirements (including exploring whether groups of residents would like to move with each other, or to homes closer to relatives or friends) and support them to move to alternative suitable placements.

2. REASONS FOR RECOMMENDATIONS

- 2.1** Prior to the findings of the routine fire safety assessments in March 2021, and the additional building conditions surveys carried out in May, there were already concerns regarding the long-term future of Apthorp due to the recurrent issues with legionella, under occupation, and issues with the practicality of its layout impacting on the staffing ratios required to support residents.
- 2.2** Unlike Apthorp, neither of the two smaller care homes included within the contract with YCB have had significant issues around their occupancy figures; and both Dell Field and Meadowside have 'Good' CQC ratings.
- 2.3** In order to keep the residents in Apthorp safe, the programme of works required to address both the fire safety and water system works related to legionella, is broad ranging and will need to be undertaken over a number of years. This presents a risk to residents due to invasive level of the repairs and maintenance, and the likely disruption to their daily lives, despite best endeavours of contactors.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1

The alternative would be to complete the works programme with the residents remaining in the home. This could cause significant disruption to residents, leading to a poorer quality of life.

Residents would have to move more than once within the home which would be detrimental to their health and safety. For those reasons, this option is not recommended.

4. POST DECISION IMPLEMENTATION

4.1 The table below sets out the high-level milestone plan that will be initiated following approval of the decision.

	Task	Due Date
Governance	Steering Group to set up task and finish groups to oversee supporting actions	End Aug 21
Communication & Engagement	Communicate decision with residents & families Consult with staff Establish regular programme of engagement with residents & families. Engagement approach will be dependent on resident & family preferences.	End Aug 21
Resident Care Reviews	Allocate a named social care professional for each resident Arrange and complete care reviews	End Sept 21
Market Capacity	Establish market capacity. Work with residents and families to agree choices.	Ongoing

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Council is proposing this action to meet its duties to residents under the Care Act 2014 and to meet its duties under building safety requirements.

5.2 Resources (Finance & Value for Money, Staffing, Procurement, IT, Property, Sustainability)

Finance & Value for Money

5.3 Social Value

- 5.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits.
- 5.3.2 Therefore, prior to initiating a procurement process, commissioners should consider whether and how the services they procure or the procurement methodology could secure additional value and benefits for their area or stakeholders.

5.4 Legal and Constitutional References

- 5.4.1 The Council will need to agree a contract variation with YCB.
- 5.4.2 In moving residents, the Council and YCB will need to consider whether TUPE applies to any YCB employees currently employed to provide services at Apthorp.
- 5.4.3 In order to ensure that Care Act duties are met, there will be engagement, care needs assessments and reviews, and care & support planning with residents, and including their families or carers if the resident wishes. There will be engagement on the proposed move to alternative premises. This could include consideration of a move to one of the two other care homes discussed above, or consideration can be given to a move to shared lives, supported living and extra care housing settings. The individual's views, wishes, feelings and beliefs will inform their care planning, as will those of family and friends they chose to involve, or those with Lasting Power of Attorney where appropriate.
- 5.4.4 The Council will need to consider the applicability of public procurement rules to any new services contract with any alternative provider, and comply with its Contract Procedure Rules, or obtain a waiver as appropriate. The Council will need to enter into new services contracts, or vary existing contracts, as appropriate.
- 5.4.5 Considerations may differ depending on whether the resident funds their own care or is funded by the NHS or the Council. There may be specific contractual terms to consider, and for example, whether top up arrangements can be considered where an alternative home is more costly. Where the local authority arranges care, people should be given reasonable choices. Further to 5.4.3 above, the Council will need to have regard to any current residents who are subject to Deprivation of liberty authorisations under Schedule A1 of the Mental Capacity Act 2005, it may be that a resident will wish to formally challenge a decision that they should be moved.
- 5.4.6 Under the Council's Constitution, Contract Procedure Rules, paragraph 11.2 states that Placement Agreements for individuals in Social Care or Educational Needs may be varied or extended without reference to the Variation or Extension Acceptance levels and documentation set out in Article 10 of the Constitution, Table B. Therefore, the appropriate authorisation document is via a Full DPR in consultation with the Theme Committee Chairman.

5.5 Risk Management

- 5.5.1 The Council has an established approach to risk management, which is set out in the Risk Management Framework. Key corporate risks are assessed regularly and reported to the Performance and Contract Management Committee on a quarterly basis.

5.5.2 Below is a summary of risks associated with moving residents from Apthorp and associated actions to mitigate against these risks. As part of the mobilisation process, fortnightly working groups will be established that will regularly monitor risk throughout the process.

Risk	Mitigation
Moving vulnerable service users from one care setting to another can be disruptive for service users and impact on their overall wellbeing.	<p>Service users will have their needs assessed prior to moves to ensure that their new home is equipped to meet their needs.</p> <p>YCB and the Council will work with residents and their families to minimise the level of disruption to residents and support their transition to a new home.</p>
A change to market conditions may mean that new placements may be more expensive than the current assumption.	<p>As far as possible, the Council will endeavour to source placements at best value which meet the needs and geographical preferences of residents. As part of this effort the Council will explore short-term block contracts as a means of securing capacity.</p> <p>The Council has a longstanding and effective cost of care process through which it works with the market to maintain a fair price for care services.</p> <p>The Council may explore third party top-up arrangements.</p>
The choice of placements for people moving will be limited.	The Council will meet its legal duties to offer choice to residents, but this will be balanced in practice by market availability
Families and residents raise a challenge because they have not been consulted as part of the decision making.	The moves have been proposed due to health & safety reasons and the impact on residents. Legal advice has been sought on engagement with residents and staff, and this will take place following the approval.

5.6 Equalities and Diversity

5.6.1 The people who will be most impacted by the decision to decant Apthorp are over the age of 65. An equalities impact assessment has been carried out, which shows that there is a negative impact on older people due to the risks of remaining in the home, which is mitigated by moving home. It also shows that there may be a minor negative impact due to the risks associated with moving frail and elderly people. However, the risk

management approach should mitigate this substantially and the long-term benefits outweigh the short-term impact.

- 5.6.2 The core provisions of the Equality Act 2010 (the Act) came into force on 1st October 2010 and the public sector equality duty (section 149 of the Act) came into force on 5th April 2011. Under section 149, the Council must have due regard to the need to eliminate discrimination, harassment and victimisation prohibited under the Act and to advance equality for opportunity and foster good relations between those with protected characteristics and those without.
- 5.6.3 The protected characteristics are age; disability; race; gender reassignment; pregnancy and maternity; religion or belief; sex; and sexual orientation. They also cover marriage and civil partnership with regard to eliminating discrimination.
- 5.6.4 Any organisation providing public sector services is subject to scrutiny by the Council to ensure that delivery complies with the Public Sector Equality Duty.
- 5.6.5 The contract for this service includes explicit requirements fully covering the Council's duties under the Equality Act 2010 and the specification requires that hard to reach groups are identified and have the opportunity to receive the service.
- 5.6.6 Decanting and moving residents to new settings will be carried out with full regard to the Act and the Public Sector Equality Duty, and new service providers will be required to comply with contractual requirements to help the Council to meet its equalities duties.

5.7 Corporate Parenting

- 5.7.1 Not applicable

5.8 Consultation and Engagement

- 5.8.1 A robust communications and engagement plan will be implemented alongside the programme of work. Residents, family and friends and staff will be consulted as part of mobilising next steps.
- 5.8.2 When all residents have moved, there will be implications for staff working in the home. As the employer, YCB will consult with the staff regarding the potential option for redeployment to other YCB services and the wider organisation if there are roles that they could fulfil.
- 5.8.3 YCB will support staff where appropriate with finding alternative employment such as CV writing and interview skills.

5.9 Insight

- 5.9.1 Not Applicable

6. BACKGROUND PAPERS

COMMITTEE/ DPR	ITEM AND AGENDA	LINK
Policy and Resources Committee, 6 January 2020	Item 10 – Annual Procurement Forward Plan (Appendix 1, line 287)	https://barnet.moderngov.co.uk/ielistedocuments.aspx?CId=692&MId=10084&Ver=4
Adults and Safeguarding Committee 18 March 2019	Item 11 – New Delivery Model for Day Care and Care Home Services – Exempt	HTTPS://BARNET.MODERNGOV.CO.UK/IELISTDOCUMENTS.ASPX?CID=698&MID=9475&VER=4

Chairman:
Has been consulted

Signed

Chairman Adults and Safeguarding Committee

Date: 19/08/2021

Chief Officer:
Decision maker having taken into account the views of the Chairman

Signed

Executive Director Adults and Health

Date: 19/08/2021

