



Report of Deputy Director Integrated Commissioning

Report to Director of Adults and Health

Date: 19th February 2020

Subject: Request to undertake a direct award to Housing 21, in accordance with CPR 9.5, to deliver a five year contract for the provision of extra care services at Box Tree Court, Boston Spa

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. Main issues

- Box Tree Court is a new extra care scheme built on the former Leeds City Council owned Primrose Hill Home for Older People site in Boston Spa. The development of the site is part of the council's Right to Buy (RtB) Replacement Programme which offered funding of up to 30% of total scheme costs towards new developments of rented accommodation to be delivered by Registered Providers, the Third Sector and the Council. This work was managed within the Resources and Housing Directorate.
- Box Tree Court is scheduled to officially open in the spring of 2020. It is a 44 apartment extra care scheme to which Leeds Adults and Health will hold nomination rights to 18 of these apartments (40.9% of the scheme).
- Analysis of the lease documents and associated schedules for the scheme show long term arrangements in the form of partnerships covering both housing and care support. Conversations with Housing 21 has confirmed that this 'one service' approach to housing and care is the business model the provider works to and the approach they will be taking at the Box Tree Court scheme.
- Upon approval of the decision to directly award the contract to Housing 21 in accordance with CPR 9.5 commissioning officers will finalise the contract with

Housing 21 in accordance with the approach laid out in the Leeds model for extra care. This will see an agreement in place with the provider that stipulates the service expectations of the Council in terms of onsite staffing presence and delivered planned support. There will be a nominal annual payment of £20 for administrative purposes, with all Council funded care paid for through either direct payments or managed budgets. Individuals will be directly responsible for meeting the costs associated with onsite staffing. The indicative demand associated with the number of nominations has been calculated to be 120 hours per week, representing potential annual income for Housing 21 of £96,158.40 through direct payments and/or managed budgets based on the provider's hourly rate of £15.41.

- While the onsite care team will be provided by Housing 21, this does not restrict an individual's ability to select a provider of choice for any planned care and support.
- The grounds for awarding a contract directly is due to the service model that is in place at the scheme. In this case that involves Leeds Adults and Health accessing a service that is owned and delivered by Housing 21 but which requires Housing 21 to give Leeds City Council nomination rights due to the grant funding arrangements used to develop the site. This leaves a direct award to Housing 21 as the most appropriate mechanism to award this contract. The award of this contract is not subject to the Public Contracts Regulations 2015 due to its value falling below the EU threshold of £663,540 for services of this nature.
- The services covered in this report will fall under the Council's commitment made when signing up to Unison's Ethical Care Charter and the wider process of Leeds City Council becoming a Living Wage accredited employer. The finalised contract will include Leeds City Council's ongoing commitments in terms of the Ethical Care Charter and the Real Living Wage.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- The contract will contribute towards the Best City Priorities of 'Health and Wellbeing' and 'Age-Friendly Leeds'.
- The contract works towards achieving the outcomes: 'Be safe and feel safe'; 'Enjoy happy, healthy and active lives', and; 'Live with dignity and stay independent as long as possible'.

3. Resource Implications

- The total value of the actual contract is £100 (based on a nominal value of £20 per annum for five years), with access to a potential income of £480,792.00 from Leeds City Council through direct payments or managed budgets across the lifetime of the contract. There will most likely be an annual increase in the value of the potential income over the life time of the proposed contract as the council continues with its commitment to a real living wage. Any increase in value will be addressed as part of any future reports on the overall real living wage commitments.
- Officer time will be necessary in order to monitor and review the contract prior to it being recommissioned. This will be met through existing capacity from within the Adults and Health Integrated Commissioning Team, along with officer time from support areas such as Finance and Procurement and Commercial Services, as appropriate.

Recommendations

- a) The Director of Adults and Health is recommended to approve the direct award of this contract in accordance with CPR 9.5 to Housing 21 and award a five year contract for the provision of care services at the extra care scheme located at Box Tree Court, Boston Spa. The outcome of the recommendation to award a contract will be presented as a significant operational decision. The contract itself will be for £100, with a potential income of £480,792.00 payable to the provider through direct payments and/or managed budgets over the lifetime of the contract.
- b) Commissioning officers on behalf of Adults and Health Integrated Commissioning and Procurement and Commercial Services will be responsible for completing all of actions covered within this report.

1. Purpose of this report

- 1.1 To seek approval from the Director of Adults and Health to undertake a direct award of a contract to Housing 21 in accordance with CPR 9.5 for a period of five years to provide extra care services at Box Tree Court, Boston Spa in support of 18 apartments where Leeds City Council holds nominations rights. The contract is to commence following final approval to award from 1st April 2020 and end 31st March 2025, though these dates may be adjusted dependent on scheme completion and launch schedule.

2. Background information

- 2.1 In July 2013, Executive Board approved a proposal to use a proportion of the capital receipts generated by RtB sales to fund a programme of replacement social housing as permitted by the Department of Communities and Local Government (CLG) "Reinvigorating Right to Buy and One for One Replacement" initiative.
- 2.2 As per the defined Department of Communities and Local Government process, at the end of each quarter, the Council receives a 30% share of the sales from properties sold under Right to Buy. The 30% funding has specific restrictions, including:
 - It can only be used for the provision of new supply affordable rented housing, and;
 - That the Council receives nomination rights on any properties supported through RtB grant funding;
- 2.3 The Council receives nomination rights for all new properties developed with support from the RtB Replacement Programme. These nomination rights entitle the Council to nominate tenants for 100% of first lets and 75% of subsequent lets for a period of up to 60 years.
- 2.4 A number of requests were received from Registered Providers and Third Sector affordable housing providers for grant contributions towards developments, including a request from Housing 21 in connection to a site based in Boston Spa, near Wetherby. The site is the former Primrose Hill Home for Older People in Boston Spa and the proposal was for a mixed tenure scheme comprising of social rented, Shared Ownership and market sale units. Housing 21 had been successful in securing funding from the Homes and Communities Agency (HCA) towards the Shared Ownership units and applied for RtB grant funding towards the development

costs of the social rented units. The application for RtB grant funding was approved by Executive Board following a submission of a report by the Director of Resources and Housing dated 19th April 2017.

- 2.5 Following the approval of funding, Housing 21 proceeded to redevelop the former Primrose Hill site into the Box Tree Court extra care scheme, their flagship extra care scheme in Leeds. The scheme consists of 44 apartments in total, to which Leeds City Council holds nomination rights to 18 of those apartments in line with the RtB funding guidance and restrictions. Both housing and care provision is covered by Housing 21.
- 2.6 The scheme will work towards a balanced community in terms of care requirements, split 40% high, 30% medium and 30% low. As is standard for extra care, there will be a 24/7 care staffing presence, which includes 2-night workers. This onsite staffing presence will be able to respond to unplanned care needs and alerts raised by the in-built digital call system. The scheme includes a communal lounge, activity area and an onsite restaurant and salon. The building is built in accordance with dementia-friendly guidance and staff will be capable of supporting cases of low level dementia.
- 2.7 Box Tree Court is scheduled to open in Spring 2020. Housing 21 have an in-house steering group in place to ensure a smooth lead-in to the scheme opening. This includes nominations for the first round of tenancies. This steering group meets once a month and comprises of the site manager, care manager and the housing manager. Links to Adults and Health care teams are currently being planned.

3. Main issues

- 3.1 Within the grant agreement between Leeds City Council and Housing and Care 21 it stipulates that Housing 21 as the Grant Recipient is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct. Leeds City Council's access to the apartments and associated services is through a Nominations Agreement that forms part of the overall grant agreement.
- 3.2 Discussions with Housing 21 have established that they have no desire or intention to be a landlord to a separate service provider at Box Tree Court. This is reflective of other Housing 21 schemes in England and is reflective of Housing 21's belief that tenants experience the best service provision from a one team approach. This means it would not be possible to commission an onsite third party care provider to deliver 24/7 support.
- 3.3 Leeds A&H only holds nomination rights to 18 out of the total 44 apartments at Box Tree Court. These 18 apartments will be supported by the same staff team that will support the remaining 26 private apartments.
- 3.4 The Nominations Agreement is for a fixed period of 60 years and will come into effect at the point of the scheme being officially opened. The nominations agreement has a standard 100% nominations rights to the first tranche of tenants to the 18 apartments, reverting to 75% for all subsequent years. At the end of the 60 years term it is assumed that the nomination rights to the apartments will revert to Housing 21. It is assumed that the length the agreement reflects return on investment for Leeds City Council and so the continuation of nomination rights cannot be assumed.
- 3.5 The contractual agreement will continue the rollout of the Leeds Model for Extra Care. Under this model, the service specification stipulates the nature of the service

and the expectations of Leeds A&H in terms of delivery. The service specification does not offer any guaranteed hours, instead it states the potential opportunity for care hours from nominated tenants which would then be paid for through direct payments, managed budgets or from an individual's own finances where applicable. Delivery of a 24/7 onsite staffing presence accessible to all tenants regardless of identified care needs falls outside of Leeds A&H duty of care and would be directly funded by individual tenants.

- 3.6 While the service specification will stipulate that Housing 21 would be assumed to be the care provider of choice, this will not impede on individuals' freedom to choose a different care provider for the delivery of any planned care if they so wished.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Ward Member consultation was undertaken as part of the initial work to allocate the RtB grants to all successful recipients, including Housing 21 for the former Primrose Hill site in Boston Spa.
- 4.1.2 Initial discussions on the intentions of establishing the contract have been held with Housing 21. The purpose of these discussions was to establish context and the parameters that commissioning officers would be working to.
- 4.1.3 The Executive Board Member for Health, Wellbeing and Adults has been briefed as of the 6th February 2020 on the proposals contained within this report.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality and Diversity Impact Assessment Screening Tool has been completed and is included at Appendix 1. This assessment demonstrates that the service meets the desired equality requirements.
- 4.2.2 Engagement with Housing 21 has evidenced that there are appropriate policies and procedures in place within the organisation.

4.3 Council policies and the Best Council Plan

- 4.3.1 The work of extra care services helps contribute to all of the outcomes stated in the current Leeds Joint Health and Wellbeing Strategy. The nature and ethos of the services contribute to: people living longer and healthier lives; helping people to live full, active and independent lives; ensuring that people's quality of life is improved by access to quality services; involving people in decisions made about them, and; helping people to live in healthy and sustainable communities.
- 4.3.2 The main domains of the Best City Priorities as stated in the Best Council Plan 2019/20-2020/21 that this extension contributes towards are 'Health and Wellbeing' and 'Age-Friendly Leeds'. The contract works towards achieving the outcomes: 'Be safe and feel safe'; 'Enjoy happy, healthy and active lives', and; 'Live with dignity and stay independent as long as possible'.

Climate Emergency

- 4.3.3 In March 2019 Leeds City Council unanimously declared a climate emergency. In response to this emergency the Council is working towards carbon neutrality by 2030. The plan to achieve this goal includes: reducing pollution and noise; improving air quality, and; promoting a less wasteful, low carbon economy. Extra care services such as the one covered in this report contribute towards this by having a site based care team deliver care and support to individuals without the

need for staff to drive between visits or utilise multiple vehicles to provide visits to individuals living within close proximity of one another.

4.4 Resources, procurement and value for money

4.4.1 The actual value of the contract will be £100 for the full 5-years. This is a nominal payment between Leeds City Council and Housing 21 for contractual purposes. The potential cost to the Council through either Direct Payments or managed budgets is estimated to be £480,792 across the full five years (£96,158.40 per annum). This total has been reached based on the following factors:

- Leeds City Council will hold nomination to 18 out of 44 apartments
- The apartment care ratio split will be 40% high (10 apartments), 30% medium (6 apartments) and 30% low (2 apartments)
- These ratios will have care allocations averaging 10 hours a week for high, 6 hours a week for medium and 2 hours a week for low. Giving a total of 120 hours of care per week across all 18 apartments.
- The hourly rate Housing 21 have confirmed is £15.41.

4.4.2 The above costs are to be met as part of the home care budget, reflecting the nature of the service being delivered.

4.4.3 The annual costs linked to the contract will increase in line with any agreed adjustments made as part of the Council's commitment to becoming an accredited Living Wage Employer. The funding to meet this probable future pressure will be addressed through the Council's Medium Term Financial Strategy, which gives consideration to committing to a real living wage.

4.4.4 Housing 21's rate of £15.41 per hour compares favourably with the home care rate. It is competitively priced in comparison to the urban rate (£16.05 per hour), which is the standard rate extra care is benchmarked against in light of the low to nil travel costs and down time between visits.

4.4.5 When considering value for money, the most relevant comparison for extra care is a residential-type service. This is due to both services sharing commonalities around staffing costs, with both extra care schemes and residential homes requiring adequate care staffing to ensure a feasible 24-hour presence. In Leeds in 2019/20 the standard weekly cost of residential care to the Council is £539 per person. The cost per person per week for comparison at Box Tree Court is calculated to be £102.73. This value is based on the projected demand figures used to reach the annual value.

4.4.6 There will be some resource implications in terms of monitoring and reviewing the contract in order to ensure the service continues to meet the necessary outcomes and that it delivers best value. These resources will be provided from within existing hours in the Adults & Health integrated commissioning and contracts teams.

4.5 Legal implications, access to information, and call-in

4.5.1 As the annual value of this decision is over £100,000 but below £500,000 this is a significant operational decision and is therefore not subject to call in. This report does not contain any exempt or confidential information under the Access to Information Rules.

- 4.5.2 Awarding new contracts direct to the providers in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that case law suggests that the Council should always consider whether contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising would be appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc) and the geographical location of the place of performance.
- 4.5.3 The Director of Adults and Health has considered this and, due to the nature of the services being delivered, the requirement to be physically located in Leeds and the fact that we must utilise the on-site care provision, is of the view that the scope and nature of the services is such that it would not be of interest to providers in other EU member states.
- 4.5.4 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 4.5.5 There is the potential risk of challenge that there are no real technical reasons justifying the direct contract award, and that the Council is simply seeking to circumvent the application of procurement rules. However, due to the reasons set out in Section 3 of this report this risk is perceived to be low.
- 4.5.6 These comments should be noted by the Director of Adults and Health in making the final decision as to the award of this contract being the best course of action for the Council and that in doing so it represents best value for the Council.

4.6 Risk management

- 4.6.1 If the recommendations as laid out in this report are not approved there is a risk that individuals could be nominated to the scheme with no contractual agreement in place to ensure they receive quality care and that their rights are protected. The only option would be to utilise spot arrangements, which do not contain any instruction as to how a 24/7 care staffing presence should function.
- 4.6.2 If the recommendations are not approved there will be no framework in place for Housing 21 to work to in the interest of ensuring a quality service from the perspective of A&H.
- 4.6.3 There is a possible risk that Leeds City Council will miss out on making nominations to apartments should there be no contract or no agreement reached with Housing 21.
- 4.6.4 There will be an element of financial risk to clients if units remain unfilled, however this is predicted to be low. Feedback from Housing 21 has indicated a high degree of interest in apartments. As of week commencing 27th January half of all shared ownership apartments have sold. Housing 21 report to receive a high level of interest in the scheme and anticipate that all remaining apartments will sell quickly once the show apartment is completed and open. There will continue to be a degree of risk present due to factors such as level of care demand from the shared ownership apartments and ensuring that LCC's own nominations to apartments maintain ratios of high (40%), medium (30%) and low (30%) level of demand.

However commissioning officers will address this with Housing 21 as part of the contract negotiations and award process with the aim of further minimising this risk.

5. Conclusions

- 5.1 In approving a direct award in accordance with CPR 9.5 commissioning officers will engage in negotiations with Housing 21 to establish the long-term arrangements for Box Tree Court Extra Care Scheme.
- 5.2 Commissioning Officers in conjunction with Procurement and Commercial Services will oversee the negotiation process for the contract where approved, which will include ongoing discussions to address the service model, contract price and value for money. This will culminate in the completion of all necessary documents including a method statement, service cost analysis form and the standard selection questionnaire. All services covered by the contracts will be subject to robust contract monitoring and on-going review, both in terms of quality and value.
- 5.3 Any proposed changes established during the initial negotiations will be brought to the attention of the Director of Adults and Health as part of the recommendation to award a contract. This will be submitted as an administrative decision except where the nature of the negotiations requires any further significant operational decision, i.e. any significant changes not covered under this original report.

6. Recommendations

- 6.1 The Director of Adults and Health is recommended to approve the direct award of this contract in accordance with CPR 9.5 to Housing 21 and award a five year contract for the provision of care services at the extra care scheme located at Box Tree Court, Boston Spa. The outcome of the recommendation to award a contract will be presented as a significant operational decision. The contract itself will be for £100, with a potential income of £480,792.00 payable to the provider through Direct Payments and/or managed budgets over the lifetime of the contract.
- 6.2 Commissioning officers on behalf of Adults and Health Integrated Commissioning and Procurement and Commercial Services will be responsible for completing all of actions covered within this report.

7. Background documents¹

- 7.1 None.

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.