



Meeting: Council

Date: 23 July 2015

Wards Affected: All

Report Title: Care Trust Properties

Is the decision a key decision? Yes

When does the decision need to be implemented? By 1 October 2015

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1. Purpose and Introduction

- 1.1 A number of 10-year leases were granted to the Torbay Care Trust in 2005, which were then assigned to the Torbay and Southern Devon Health and Care NHS Trust in 2012.
- 1.2 For the purposes of this report reference shall be made to the 'Trust'.
- 1.3 The leases referred to in this report were excluded from the security provisions of the Landlord and Tenant Act 1954 and therefore the Trust have no security of tenure. As such new leases need to be agreed prior to the expiry of the current arrangements or the Trust will need to vacate at the end of the contractual term.
- 1.4 The leases come to an end on 30 November 2015 and for the four properties the Trust have asked that they be granted short term leases so that they can review the future of their service delivery for each location.

2 Proposed Decisions

That the Mayor be recommended:

- 2.1 That the Torbay and Southern Devon Health and Care NHS Trust be granted a 2-year excluded lease from 1 December 2015 on acceptable terms with the inclusion of a tenant and landlord rolling 6-month break clause for Hollacombe Community Resource Centre (CRC).

- 2.2 That the Torbay and Southern Devon Health and Care NHS Trust be granted a 2-year excluded lease from 1 December 2015 on acceptable terms with the inclusion of a tenant and landlord rolling 6-month break clause for St Edmunds Centre.
- 2.3 That the Torbay and Southern Devon Health and Care NHS Trust be granted a 2-year excluded lease from 1 December 2015 on acceptable terms with the inclusion of a tenant and landlord rolling 6-month break clause for Bay Tree House.
- 2.4 That the Torbay and Southern Devon Health and Care NHS Trust be granted a 2-year excluded lease from 1 December 2015 on acceptable terms with the inclusion of a tenant and landlord rolling 6-month break clause for St Kilda's Residential Care Home.
- 2.5 To note that the Council has the option of providing a grant to cover all or part of the market rent for the properties set out in 2.1 to 2.4 above which will be dealt with as per the Councils constitution and reviewed annually.
- 2.6 That, in turn, Sandwell Community Caring Trust be granted a two year (less three days) excluded sub-lease from 1 December 2015 on acceptable terms with the inclusion of a tenant rolling 6-month break clause for St Kilda's Residential Care Home. In the event that the Trust exercise a break option the sub-lease is to terminate on a co-terminus basis with the head lease.

3 Reason for Decision

Hollacombe Community Resource Centre (CRC)

- 3.1 The Trust has indicated that they are considering setting up a Community Interest Company (CIC) to run the Learning Disability Day Service. A feasibility study exploring the possibilities of forming a new commercial entity shall commence in summer 2015.
- 3.2 The new lease granted to the Trust will need to be assignable to a Community Interest Company should one be created. Should the Trust decide against forming a CIC they may still wish to procure the service through an external provider. To accommodate this, the lease should also contain the provision to sub-lease to an external provider.

St Edmunds Centre

- 3.3 When the lease was granted it was used as a residential home and day centre for the elderly and meals on wheels operation.
- 3.4 These uses ceased to operate from St Edmunds a number of years ago with the building now being used as offices and provides the service delivery point for carers which are the Councils statutory duty under the Care Act.
- 3.5 To allow the Trust time to review the future service provision for the property it has asked for a further 2-year lease.

Bay Tree House

- 3.6 The Council in February 2015 as part of the Annual Strategic Agreement (ASA) agreed a revised short breaks Policy in line with the Care Act and work has now commenced which will co-produce a different solution for those seeking breaks.
- 3.7 When the lease was granted in 2005 it was used as a residential home for people with learning disabilities but it is now being used as a short term break / respite home. There are 10 bedrooms but, as at March 2015, there were only 2 clients / residents, one of which has stayed there for about a year.
- 3.8 To allow the Trust time to review the future service provision for the property it has asked for a further 2-year lease.

St Kilda's Residential Care Home

- 3.9 The new lease will allow the Trust and Sandwell Community Caring Trust to continue the provision of care services at the existing facility whilst offering sufficient flexibility to enable the transition of services to the new building upon practical completion which is anticipated in October 2016.

Supporting Information

- 4 **Position** The leases come to an end on 30 November 2015 and for 4 properties the Trust have asked that they be granted short term leases so that they can review the future of their service delivery for each location.

Hollacombe Community Resource Centre (CRC)

- 4.1 The Market Rent for Hollacombe CRC has been assessed at £59,500 per annum.
- 4.2 The provision of adult social care continues to be a strategic function of the Local Authority therefore the Trust will seek assurance from the Council that a full grant will be offered to either a Community Interest Company or, should the Trust decide to procure such services, from an external provider.

St Edmunds Centre

- 4.3 The market rent has been assessed at £35,000 per annum.

Bay Tree House

- 4.4 The market rent has been assessed at £24,000 per annum.

St Kilda's Residential Care Home

4.5 The market rent has been assessed at £58,000 per annum which reflects a value attributable to the 29 bedrooms currently in operation within the care facility. Rent has not been attributed to those 7 redundant first floor bedrooms within the central block.

4.6 A rent of one peppercorn per annum is to be levied by the Trust to Sandwell Community Caring Trust for the sub-lease arrangement.

5 **Possibilities and Options** All leases attributable to the four Properties will expire on 1 December 2015. The leases will terminate automatically and without notice and at the end of the term the Trust must give up possession in each instance.

5.1 If there is no documentation in place at expiry of the leases but the Council consents to the continued occupation then the basis of occupation would be an implied tenancy at will.

5.2 A tenancy at will would be implied in each instance as discussions have been undertaken with the Trust for all properties. Implied tenancies at will would exist until some other interest is created. As there is evidence of different intentions than to replicate the existing leases the new contracts could still potentially be framed upon the negotiated terms for the new lease.

5.3 The above situation should be avoided to prevent any potential threat of unnecessary legality. The current leases should not be allowed to expire without a new lease in place.

6. Fair Decision Making

6.1 No consultation needed to lease extensions

7. Public Services (Social Value) Act 2012

7.1 Not applicable – the Act does not apply to this decision. The Council are not looking at any other approaches to running services operated from the four care trust properties. The Council have a system wide strategic commitment to continuation of the current service structure and alternative procurement of the service would undermine the business plan considerably.

8. Risks

- 8.1 The risks are predominantly linked to the reduction in service delivery if the extensions are not granted. The implications of this would be significant.
- 8.2 The property related risks linked to the lease extensions are low in that the leases are excluded which offers no security of tenure beyond the two year period.