



Report No: **74/2011** Public Agenda Item: **Yes**

Title: **The Re-Provision of the St Kilda's Residential Care Home and Subsequent Disposal of the St Kilda Site**

Wards Affected: **St Mary's with Summercombe Ward**

To: **Cabinet** On: **22 March 2011**

Key Decision: **Yes – Ref. X2/2011**

Change to Budget: **No** Change to Policy Framework: **No**

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1. What we are trying to achieve and the impact on our customers

1.1 For Members to consider proposals put forward by the Torbay Care Trust about the re-location of the residential home to Brixham Hospital with the subsequent disposal of the St Kilda site to help facilitate the re-provision of the facilities.

2. Recommendation for decision

2.1 That the Head of Legal Services, in consultation with the Chief Executive of the Torbay Development Agency, be authorised to accept a surrender of the lease from the Torbay Care Trust and then transfer the freehold of the St Kilda site (outlined in red on plan EM932a) to the Torbay Care Trust or its chosen service provider on acceptable terms for no capital receipt under the Local Government Act 1972: General Disposal Consent 2003.

3. Key points and reasons for recommendations

3.1 St Kilda is a residential home that provides 24-hour care for up to 36 service users that are in the category of old age (but not fitting within any other category). The home offers respite, intermediate and long-term care.

3.2 The home was leased to the Torbay Care Trust (TCT) in 2005 with the TCT holding a 10-year lease from 1 December 2005. This has the protection of the Landlord and Tenant Act 1954 and therefore the TCT would be entitled to a new lease on similar terms at the end of the 10-year period. The site is shown edged red on plan EM932a, attached as Appendix 1 to this report.

- 3.3 In 2007 the TCT appointed Sandwell Community Caring Trust to run St Kilda following a tender for the service. The contract required Sandwell to improve the conditions for the clients using the facility and, if necessary, to work with the TCT to provide alternative facilities.
- 3.4 The TCT have recognised that, whilst the standard of care at St Kilda is valued by the local community, the facility needs to be re-provided as currently there are issues in terms of space, which limits the flexibility and use of the facilities.
- 3.5 The TCT has identified a site within the grounds of Brixham Hospital, which could be made available to Sandwell to lead the construction of a purpose-built facility to replace the home at St Kilda. The TCT has therefore asked that the freehold of the St Kilda site be transferred to the TCT / their chosen service provider at nil consideration so that it can subsequently be sold with the capital receipt being used to help fund the construction at the hospital.
- 3.6 The Council's position will be safeguarded when the St Kilda site is eventually sold to ensure that it receives a share of any uplift in value. The documentation will also safeguard the Council's position in respect of the Hospital site. Details are contained in sections A2.1.3 – A2.1.5.
- 3.7 Under the Local Government Act 1972: General Disposal Consent 2003 ('the Consent') allows Councils to dispose of land for less than the best consideration that can reasonably be obtained.
- 3.8 The Consent also means that specific consent is not required for the disposal of any interest in land which the Authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.
- 3.9 It is considered that the proposal will have economic, social and environmental benefits with details being contained in sections A1.16 – A1.19.

For more detailed information on this proposal please refer to the supporting information attached.

Steve Parrock
Chief Executive, Torbay Development Agency

Supporting information to Report 74/2011

A1. Introduction and history

- A1.1 St Kilda is a residential home that provides 24-hour care for up to 36 service users that are in the category of old age (but not fitting within any other category). The home offers respite, intermediate and long-term care.
- A1.2 The home was leased to the Torbay Care Trust (TCT) in 2005 with the TCT holding a 10-year lease from 01 December 2005. The site is shown edged red on plan EM932a, attached as Appendix 1 to this report.
- A1.3 In 2007 the TCT appointed Sandwell Community Caring Trust to run St Kilda following a tender for the service. The contract required Sandwell to improve the conditions for the clients using the facility and, if necessary, to work with the TCT to provide alternative facilities.
- A1.4 There is a grade II listed building at the front of the site, which is deteriorating in condition and now requires a substantial capital injection to rectify the external state of repair and internal problems. There is an existing 1970s 3-storey day centre/care home to the rear of this listed building. It is understood that the Grade II listed house and garden adjoining it is contained within a Conservation Area but the home and day centre forming the north western part of the site is excluded from the Conservation Area.
- A1.5 Condition surveys were carried out in 2007 by the Council which identified repairs totalling circa £50,000 for the listed building and circa £292,300 for the 1970s care home.
- A1.6 The TCT presented a 'Brixham Health and social care framework' to the Health Scrutiny Committee in September 2010. The TCT is currently working on an update to this strategy with the aim to improve the health and social wellbeing of the people of Brixham. The vision is to ensure a community health and social care infrastructure that is fit for purpose in meeting the demands of the Brixham population.
- A1.7 The strategy has looked at all aspects of health care in Brixham including (but not limited to) the provision of GP/Dental practices, mental health care, the physical disability service and the facilities at St Kilda.
- A1.8 The TCT have recognised that, whilst the standard of care at St Kilda is valued by the local community, the facility needs to be re-provided as currently there are issues in terms of space, which limits the flexibility and use of the facilities.
- A1.9 The TCT has identified a site within the grounds of Brixham Hospital, which could be made available to Sandwell to construct a purpose-built facility to replace the home at St Kilda. The TCT has therefore asked that the freehold of the St Kilda site be transferred to the TCT / their chosen service provider at nil consideration so that it can subsequently be sold with the capital receipt being used to help fund the construction of the new facility at the hospital.

- A1.10 This proposal is an opportunity to integrate the proposed St Kilda facility with other services on the Hospital site to provide a range of health and social care services at one location in Brixham.
- A1.11 The intention would be for a Conditional Contract to be entered into so that the freehold is only transferred once all of the conditions have been satisfied. One condition will be that the new facilities are built and ready for occupation. Members should therefore be reassured that no clients using the facilities at St Kilda will be displaced as a result of these proposals. The intention would be for them to remain in the existing St Kilda site whilst the new facilities were built at Brixham Hospital and only once these were ready for occupation, would the users be transferred from St Kilda.
- A1.12 As mentioned above the Council is being asked to transfer the freehold of the St Kilda site for nil consideration. Under the Local Government Act 1972: General Disposal Consent 2003 ('the Consent') allows Councils to dispose of land for less than the best consideration that can reasonably be obtained.
- A1.13 The Consent removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and Secretary of State for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (the 'undervalue') is £2,000,000 or less.
- A1.14 External advice has been sought about the value of the St Kilda site and the details of such advice is contained in Exempt Appendix 2 attached to this report.
- A1.15 The Consent also means that specific consent is not required for the disposal of any interest in land which the Authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.
- A1.16 The new St Kilda will provide up to date facilities that will allow people with complex needs to be cared for within the area e.g. local people suffering with Mental Health, Dementia and Nursing related issues. The final decision on how St Kilda will be used will be determined by Torbay Care Trust in consultation with the Council.
- A1.17 The redevelopment of this site will have economic benefits in terms of employment e.g. building/construction, care and associated support services. The conditional contract will require their chosen building contractor to work with the TDA to offer a suitable work placement/apprenticeship programme for local people.
- A1.18 Having the new St Kilda adjacent to Brixham Hospital will allow greater flexibility of use of staff and facilities.
- A1.19 The building at St Kilda is not efficient to run in terms of energy and utilities outgoings. Also the layout does not lend itself to the effective deployment of staffing/care resources. The proposed new building will be built to a modern standard and will be more efficient to run in terms of utility and general running and organisational costs although it is not currently possible to quantify these savings as detailed work has not yet been carried out. The transfer will also

mean that the TCT / their service provider do not have to finance the repairs identified in the condition surveys. As mentioned in A1.5 these total circa £342,300.

A2. Risk assessment

A2.1 Outline of significant key risks

A2.1.1 There is a risk that, because the TCT have not tendered for the construction of the replacement facilities on the Brixham Hospital site (likely cost in the region of £2.5 - 3M) an interested company may complain that they have not been given an opportunity to tender for this contract under European procurement rules. The TCT will be robustly checking the procurement position carefully with their legal advisors before the scheme can proceed. Their initial advice, however, is that the 2007 tendering was OJEU compliant in terms of progress with the concept of a replacement facility. The build contract itself will be subject to competitive tendering.

A2.1.2 The Council has been asked to transfer the freehold of the St Kilda site to the TCT / their chosen service provider at nil consideration. There is a risk that this could be deemed to be State Aid. The Council's Legal Department has looked into this matter and have concluded that there are no state aid implications.

A2.1.3 The intention is for the TCT / their chosen service provider use the proceeds from the sale of the St Kilda site to contribute towards the construction costs of the new facility. If they subsequently dispose of the new facility their profits will be higher as they would have profited from the Council's willingness to transfer the freehold at nil consideration. The Council's position could be safeguarded by including in the transfer documentation a requirement that the service provider is to pay the Council a percentage of any future sale proceeds (percentage to be agreed).

It could be calculated so that if, for example, the market value of the St Kilda site equated to 15% of the construction costs, then the Council would secure the equivalent percentage interest in the new facility. This would mean that if the facility was ever disposed of then Torbay Council would receive 15% of any sale proceeds with the minimum sum being the market value of the St Kilda site as at the date of transfer. This is for illustrative purposes only and the exact mechanism would need to be agreed in due course.

It is possible that Sandwell is only granted a long lease for the hospital site. In such a scenario the mechanism for safeguarding the Council's position will be different and will need to be agreed in due course.

It should however be noted that there are no plans to sell the Hospital site and the NHS is committed to remaining at this site and this is supported by investments made in the buildings in recent years and the plans to develop the site further referenced in this report.

A2.1.4 There is a risk that, once the St Kilda site has been transferred, then it is sold for more than it was valued at the time the Conditional Contract was entered into. To ensure that the Council receives value for money an overage clause would be included in the documentation to ensure that the Council receives a share of

any uplift in value.

A2.1.5 There is a risk that the service provider sells the St Kilda site for less than market value. This is considered to be a minor risk since the service provider will be obliged to obtain best value. Nevertheless the documentation could provide that the overage provision is calculated on the basis of an independently obtained assessment of the optimum market value.

A2.2 Remaining risks

A2.2.1 There is a risk that, if the transaction was structured to incorporate the provisions of A2.1.3 above, then the Council would be liable for Stamp Duty Land Tax. This aspect would need to be investigated in due course by the Council's legal advisors to minimise the liability.

A3. Other Options

A3.1 That the Council does not agree to the TCT's proposal. This, however, will increase the cost of the provision of the current facilities, which have limitations in terms of service delivery and are in need of a large injection of capital to cover items of repair identified in the condition surveys.

With the intended re-structuring of the Primary Care Trust, if the proposals did not proceed, then there is a risk that the responsibilities for the management of the St Kilda site would revert back to the Council if it took over the function of the Care Trust. It would therefore 'inherit' all the running costs and the repairs & maintenance liability of circa £342,300.

A3.2 If the Council decides not to agree to the proposal then, for it to proceed the TCT will need to find alternative sources of funding.

Current budget proposals highlight an un-ringfenced grant of circa £0.4M in 11/12 to the TCT for suitable capital projects. It is also understood that the TCT may have an under-spend from 10/11, which could be rolled into the new financial year. This will need to be clarified in due course but, if any under-spend is identified, then the option of using some of this instead of the full value (or part thereof) of the St Kilda site to part fund the replacement facilities could be explored.

A4. Summary of resource implications

A4.1 Asset Management and Legal Services will be involved with the negotiation and preparation of the necessary documentation.

Details about the amount of money the Council would be foregoing are contained in Exempt Appendix 2 attached to this report.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 It is considered that the recommendations within this report will not cause an impact on equalities.

- A5.2 The new facilities on the Brixham Hospital site will be more energy efficient to comply with modern Building Regulations and as such it should be more environmentally sustainable.
- A5.3 The St Kilda site is within a conservation area and therefore re-development of this site is likely to bring an opportunity for sympathetic development. This would be dealt with through any future planning application.
- A5.4 Due to the profile of the users of the existing St Kilda site and the proposed facilities at Brixham Hospital, it is not considered that the proposal will have an impact on crime and disorder.

A6. Consultation and Customer Focus

- A6.1 The TCT has carried out consultation with the Brixham Hospital League of Friends, Brixham Town Council, Ward Councillors and the relevant Community Partnership.
- A6.2 The above organisations have indicated their support to the principle of relocating the facilities to the Brixham Hospital site.

A7. Are there any implications for other Business Units?

- A7.1 There will be an implication for the Planning Department as they will need to consider the planning applications in due course for the Brixham Hospital and St Kilda sites.

Appendices

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| Appendix 1 | Plan EM 932a |
| Appendix 2 | Financial Advice about the St Kilda site - Exempt |

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

File B3011 - Some of the papers are exempt.