



Public Agenda Item: **Yes**

Title: **The Granting of a Long Lease for the Ocombe House site.**

Wards Affected: **None as the site is outside the Torbay Boundary**

To: **Mayor** On: **18 October 2012**

Key Decision: **Yes – Ref. I010796**

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 the Mayor to consider proposals put forward by the Torbay and Southern Devon Health and Care NHS Trust (Formerly Torbay Care Trust) hereby referred to as the 'Trust' about the provision of Independent Living accommodation at the Ocombe House site.

**2. Recommendation for decision**

**2.1 That the Head of Commercial Services, in consultation with the Chief Executive of the Torbay Development Agency, be authorised**

- i) to permit the assignment of the current lease relating to Ocombe House and Fairwinds Day Centre to the Trust's chosen service provider;**
- ii) to grant an Agreement for Lease and Lease (for 40 years at a peppercorn rent) to the Trust's chosen service provider for the site shown edged red on plan EM1898 on acceptable terms for no capital premium under the Local Government Act 1972: General Disposal Consent 2003.**
- iii) If, following the Trust's procurement exercise, their chosen service provider require a lease with a longer term than 40 years, then the Head of Commercial Services in consultation with the Mayor, Executive Lead of Adult Social Care and Older People and the Chief Executive of the Torbay Development Agency be authorised to agree such longer term as she considers appropriate up to a maximum of 125 years**

### **3. Key points and reasons for recommendations**

- 3.1 In discussion with the families of the remaining residents at Occombe the Trust is currently undergoing a procurement exercise to appoint a service provider.
- 3.2 The intention is that this service provider would run Occombe House 'as is' and within a specified period work with the families and planners to finalise proposals for the redevelopment of the site to provide independent supported living for the current and future residents.
- 3.3 An Agreement for Lease would be entered into so that the long term lease is only granted once planning permission and any other necessary consent have been obtained.
- 3.4 It is considered that the lease should be for a maximum of 40 years. For any lease, which is longer than 40 years the Upper Tribunal (formerly the Lands Tribunal), under s84 of the Law of Property Act 1925 may on certain grounds, after 25 years into the term, discharge or modify restrictions as to user or buildings on the land affecting the leasehold interest.  
  
Only granting a lease to a maximum lease of 40 years therefore would prevent the service provider applying to the Upper Tribunal thus safe guarding the Council's position.
- 3.5 Whilst the Council would want to restrict the length of the lease to 40 years there may be circumstances whereby the Trust's chosen service provider would seek a longer term. Such requests to be considered if and when appropriate.
- 3.6 It is not unusual for a long term lease to be granted with a peppercorn rent but with a premium being paid. 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 It is considered that the proposal will have economic and social benefits

**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

### A1. Introduction and history

- A1.1 Occombe House Residential Home is a Victorian House, which has previously accommodated 24 residents although it is currently only home to 7 residents. The site also incorporates the Fairwinds Special Development Centre, which provided a day service although this service has been de-commissioned since October 2012.
- A1.2 The site was leased to the Trust in 2008 with the Trust holding a 7-year lease from 01 December 2008. This does not have the protection of the Landlord and Tenant Act 1954 and therefore the Trust would not be entitled to a new lease at the end of the 7-year period. The site is shown edged red on plan EM1898, attached as Appendix 1 to this report.
- A1.3 In 2010 a proposal was submitted to the Care Trust Board and Torbay Council to consider the re-provision of Occombe House to secure high quality support in an environment that enables individuals with a severe learning disability to live the lives of their choosing, fulfilling their aspirations and individual choices enabling them to reach their full potential now and for the future as they grow older.

The Board was also asked to give a mandate to undertake to procure services that will provide for the changing needs of the seven long stay residents of Occombe House. This decision takes into account the need to plan for the future of the residents now, in a way which offers sustainable services that are secure for their future and which can adapt to the growing needs of the residents as they become older.

The key outcome for this development is:

*All people with a learning disability are supported to live in homes of their choice, choosing where, with whom and how they are supported within available resources.*

At the end of 2011 the Trust, in agreement with Torbay Council and the family and relatives of the residents of Occombe House, agreed that a programme of best interest meetings would be arranged to identify what would be the most suitable accommodation and support arrangements for each of the individuals living in Occombe House; that the Occombe House site could be considered as an accommodation location for supported living arrangements within this process. There was also an agreement that the Trust (in partnership with families and staff) would implement a procurement process to identify a suitable alternative provider for the long term service currently provided at Occombe House.

The decision has been considered and passed by the Trust Board. As a key decision within the partnership agreement with Torbay Council, the decision has been approved by the Mayor.

- A1.4 Following the procurement exercise the intention is that the current lease to the Trust is assigned to the chosen service provider with them then working with the families and planners (South Hams District Council) to redevelop the site for independent living accommodation.

- A1.5. Since there is no guarantee that planning consent will be forthcoming the Council would enter into an Agreement for Lease with the chosen service provider so that the lease is only granted once planning consent has been obtained. Other consents will also be required (e.g. Building Regulations) and therefore it is likely that the granting of the lease will also be subject to these consents being obtained.
- A1.6 As mentioned above the Council is being asked to grant a lease at a peppercorn rent. The current lease is on the same basis and whilst the Council could seek to monetary rent if a new lease was granted in 2015, due to the nature of the business and tenant liabilities, it is possible that such would not be appropriate.

The service provider will also be investing a large amount of capital in re-developing the site if planning permission is granted to and such would justify the granting of an effective rent-free period for the duration of the lease.

- A1.7 It is not unusual for a premium to be paid for the granting of a long lease. The Council is being asked to grant the lease without a premium being paid. 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.
- A1.8 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.
- A1.9 The value of the site is considered to be below £2,000,000.
- A1.10 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.
- A1.11 The redevelopment of this site will have economic benefits in terms of employment e.g. building/construction, care and associated support services. It will also benefit the existing residents by allowing them to remain living in familiar surroundings.

## **A2. Risk assessment**

### **A2.1 Outline of significant key risks**

- A2.1.1 The key risk is that planning permission is not granted for the re-development proposals. This risk can't be mitigated by Torbay Council since South Hams District Council is the Local Planning Authority for the Occombe site.

### **A2.2 Remaining risks**

- A2.2.1 There is a risk that terms for the Agreement for Lease and the Lease cannot be agreed with the Trust's chosen service provider. If this is the case then the proposals will not be progressed unless the Trust can identify sufficient capital funding.

### **A3. Other Options**

- A3.1 That the Council does not agree to the Trust's proposals. The Trust would in the immediate period continue to run the home in accordance with the current lease. However this would not meet the aspirations of the families of the current residents with the possibility of bad publicity for the Council. In these circumstances The Trust and the Council would need to urgently review the position to find a way forward for the Occombe residents and carers.
- A3.2 If the proposals did not proceed and circumstances changed then the responsibilities for the management of the site may revert back to the Council. As a consequence it would 'inherit' all the running costs and the repairs & maintenance liability of circa £186,800 (as identified in a condition survey carried out in August 2012).

### **A4. Summary of resource implications**

- A4.1 The Asset Management Team of the Torbay Development Agency and the Council's Commercial Services will be involved with the negotiation and preparation of the necessary documentation.

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

- A5.1 A separate Equalities Impact Assessment has been prepared by the Trust - see Appendix 2 to this report.
- A5.2 Any new facilities / buildings will be more energy efficient to comply with modern Building Regulations and as such it should be more environmentally sustainable.
- A5.3 it is envisaged that the proposals for the site could bring an opportunity for sympathetic development. This would be dealt with through any future planning application with South Hams District Council.
- A5.4 It is not considered that the proposal will have an impact on crime and disorder.

### **A6. Consultation and Customer Focus**

- A6.1 Throughout the procurement process the Trust has engaged closely and throughout with the parents and carers of the residents of Occombe House. A copy of a letter from the Trust to the Mayor is contained in Appendix 3 to this report details the families' involvement.

The families of the residents have been consulted at the appropriate stages in the process and have attended meetings and forums with potential bidders and the Trust procurement team for the project. Regular progress reports/briefings with respect to Occombe House have been given to Health Scrutiny and relevant lead Members & Council officers. Councillor Scouler also sits on the Trust Learning Disability Programme Board which is managing changes within the Learning Disability Service.

A6.2 As a consequence of the above engagement the Occombe Families have supported the Trust's procurement process with aiming to finding an external service provider to develop independent living accommodation on the Occombe site.

**A7. Are there any implications for other Business Units?**

A7.1 None

**Appendices**

Appendix 1	Plan EM 1898
Appendix 2	Equalities Impact Assessment
Appendix 3	Letter from Trust to the Mayor

**Documents available in members' rooms**

None

**Background Papers:**

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

None