

CHESHIRE EAST COUNCIL CHESHIRE WEST AND CHESTER COUNCIL

REPORT TO: JOINT EXTRA CARE HOUSING MANAGEMENT BOARD

Date of Meeting: 21 December 2009
Report of: Borough Solicitor, Cheshire East
Subject/Title: Joint Extra Care Housing Management Board –
Terms of Reference and Constitution

1.0 Report Summary

- 1.1 To note the Terms of Reference and Constitution of the Joint Extra Care Housing Management Board.

2.0 Recommendations

- 2.1 To note the Terms of Reference, Constitution and Powers of the Joint Extra Care Housing Management Board.
- 2.2 To delegate its functions to the Lead Authority.

3.0 Reasons for Recommendations

- 3.1 As this is the first meeting of the Joint Extra Care Housing Management Board Members are asked to note the situation following resolution of the respective Cabinet/Executive of the Councils forming this joint committee.
- 3.2 The delegation to the Lead Authority allows it to take action requested by the Joint Extra Care Housing Management Board on behalf of both Councils.

4.0 Wards Affected

- 4.1 No Wards are affected.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications

6.1 Not applicable.

7.0 Financial Implications for Transition Costs

7.1 Not applicable.

8.0 Financial Implications 2009/10 and beyond

8.1 There are no direct financial implications of setting up this Board. However, the extensive and demanding nature of the PFI procurement route will require the Council to, on occasions, act quickly in order to maximise its financial outcome within the overall project. The Board through its delegated powers will, for example, be able to ensure that key deadlines are adhered to and in turn, that best possible commercial rates (for example in respect of bank loans) are obtained by the project.

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 The constitutions of Cheshire East Council and Cheshire West and Chester Council provides that the Cabinet/Executive may set up sub-committees. The Local Government Act 1972 allows local authorities to set up joint committees and further authority for such joint arrangements was introduced by virtue of regulations made under the Local Government Act 2000. The Joint Extra Care Housing Management Board is a joint committee.

9.2 In setting up the Joint Extra Care Housing Management Board there must be clarity about what it is able to do; hence Terms of Reference have been agreed: as well as clear rules as to how it should operate; hence a Constitution has also been agreed.

9.3 The Councils have delegated certain decision making to the Joint Extra Care Housing Management Board but reserved other matters e.g. approval of affordability. Tables setting out the responsibilities of the Joint Extra Care Housing Management Board appear in Appendix 2. In turn the Joint Extra Care Housing Management Board delegates its functions to the Lead Authority.

10.0 Risk Management

10.1 The Joint Extra Care Housing Management Board should ensure that existing provision is managed effectively at a strategic level and also allow new provision to be procured efficiently. Without the Joint Extra Care Housing Management Board there is a risk that decisions could be delayed due to the timing of the respective Cabinet/Executive.

11.0 Background and Options

- 11.1 The Cabinet of Cheshire East Council on 1 December 2009 and the Executive of Cheshire West and Chester Council on 9 December 2009 approved the establishment of the Joint Extra Care Housing Management Board with the following Terms of Reference:

The Joint Extra Care Housing Management Board shall be responsible for

Providing strategic guidance
Making strategic decisions
Reviewing performance

in relation to Extra Care Housing provision (except where matters are reserved to the respective authorities).

- 11.2 In order to further define the role and Powers of Joint Extra Care Housing Management Board and the respective Councils (acting through their respective Cabinet/Executive) two tables have been produced which appear in Appendix 2 to this report. The first relates to Round 3 (i.e. it is mainly about contract management of the existing provision) and the second relates to Round 5 (i.e. it is mainly about procurement of the new provision).
- 11.3 Joint Extra Care Housing Management Board will function as a joint committee and be subject to all of the usual rules relating to public meetings. Its Constitution appears in Appendix 1 to this report.
- 11.4 The Constitution of the Joint Extra Care Housing Management Board states that each Council shall appoint three Members and that nominated substitutes shall be allowed to attend any meeting in the place of an appointed member, subject to prior notification being given to the Lawyer and Secretary to the Joint Extra Care Housing Management Board. This nomination should be made to Democratic Services at Cheshire East Council.
- 11.5 Cheshire East Council has appointed Councillors has appointed Councillors Roland Domleo (Portfolio Holder Adult Services), Frank Keegan (Portfolio Holder Resources) and Peter Mason (Portfolio Holder Procurement Assets and Shared Services). Substitutes are to be drawn from the Cabinet as appropriate.
- 11.6 Cheshire West and Chester Council has appointed Councillors Brenda Dowding (Portfolio Holder Adult and Health Services), Herbert Manley (Portfolio Holder Prosperity) and Les Ford (Portfolio Holder Finance). Substitutes are to be drawn from the Executive as appropriate.

- 11.7 As Cheshire East Council is the Lead Authority for extra care housing, it will have chairmanship of the Joint Extra Care Housing Management Board.
- 11.8 The meetings of the Joint Extra Care Housing Management Board will be held at the offices of the Lead Authority. Meetings will be bi-monthly unless otherwise determined by the Joint Extra Care Housing Management Board.
- 11.9 The Terms of Reference and the Constitution of the Joint Extra Care Housing Management Board can only be altered by the respective Councils (not the Board) and they will need to reach agreement on any changes.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Andrew Leadbetter

Designation: Legal Services Manager

Tel No: 01270 529948

Email: andrew.leadbetter@cheshireeast.gov.uk

APPENDIX 1

CONSTITUTION OF THE JOINT EXTRA CARE HOUSING MANAGEMENT BOARD

1. Each of the Authorities shall appoint three Members (being elected members of the respective Cabinet/Executive of the Authorities) as its nominated Members of the JECHMB. The Members appointed shall have full voting rights.
2. Each Authority may nominate one or more substitute Members from the respective Cabinet/Executive of the Authorities to attend any meeting in place of an appointed Member from that Authority, subject to notification being given to the Lawyer and Secretary to the JECHMB before the start of the meeting. The Member appointed as a substitute shall have full voting rights where the Member for whom they are substituting does not attend. If an Authority's nominated Members attend a meeting of the JECHMB, any named substitute may also attend as an observer but shall not be entitled to vote.
3. Each Member of the JECHMB shall comply with the Code of Conduct of their Authority when acting as a Member of the JECHMB.
4. Each of the Authorities may remove any of its nominated Members or substitute Members of the JECHMB and appoint a different Member or substitute to the JECHMB from the respective Cabinet/Executive of the Authorities by giving written notice to the Lawyer and Secretary to the JECHMB.
5. Each Authority shall have three votes. These shall be exercised by the nominated Members who are elected members of the Authority. In the absence of a Authority's nominated Member, a vote may be exercised by the named substitute who is an elected member of the Authority.
6. Each Member of the JECHMB shall serve upon the JECHMB for as long as he or she is appointed to the JECHMB by the relevant Authority but a Member shall cease to be a member of the JECHMB if he or she ceases to be a Member of the Authority's Cabinet/Executive that appointed him or her or if the relevant Authority removes him or her as a Member of the JECHMB.
7. Any casual vacancies howsoever arising shall be filled by the Authority from which the vacancy arises by notice in writing sent to the Lawyer and Secretary to the JECHMB.
8. Meetings of the JECHMB shall be held at the offices of the Lead Authority.

9. The JECHMB shall appoint one of its nominated Members as Chairman and another one of its nominated Members as Vice Chairman to hold office until such time as any Member of the JECHMB requests another nomination to one or more of these offices.
11. The JECHMB shall meet once every two months (bi-monthly) unless otherwise determined by the JECHMB.
12. The Lawyer and Secretary to the JECHMB may call additional meetings by providing at least five clear days' notice to Members of the JECHMB, for the purposes of resolving matters arising between the bi-monthly meetings of the JECHMB. The Lawyer and Secretary to the JECHMB must call a meeting of the JECHMB if at least two Members of the JECHMB request it or the Head of Paid Service of either Authority requests it.
13. Meetings shall be notified to Members of the JECHMB by the Lawyer and Secretary to the JECHMB.
14. The Lawyer and Secretary to the JECHMB shall send electronically to all Members and relevant officers of each Authority the agenda for each meeting of the JECHMB no later than five clear working days before the date of the relevant meeting. The Lawyer and Secretary to the JECHMB shall send to all Members of the JECHMB, to the Political Group Leaders of each Authority and relevant officers of each Authority printed copies of the agenda for each meeting of the JECHMB no later than five clear working days before the date of the relevant meeting.
15. The Lawyer and Secretary to the JECHMB shall arrange for written minutes to be taken of each meeting of the JECHMB and shall present them to the JECHMB at its next meeting for approval as a correct record. If the JECHMB confirms that the minutes contain an accurate record of the previous meeting, those minutes shall be signed by the Chairman or Vice-Chairman.
16. A meeting of the JECHMB shall require a quorum of two Members of each Authority who are entitled to attend and vote. If there is a quorum of members present but neither the Chairman nor the Vice-Chairman is present, the Members present shall designate one Member to preside as Chairman for that meeting.
17. Subject to the provisions of any enactment, all questions coming or arising before the JECHMB shall be decided by a majority of the Members of the JECHMB immediately present and voting thereon. However, matters before the JECHMB shall wherever possible be decided by consensus. In the case of an equality of votes when a matter is being considered for the first time the matter will be deferred to the next meeting of the JECHMB. If there remains an equality of votes the second time the matter is considered then the Chairman of the meeting shall exercise his or her casting vote.

18. Any Member of the JECHMB may request the JECHMB to record the votes of individual Members of the JECHMB on a matter for decision.
19. A Member when speaking shall address the Chairman. If two or more Members wish to speak, the Chairman shall call on one to speak. While a Member is speaking other Members shall remain silent.
20. A Member shall direct his/her speech to the matter under discussion or to a personal explanation or to a point of order.
21. Only one amendment to a proposal may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been disposed of, providing that the Chairman may permit two or more amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of the JECHMB's business.
22. If an amendment is lost, other amendments may be moved on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.
23. The order of business shall be indicated in the agenda for the meeting.
24. When a motion is under debate by the JECHMB no other motion shall be moved except the following:
 - 24.1 to amend the motion;
 - 24.2 to adjourn the meeting;
 - 24.3 to adjourn the debate;
 - 24.4 to proceed to the next business;
 - 24.5 that the question be now put;
 - 24.6 that a Member be not further heard;
 - 24.7 by the Chairman that a Member do leave the meeting;
 - 24.8 a motion under Section 100(A)(4) of the Local Government Act 1972 to exclude the public;
 - 24.9 to postpone consideration of the item.
25. A Member may move without comment at the conclusion of a speech of another Member, "That the Board proceed to the next business", "That the question be now put", "That the debate be now adjourned", or "That the Committee do now adjourn", on the seconding of which the Chairman shall proceed as follows:
 - 25.1 on a motion to proceed to next business; unless in his opinion the matter before the meeting has been insufficiently discussed put to the vote the motion to proceed to the next business

25.2 on a motion that the question be now put; unless in his opinion the matter before the meeting has been insufficiently discussed he shall first put to the vote the motion that the question be now put

25.3 on a motion to adjourn the debate or the meeting; if in his opinion the matter before the meeting has not been sufficiently discussed and cannot reasonably be efficiently discussed on that occasion put the adjournment motion to the vote.

The ruling of the Chairman shall not be open for discussion.

26. Any member of the Authorities who is not a Member of the JECHMB is entitled to attend the JECHMB but he/she shall not be entitled to vote, shall not take part in the consideration or discussion of any business, save by leave of the Chairman and comments will be recorded only on the direction of the Chairman.

27. The following elected representatives are entitled to attend the JECHMB but they shall not be entitled to vote, shall not take part in the consideration or discussion of any business, save by leave of the Chairman and comments will be recorded only on the direction of the Chairman:

27.1 Members of parish councils within the areas of the Authorities;

27.2 Members of Parliament for the residents of the areas of the Authorities;

27.3 Members of the European Parliament for the residents of the areas of the Authorities.

28. Meetings of the JECHMB will be open to the public except to the extent that they are excluded under paragraph 30.

29. Members of the public wishing to address the JECHMB (or a subcommittee of the JECHMB) on reports contained within the agenda for the meeting shall be given the opportunity to do so subject to:

29.1 the opportunity being extended to one person to speak in support of each agenda item and one person to speak against each agenda item when called to do so by the Chairman;

29.2 an indication of the desire to speak on the agenda item being made by the person just prior to the meeting and the name supplied to the Democratic Services Officer in attendance, the first person registering to have precedence in the event of more than one person wishing to speak either for or against the agenda item;

29.3 each person addressing the JECHMB being limited to three minutes speech;

29.4 an opportunity being provided for an expression of a contrary view, even though no prior notice has been given, when a member of the public has spoken for or against the item;

29.5 in the event of the person having registered to speak on an agenda item not wishing to take up their right to speak on the agenda

item because it was deferred, that person will automatically be given the right to speak on the agenda item at the next meeting of the JECHMB;

29.6 the Chairman of the meeting having discretion to rule that a person wishing to address the meeting shall not be heard if, in his/her opinion, that issue or the organisation or the person wishing to make representation on that issue has received an adequate hearing.

30. The public may be excluded from a meeting of the JECHMB during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information as defined in section 100A(3) of the Local Government Act 1972 or exempt information as defined in section 1001 of the Local Government Act 1972 would be disclosed to them.
31. Each Authority may call in any decision of the JECHMB in accordance with the overview and scrutiny provisions of that Authority's constitution. If any decision of the JECHMB is subject to call in by an Authority, the JECHMB shall take no action to implement that decision unless the call in process upholds the decision.
32. The JECHMB may delegate a function to an officer or sub committee.
33. Any contractual procedures will be undertaken by one of the Authority's and that Authority will apply its own financial regulations and contract procedure rules to those arrangements.
34. The Lawyer and Secretary to the JECHMB shall provide governance and secretarial support services and legal advice and support to the JECHMB on such terms as may be agreed from time to time between the Authorities.

APPENDIX 2

JOINT EXTRA CARE HOUSING MANAGEMENT BOARD Round 3 – Management of Current Provision	
RESERVED TO RESPECTIVE CABINET/ EXECUTIVE	JOINT EXTRA CARE HOUSING MANAGEMENT BOARD
Fundamental changes to any contractual relationships	Reaction to external policy changes and proposals
Termination of any contractual relationships	Internal policy setting and changes to policy
Setting financial parameters that the Joint Extra Care Housing Management Board must operate to	Strategy to maintain performance
Award of Replacement/New Contracts	High level performance monitoring (service standards and financial position)
Changes to Terms of Reference	Approval and review of inter authority arrangements
Changes to Constitution	Provision of strategic direction
Agreement to swap Lead and Non-Lead Authority Roles	Approval of procurement arrangements
Appointment of Joint Extra Care Housing Management Board members	Last stage in handling complaints
	Appointment of external advisers (subject to Finance and Contract Procedure Rules of Lead Authority and provided appropriate budget identified by respective Councils)
It is possible for the Joint Extra Care Housing Management Board to refer a matter to the respective Cabinet/Executive for decision.	

JOINT EXTRA CARE HOUSING MANAGEMENT BOARD
Round 5 – Procurement of New Provision

RESERVED TO RESPECTIVE CABINET/EXECUTIVE	JOINT EXTRA CARE HOUSING MANAGEMENT BOARD
Decision to acquire a site (or secure an option on a site) including granting leases as appropriate.	Approval and review of inter authority arrangements
Approval of the project affordability at all stages	Provide overview of and all necessary procurement approvals other than those specifically reserved to the Authorities
Approval of Bidders to proceed to final stage	Approval of Outline Business Case and authorisation to submit
Approval of Preferred Bidder	Approval of list of Bidders to be invited to participate in the competitive dialogue procurement process
Award of and approval of execution of PFI contract	Recommendations to respective Cabinet/Executive in relation to procurement approvals as necessary
Certification of PFI Contract and costs indemnities	Appointment of external advisers (subject to Finance and Contract Procedure Rules of Lead Authority and provided appropriate budget identified by respective Councils)
Award of and approval of execution of Care and where appropriate Catering Contracts	
Changes to Terms of Reference	
Changes to Constitution	
Appointment of Joint Extra Care Housing Management Board Members	
It is possible for the Joint Extra Care Housing Management Board to refer a matter to the respective Cabinet/Executive for decision.	