

Cheshire East Council

Cabinet

Date of Meeting: 18th October 2016

Report of: Kath O'Dwyer
Deputy Chief Executive and Executive Director – People

Subject/Title: Children's Residential Home Tender

Portfolio Holder: Cllr Liz Durham, Children and Families

1. Report Summary

1.1. Cabinet received a report on the 12th April 2016 setting out the approach to the redesign of Children's Homes in the borough. Cabinet agreed a timeline to put in place a wholly commissioned Children's Home service from 1 April 2017 comprising of :

- Home 1 (existing) with 3 beds within Macclesfield (Registered for Emotional and Behavioural Difficulties EBD)*
- Home 2 (existing) with 4 beds within Macclesfield (Registered for EBD)
- Home 3 (existing) with 3 beds within Crewe (Registered for EBD, Learning Disability and Physical Disability) *
- Home 4 & 5 (new) with 2 beds each within Crewe (to be Registered as EBD and the ability to utilise 1 bed in each home for emergency)

**The above homes have the option of providing one additional bed each and as such are registered as 4 bed units with Ofsted*

1.2. The purpose of this report is to provide an update on the progress of the tender process to put in place a wholly commissioned service for Children's Homes in Cheshire East and to request delegated authority to award the contract.

1.3 A fully compliant procurement process is being followed which will enable an effective and transparent contract award to be undertaken.

1.4 The commission of Children's Homes supports the strategic intentions and ambition for our children in care and demonstrates further evidence of the Council's passion and commitment to put children and particularly children in care at the heart of all that we do.

- 1.5 Children in care are our children and it is our role to ensure they are supported, nurtured and helped to be, and feel, safe, achieve their potential and grow into confident young people and adults. Ensuring our children can live and grow up in a safe and stable home is integral to ensuring their wellbeing and securing their positive development. Awarding the Children's Home contract through an effective and timely tender process supports our commitments to children in care.
- 1.6 The Government has started to utilise the recommendations of Sir Martin Narey's independent review of residential care. The Narey report is positive in respect of the role and impact that good residential provision can have for cared for children. The approach adopted by Children's Services in developing our residential offer fits with the findings and recommendations of the Narey report.
- 1.7 The government strategies that have followed the Narey report ('Putting Children First' and 'Keep on Caring') place great emphasis on cared for children experiencing stability and feeling safe and secure and also supporting young people from care to independence. The Local Authority will expect that the successful supplier of our five Children's Homes will participate fully in the innovation programme surrounding 'Staying Close'. Generally we would expect that the successful bidder and Cheshire East Council will work together to ensure that any significant strategies / legislative changes are included in the development of the service.
- 1.8 The specification for our Children's Homes tender is attached at Appendix 1. The specification has been brought to life through the co-production with young people and their reflection on living in residential homes. The specification has received positive feedback in respect of the child focused content and format.

2 Recommendation

- 2.1 Cabinet is recommended to delegate the authority to award the Children's Homes contract to the Deputy Chief Executive and Executive Director – People, in consultation with the Children's Portfolio Holder.
- 2.2 To authorise the Director of Legal Services to enter in to the contract with the successful bidder and any ancillary legal documentation required including the granting or taking of leases, underleases and licence agreements (after having consulted with the Head of Assets in respect of any property agreements).

3 Reasons for Recommendation

- 3.1 The delegation of award of contract will ensure:
- i) An effective mobilisation of the service following award of contract. There are a range of important steps following contract award (ie TUPE / pension provision and sourcing of 2 new properties and their Ofsted registration as Children's Homes) that are critical in ensuring the stability of residential placements for

cared for children living in the current Children's Homes. The sooner the additional accommodation capacity delivered through the contract is established the sooner the Council will see the value for money aspects applied.

- ii) There is a seamless move from existing contractual arrangements to the start of the new contract. The contract for the two existing commissioned service homes delivered by Together Trust expires on the 31 March 2017 and there is no ability to extend.
- iii) That commercially sensitive tender information is not recorded within a public meeting.

4 Background

4.1 The current internal residential service comprises three four-bedded children's homes:

- Claremont in Crewe is owned and operated by the Council;
- Ivy Lane and Victoria Lodge in Macclesfield are also owned by the Council but are managed and staffed under a contractual arrangement with the Together Trust.

The contract out for tender maintains the three homes above and adds further capacity and flexibility with two additional two 2 bed homes from 1 April 2017.

Alongside our current residential service a range of external agency placements are also sourced via framework contracts and spot purchase. Eighteen residential placements (excluding residential schools) are purchased via fourteen different providers at a cost per week of between £2250 and £5890 (average £3600). Health contributions offset some of the weekly costs when continuing care assessments meet criteria.

- 4.2 Following Cabinet's agreement to apply a wholly commissioned service model to Children's Home delivery a project group was established to ensure an effective and compliant process. The project group includes Children's Services, Procurement, Legal and Assets. Finance and Human Resources colleagues have also provided support and advice.
- 4.3 A Provider engagement session was held in Middlewich on the 21st June 2016 to warm the market to the invitation to tender and explore the good practice gleaned from similar tendering across the country. The engagement session was well attended and input was positive. Providers confirmed that the draft timeline proposed would work effectively and importantly would provide sufficient time for effective mobilisation.
- 4.4 The specification for our Children's Home services has been compiled with input from children and young people. This aspect of co-production is important if we are to follow through with our commitment to build services that are in line with the wishes and views of children that will actually live in the homes. The

evaluation of the bidders for this service will also include a children and young people panel. The specification for services is attached at Appendix 1.

4.5 A summary of the procurement timeline is as follows:

Stage	Date(s)/time
Issue OJEU notice	16/08/2016
Issue of Invitation to Tender	23/08/2016
Deadline for queries and clarifications relating to Invitations to Tender	16/09/2016
Submission of Tenders	23/09/2016
Evaluation of Tenders	03/10/16 – 07/10/2016
Tenderer interviews/clarification meetings	w/c 17/10/2016
Notification of result of evaluation	24/10/2016
Standstill period	25/10/2016 – 07/11/2016
Expected date of award of Contract(s)	08/11/2016
Contract commencement	01/04/2017

5 Wards Affected and Local Ward Members

5.1 The three existing Children's Homes will remain in their current locations in Macclesfield and Crewe. The two new two bed Children's Homes are planned to be opened in the Crewe area but until properties are actually sourced this cannot be confirmed and therefore this increase in residential capacity has the potential to affect all areas of Cheshire East.

6 Implications of Recommendation

6.1 Policy Implications

6.1.1 The tender process will put care for children at the centre of Council policy and decision making. The invitation to tender will be undertaken with clear reference to the Children and Young People's Plan, Corporate Parenting Strategy and Sufficiency Statement.

6.2 Legal Implications

- 6.2.1 There are a number of pieces of legislation and statutory guidance that set out the role of the local authority in respect of cared for children and care leavers. There are statutory obligations and guidance for the role of the Local Authority as the Corporate Parent in the Children Acts 1989 and 2004, the Children and Young Persons Act 2008 and the Children Act 1989 guidance and regulations, Volume 2: care planning, placement and case review.
- 6.2.2 Statutory Guidance: Securing Sufficient Accommodation for Looked After Children 2010, requires local authorities to develop a plan to secure sufficient accommodation for cared for children within their local authority area and which meets their needs. They can only do this if they work in partnership with other agencies as the requirement is not just about accommodation and placements but also securing a diverse range of universal, targeted and specialist services working together to meet children's needs' and applies not only to cared for children, but also those on the edge of care and at risk of custody.
- 6.2.3 The procurement process is being undertaken in accordance with the Public Contracts Regulations 2015 and the Council's own Contract Procedure Rules.
- 6.2.4 By entering into contractual arrangements with the successful bidder for the delivery of the service, TUPE regulations will be triggered in respect of the transfer of current staff who are working on the delivery of the service immediately before the transfer. The Council has undertaken the necessary due diligence to identify which of its employees have the right to transfer and to be able to provide the necessary employee liability information in accordance with the TUPE Regulations. The Council and the successful bidder will also have to be mindful of the need to comply with the Regulations' consultation requirements.
- 6.2.5 In respect of the leases of the Council's property the Council has the power to dispose of land pursuant to s123 of the Local Government Act 1972 subject to it being at the best consideration that can reasonably be obtained.
- 6.2.6 The Council has the power to take a lease of property pursuant to s120 of the Local Government Act 1972.
- 6.2.7 The General Disposal Consent 2003 authorises the disposal of land for 7 years or more at less than best consideration if the undervalue is £2 million or less, as in this case, and subject to those powers being exercised in line with public law principles.
- 6.2.8 The Council has a fiduciary duty at all times to the taxpayers and must fulfil this duty in a way which is accountable to local people.
- 6.2.9 The Council also has to be mindful of The European Commission's State Aid rules which set out that when disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land which may distort the market. In such cases the Council must ensure that the nature and the

amount of the subsidy complies with State Aid rules either by coming under one of the General Block Exemptions or under the De Minimis rule which permits aid up to approximately £155,000 (€200,000) over a 3 year period.

6.3 Financial Implications

6.3.1 The invitation to tender will ensure that the best value for money solution is put in place. This will focus on the most effective blend of internal / external provision for the varying number and needs of cared for children. The final financial implications will only be evident when the tender is complete and comparison to the reduced use of the external agency market is clear.

6.3.2 It is however clear that even if we do nothing in respect of the current model of Children's Homes the cost of re-commissioning the two homes currently run by Together Trust will provide an estimated budget pressure of at least £100k in 2017-18 and beyond.

6.4 Equality Implications

6.4.1 None at this stage.

6.5 Rural Community Implications

6.5.1 None identified at this stage.

6.6 Human Resources Implications

6.6.1 Consultation and effective communication with the staff at the current in-house home (Claremont) and via Together Trust for the two existing homes that they are contracted to run is taking place. TUPE/ pension provision considerations will also have to be planned in consultation with the Trade Unions.

6.7 Public Health Implications

6.7.1 Cared for children are more at risk of health inequalities than their peers. The proposals are expected to improve the awareness and response in respect of these health needs.

6.8 Implications for Children and Young People

6.8.1 Children in care will have an increased ability to live closer to their family, friends and local communities. The new design of commissioned Children's Homes will ensure a range in size of home which will provide a better match to the varying needs of our children and an improved fit with the size / layout of the accommodation. The ability to link more of our cared for children to the range of internal support provided by Children's Social Care will also support the quality of care they receive and ultimately the stability of placement.

6.9 Other Implications

6.9.1 None

7 Risk Management

- 7.1 Cared for children are a vulnerable group that are at risk of a number of factors – poor education and training, health, safeguarding and transition into adulthood. The design of an effective residential offer will aim to mitigate these risks to our children.
- 7.2 Individual elements of the tender for a wholly commissioned service will provide risks surrounding reputation (ie location of Children's Homes) and finance.

8 Access to Information/Bibliography

- 8.1 The legislation and key statutory documents in relation to cared for children and care leavers are set out in this paper.

9 Contact Information

Contact details for this report are as follows:-

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