

# Cheshire East Council

## Cabinet

---

<b>Date of Meeting:</b>	17 <sup>th</sup> January 2017
<b>Report of:</b>	Kath O'Dwyer – Executive Director of People and Deputy Chief Executive
<b>Subject/Title:</b>	Commissioning Nurseries in Crewe
<b>Portfolio Holder:</b>	Cllr Liz Durham, Children and Families

---

### 1. Report Summary

- 1.1. The Council is the commissioner of three Nurseries in Crewe. The original contract term commenced in June 2011 and was for 9 years with break clauses at years 5 and 7. Following negotiation with the current supplier a further break clause was added for the end of year 6 and this has been agreed and applied. The contract end date is 26 July 2017.
- 1.2. Ensuring good quality nursery provision in our most deprived wards is of critical importance and fits with the current Corporate Plan and the priority 'to support residents early to provide a great start in life'. Ensuring early years settings that provide a good platform for education for our children in our most deprived wards and supporting their parents into work is crucial.
- 1.3. The three nurseries are essential to ensure there are sufficient places available for 2, 3 and 4 year olds to access their free early education entitlement, and flexible childcare to meet the needs of working families. These three Crewe Nurseries deliver 26% of the 2 year old and 14% of the 3 and 4 year old provision in Crewe.
- 1.4. The recommended approach is to re-tender for the nursery provision in Crewe following a transparent and compliant procurement process. It is also proposed to explore the ability to extend the specification requirements for crèche facilities for the three Crewe Nursery sites to cover the programme of activities across Cheshire East. This extended specification is in response to difficulties experienced through a stand-alone procurement plan, feedback from potential providers and benchmarking with other local authorities.
- 1.5. The purpose of this paper is to seek Cabinet approval to proceed with the procurement and award of contracts for 9 years at a value of circa £8 million. The funding for this service is via pass through of Department for Education (DfE) per capita funding for families that are eligible for free nursery provision and those that decide to top up from personal finances.

The potential to extend the crèche reach is estimated to be £20,000 pa and is funded via base budget.

- 1.6. The Council is proposing to procure these nurseries as it is not likely that the market will make this provision in the least affluent areas under its own steam. We have a statutory duty to ensure a sufficiency of child care and without this provision we would be in breach of this duty.
- 1.7. The Council is the owner of the properties that it proposes to use to house the successful bidder following the procurement process. It will be necessary for the Council to grant a lease of each of the sites to the successful bidder to enable the service to be provided in accordance with the service contract.

## **2. Recommendations**

- 2.1. That Cabinet agree the re-procurement of the three Nurseries on their current sites and that the requirement for crèche facilities within the specification is extended beyond the three Crewe Nursery sites to support the programme of activities across Cheshire East.
- 2.2. That Cabinet delegates authority to the Executive Director of People Services and Deputy Chief Executive in consultation with the Portfolio Holder for Children's Services to undertake the procurement process, award of contracts and to take all necessary steps to mobilise the contract.
- 2.3. To authorise the Director of Legal Services to enter in to the contract with the successful bidder together with 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. Other Options Considered**

- 3.1. In order to consider any alternative service models and refine the specification of services it is proposed to undertake a procurement process that builds dialogue into the process. Although this takes additional time it is important that the procurement process delivers the model that delivers the best quality service, value for money and sustainability across the term of the contract.
- 3.2. The procurement dialogue will review the market appetite and financial viability of letting the contract as one or as separate lots for each site.
- 3.3. The indicative procurement timeline is attached at Appendix 1.
- 3.4. Any option put forward during the procurement process would have to be predicated on the provision running on a 52 week basis and as full child care (to support working parents). Any move away from this would have the net effect of reducing the volume and availability of child care in Crewe at a time when the onus is on Local Authorities to expand the availability of

child care. The current picture is one of expansion not reduction of the availability of 2 year old places. The Government has also committed to expand free child care for working parents to 30 hours a week from September 2017.

- 3.5. The three current settings offer full child care i.e. 8 am to 6 pm for 52 weeks of the year. This offer is deliberately flexible in order to meet the needs of parents. They also provide approximately 25% of the 2 year old child care places in Crewe as they serve areas where a significant number of the eligible two year olds live. The current contract also delivers 4% of the hours for 3 and 4 year old free entitlement for the whole of the borough.
- 3.6. The option to run this service in-house has been ruled out based on financial sustainability.

#### **4. Reasons for Recommendation**

- 4.1. The key reason for this recommendation is to test the market and models of service delivery following 6 years of the current contractual arrangement in order to ensure that the quality of Early Years learning in Crewe is maximised.
- 4.2. The Council has introduced a relatively new Social Value policy and the re-commission will allow this to be tested and applied.
- 4.3. To allow the Council an opportunity to find a solution to the difficulties being experienced in putting in place a crèche service to support activities being delivered across Cheshire East.
- 4.4. Future housing developments and population forecasts indicate an ever growing demand for childcare across the borough and particularly in Crewe. 96% of the eligible population of 3 and 4 year olds in Crewe access their entitlement to funded provision. The entitlement is set to increase in September 2017 from 15 to 30 hours per week. The almost universal take up of 15 hours is a strong indicator of the likely demand for 30 hours. It is estimated that an additional 286 places may be required in Crewe to meet the demand for this new statutory entitlement.
- 4.5. To ensure a transparent procurement that builds on the ability to have dialogue with local Schools and the local provider market to ensure engagement drives the best service delivery model. The contract is planned to be for 9 years with a break clause at 5 years to provide a longer term commitment to the market and therefore stable and sustainable service delivery.

#### **5. Background/Chronology**

- 5.1. In 2007 when Children's Centres were established in Crewe there was a requirement that Children's Centres in the bottom 30% Index of Multiple Deprivation areas provided Child Care on site. This resulted in the setting

up of three day care provisions at Oak Tree/Underwood West, The Brooks and Monks Coppenhall. All three are on joint school and Children's Centre sites.

- 5.2. The original contract term commenced in June 2011 and was for 9 years with break clauses at years 5 and 7. Following negotiation with the current supplier a further break clause was added for the end of year 6 and this has been agreed and applied. The contract end date is 26 July 2017.
- 5.3. In order to support effective transition to the current model of service delivery Safehands Ltd received some sustainability funding in the initial years of the contract term. The majority of the income to deliver the current service comes from the Department for Education (DfE) grant funding for 15 hours of Free Child Care for 2, 3 and 4 year olds.
- 5.4. The three Crewe nursery settings support some of our most vulnerable children and families. Ofsted is the arbiter of quality. The provision's Ofsted judgment should be as a minimum 'good' with aspirations to be 'outstanding'. All 3 settings are currently judged as 'Good' by Ofsted. However Ofsted inspections in this arena are on a four year cycle with Crewe nursery settings last being inspected between October 2012 and February 2015.
- 5.5. Due to the nature of the settings and their focus on our most vulnerable children and early communication and language they are supported on a weekly basis via the Local Authority's Early Years team to ensure an appropriate quality of provision. Each Nursery accesses universal support but also a targeted programme: 'Raising Attainment in the Early Years'.
- 5.6. The Early Years team visits provide support and challenge, with a focus on:
  - Early Language and Communication
  - Safeguarding, including the support for children based on an early help assessment i.e. based on the Common Assessment Framework (CAF) process, children who are Children in Need or on a Child Protection Plan
  - Supporting children with special education needs and disability
- 5.7. The visits utilise a quality monitoring framework covering:
  - Strengthening Leadership
  - Supporting progress learning and development
  - Developing Practitioner learning
  - Facilitating partnerships for learning and
  - Securing high quality environments for learning and development
- 5.8. The visits described above are supplemented and formalised through regular performance management meetings as follows:

- 5.8.1 Childcare Partnership Meetings are held every 6 to 8 weeks, led by the Lead Early Years Consultant and focus on partnership working between the setting and their Children Centre. The focus is data and operational site issues. Children are identified as not reaching age related expectations, with discussions with their local children centres this will be developed to enable the children to access groups within the children centre which will support the early identification of their needs. All Records of visits are shared with the manager and the Operational Lead.
- 5.8.2 Childcare Strategy Meetings are held every 6 to 8 and are chaired by the Early Years and Childcare Manager and include the Operational Lead of the company and the LAs Lead Early Years Consultant. The focus for quality improvement and these meetings is the Early Years Quality Improvement Support programme.
- 5.8.3 Commissioned Childcare Meetings are led by the Head of Service for Commissioning and held on a 3 monthly basis to monitor the settings contract with the LA.

## **6. Wards Affected and Local Ward Members**

- 6.1. All Crewe Wards

## **7. Implications of Recommendation**

### **7.1. Policy Implications**

- 7.1.1. There is a strong Council commitment to improve the educational outcomes of the most vulnerable children and to improve educational outcomes for children in Crewe.

### **7.2. Legal Implications**

- 7.2.1. Section 6 of the Childcare Act 2006 places local authorities under a statutory duty to ensure there are sufficient childcare places in their area to meet the requirements of parents to take up or remain in work. Section 7 of the Act also requires local authorities to ensure that there are sufficient free places for those children entitled to free early years care.
- 7.2.2 These services will need to be procured in accordance with the Public Contract Regulations 2015 ("the Regulations") and the Council's Contract Procedure Rules. Services of this nature fall within Schedule 3 of the Regulations and procurement of Schedule 3 contracts is commonly referred to as the light touch regime. In accordance with Regulation 76, it is for contracting

authorities to devise their own procurement procedures that apply to above threshold Schedule 3 contracts which take into account the specifics of the services in question. The procedure shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of suppliers. All time limits imposed on suppliers, whether for responding to a contract notice or taking any other steps in the relevant procedure, must be reasonable and proportionate. When devising their procedures, which may be any of the existing procedures outlined in the Regulations or variations of those procedures, contracting authorities may take into account any relevant considerations including

- The need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- The specific needs of different categories of users, including disadvantaged and vulnerable groups;
- The involvement and empowerment of users; and
- Innovation.

7.2.3 The Council will need to ensure that the duties under the Public Services (Social Value) Act 2012 are fulfilled. The Act requires the Council to:

- Consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area
- How in conducting a procurement process it may well act with a view to securing that improvement
- Undertake any local provider market / community engagement as appropriate on their proposals.

7.2.4 Section 123 of The Local Government Act 1972 permits the Council to dispose of land (for a term longer than a short tenancy) subject to it obtaining the best consideration that can reasonably be obtained. Local authorities are, however, able to dispose of land and buildings at less than the best consideration reasonably obtainable under the General Disposal Consent (England) 2003, where the 'undervalue' is less than £2million. The leases would be disposals. The Consent requires the Council to be of the view that the disposal is likely to help to secure the promotion or improvement of the economic, social or environmental well-being of its area or residents in its area.

7.2.5 There is no requirement that local authorities undertake a tendering process within the General Disposal Consent. However, there is the general requirement for authorities to follow "normal and prudent commercial practices". Where a local authority has undertaken a valuation of the asset to understand the level of the 'undervalue' and has established a robust business case for the

leases, there would be no further requirement to 'market test' a lease proposal to meet the General Consent criteria.

7.2.6 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.

7.2.7 All disposals must comply with the European Commission's State Aid rules. When disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land. In such cases the Council must ensure that the nature and the amount of the subsidy complies with State Aid rules, failure to comply means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient. If the occupier receives less than approximately £156,531.00 (as at 15th March 2016) (200,000 Euros) in state aid over a 3 year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).

State aid rules can (among other things) apply to the following:

- grants
- loans
- tax breaks
- the use or sale of a state asset for free or at less than market price.

7.2.8 The rules can apply to funding given to charities, public authorities and other non-profit making bodies where they are involved in commercial activities. It is the activity that needs to be considered.

7.2.9 Services of this nature fall under a light touch regime in the Regulations. This affords the Council significant flexibilities in how the procurement process is designed. Subject to the timescales for tenders being proportionate and reasonable for the contracts being tendered, any process or procedure can be adopted as long as it respects the treaty principles of transparency and equal treatment.

### **7.3. Financial Implications**

7.3.1. The commissioning of a sustainable provider for the three Crewe Nurseries will be cost neutral. The potential to extend the crèche reach is estimated to be £20,000 pa and is funded via base budget.

### **7.4. Equality Implications**

7.4.1. The expansion of child care is aimed at increasing school readiness and parents employment and training opportunities.

## **7.5. Rural Community Implications**

None.

## **7.6. Human Resources Implications**

- 7.6.1. Depending on the outcome of the re-tender process, the transfer of staff between providers may apply and may require a TUPE process however this will not directly involve the Council.

## **7.7. Public Health Implications**

- 7.7.1. The recommissioning of the settings will allow for integrated working between the settings, Health Visitors and Children's Centres on public health outcomes.

## **7.8. Implications for Children and Young People**

- 7.8.1 This commission will ensure good quality nursery provision in our most deprived wards to ensure our children get a great start in life and reach their full potential. This service will also support a strong family unit for children by helping their parents into work.

## **7.9. Other Implications**

- 7.9.1 None.

## **8. Risk Management**

- 8.1. That the provision does not remain financially sustainable and requires additional council support. This risk can be mitigated by ensuring that the successful provider is sufficiently capitalised and has strong financial management systems in place.

## **9. Access to Information/Bibliography**

- 9.1 None.

## **10. Contact Information**

Contact details for this report are as follows:

**Name:** Dave Leadbetter  
**Designation:** Head of Children's Commissioning  
**Tel. No.:** 07794 059581  
**Email:** david.leadbetter@cheshireeast.gov.uk