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**Meeting of the Cabinet – 24<sup>th</sup> March 2022**

**Report of the Director of Adult Social Care**

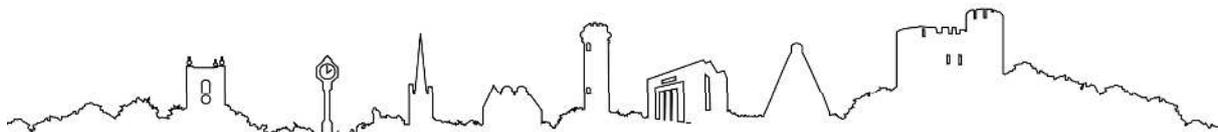
**Extra Care Provision / Development in Dudley**

**Purpose**

1. To detail the programme of work undertaken from January 2021 to February 2022 in relation to the development of the Extra Care scheme in Brierley Hill following approval by Cabinet to progress in December 2020.
2. The paper provides the Council with the options considered and positive changes in the structure of the arrangement with E5 for the Council and the wider Borough.

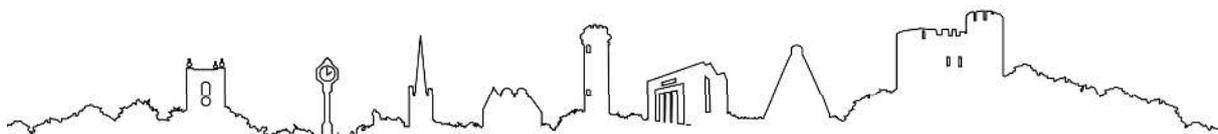
**Recommendations**

3. That Cabinet recommend to Full Council to: -
  - a) Approve entering into a long-term lease arrangement with E5 on the basis the financial and legal obligations are offset by way of an underlease to a reputable housing association and include the project in the Capital Programme. The arrangement with E5 is conditional on being able to match the Head Lease with the under-lease following a Procurement process.
  - b) Delegate authority to the Director of Adult and Social Care following consultation with the Director of Finance and Legal, the Director of Housing and Community Services and the relevant Cabinet Members to implement the programme of work needed to ensure successful delivery.



## **Background**

4. Cabinet approved the proposal for the Council to enter into a land transaction for the build of a 100 flat Extra Care scheme in Brierley Hill. This would bring a purpose built fully rented scheme to Dudley and would be used by the Council as a direct replacement for residential care with the development and commissioning of an enhanced care contract.
5. Officers have sought to ensure that the proposed arrangement with E5 provides the maximum benefits to the Borough, its residents and the Council's financial position and liability through entering into this deal.
6. Part of this exercise was to explore and consider a range of options for the delivery of the scheme (or similar) within Dudley specifically considering: -
  - The overall cost of the scheme over the duration of the arrangement
  - The risks and potential mitigations
  - Timescales for delivery
7. A range of additional options were explored including: -
  - a) The Council building a similar scheme
  - b) The Council buying the finished product from the developer
8. Whilst there is a financial benefit (across the duration of the 40 years) if the Council were to build the scheme itself there are a number of factors to consider:
  - a) The Public Works Loan Board (PWLB) rates may rise in future years putting a pressure on the Council's borrowing liability
  - b) The risk of increased building / works / pre-works costs
  - c) The build quality / level / features from the developer (as defined by the Heads of Terms to be signed off) will be superior when compared to those delivered by the Council
  - d) Current issues with the availability of labour / increased costs of labour together with the increased costs of materials presents a risk to the Council of developing the scheme itself
  - e) The timing element of the proposal and the nature / progress of the deal with E5 mean that there is a real opportunity to increase the scale and pace of the arrangement to progress a tangible new building and Extra Care service within 24 months
9. E5 will be taking the full liability / risk of cost increases as a key feature of the arrangement.

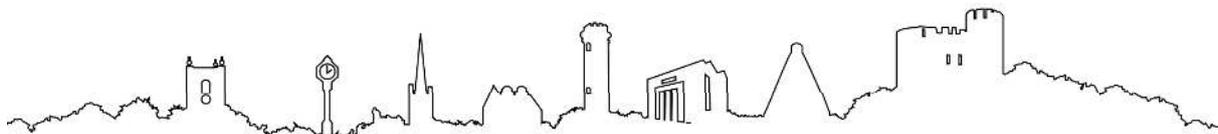


## Independent Advice

10. Working with Thomas Lister, the Council has sought independent / expert advice on the mechanics of the proposed deal and where the Council should seek further details / negotiate areas specifically focussed on:-
  - a) The financial appraisal produced by the Developer
  - b) The benefits to the Council of entering the deal
  - c) Any risks and risk mitigations to support the Council
  - d) Any further options / changes to the deal where the overall benefit to the Council is enhanced
11. Further engagement with Fusion Building Consultancy (Independent Chartered Surveyors) has provided the Council with a level of assurance that the proposed cost model is within the expected levels (albeit on the higher end / scale).
12. Further work on the building specification with Fusion has been completed which has provided the Council (and subsequent Registered Provider) with assurances that the detailed make-up of the building at all levels (e.g. from building construction levels to floor fittings and electric points) is of expected standards and innovation.
13. This will also form the basis of the Heads of Terms and delivery specification as the Council seeks to procure a Registered Provider.

## Changes to the proposed structure of the arrangement

14. Following work with Thomas Lister (Independent Advisor) in conjunction with officers across Corporate Landlords, a detailed financial appraisal of the arrangement was developed by E5 which provided the Council with a line by line cost model.
15. A formal soft-market session (and follow up 1:1 meetings) with prospective Registered Providers was held in March 2021 with a range of local and national organisations which provided the Council and E5 with areas of the building / land arrangement that required improving / changing to make it a more viable opportunity for a Provider.



16. Table A details the specific areas of change from the initial

<b>Original Proposal</b>	<b>Negotiated Position</b>
35-year lease arrangement	40-year lease arrangement with the building reverting to DMBC ownership (income strip)
6 month rent free period	12 month rent free period
Unfurnished flats	Extensive furniture pack for each flat and all communal areas (circa £600k)
Rental level tracking CPI	Rental level tracking CPI on a cap and collar of between 0% and 4.65%

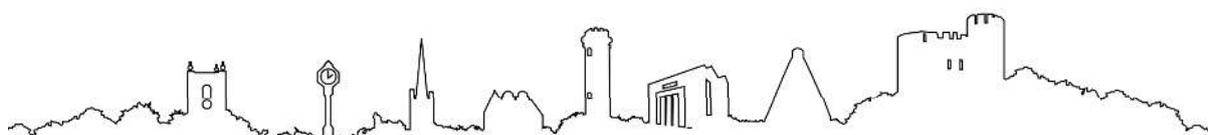
Table A – negotiated process

Summary

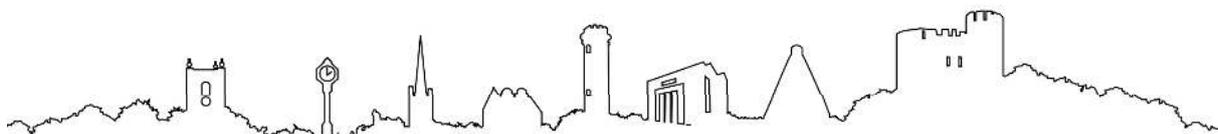
17. The negotiated arrangement provides a favourable deal for the Council.
18. The additional rent-free period (circa total £0.9m) will provide the Council with a favourable timescale to fill the scheme whilst allowing the Registered Provider to build a substantial void pot to support the ongoing arrangement. It will also make the whole arrangement more viable and attractive to Registered Providers.
19. The inclusion of furniture in each flat is unique to this scheme and will provide a positive feature to tenants.
20. The level of building / features will support the Brierley Hill area and investment strategy.
21. The risk of increased costs (labour / materials / works) sits with the Developer with the Council having no liability to cover any increases throughout the build process or through any subsequent changes to the arrangement of the deal through the agreed Heads of Terms.
22. Market exercises have indicated a strong appetite from Registered Providers to take a long lease for the building and from Care Providers for the delivery of a high level care model for older people and people with dementia.

Finance

23. The growing cost of care in the community and across the care home market in Dudley (and nationally) has meant that the need for such a scheme has become paramount.



24. The impact of COVID-19 on the care market will require a renewed focus for Adult Social Care. This build will form a fundamental part of the operating model for Dudley Adult Social Care as the Directorate looks to develop its strategy to transform services and delivery.
25. The scheme will provide a tangible saving against older people's care home placements as detailed in the previous Cabinet report.
26. As part of the negotiated arrangements the Council will have the option to purchase the building and associated land at the end of the 40-year period for £1 (one pound) as part of an Income Strip model.
27. The acquisition of a tangible asset will provide the Council with a large purpose-built building with a number of options available at the end of the arrangement including: -
  - Sale of the building
  - Further lease of the building at a 100% profit level
  - Change of use as dictated by the needs / market
28. All of the above options provide a favourable financial position for the Council.
29. The financial liability over the 40-year arrangement for the Council has been modelled on a range of scenarios based on the agreed cap and collar arrangement.
30. Under these scenarios, the lease arrangement would see the Council liable to the tune of £46m to £50m over a 40-year period.
31. Modelling assumes that the Registered Provider would be able to meet their operating costs and under-lease payments to the Council from the greater of: -
  - a) £182.50 per week rent per unit plus service charges set on signing the agreement to lease with CPI indexation to be applied at the commencement of the lease (assuming that this is within Housing Benefit levels)
  - b) The actual level of rent plus service charges that are within Housing Benefit levels at commencement of the lease



## **Law**

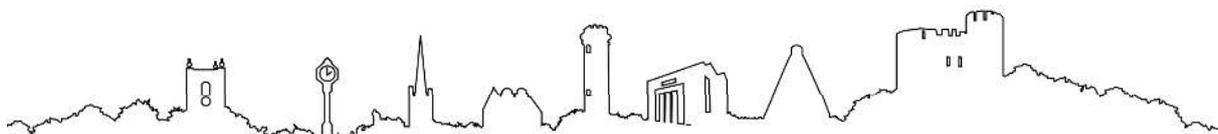
32. Section 123 Local Government Act 1972 provides that the Council may not dispose of any land at less than best consideration than can reasonably be obtained except with the consent of the Secretary of State. However, the General Disposal Consent (England) 2003 provides a general consent removing the requirement for the Council to seek specific consideration. Councils are granted consent in circumstances when the undervalue does not exceed £2million and where the Council consider that the disposal is likely to contribute to achievement of the promotion or improvement of the economic, social or environmental well-being of the whole or any part of the area.
33. The best consideration protocol of the Council is attached for further consideration.
34. Section 1 of the Localism Act 2011 provides the Council with power to do anything that individuals may do.

## **Equality Impact**

35. An initial screening Equalities Impact Assessment has been populated which details the positive impact of the new development on all older people with protected characteristics (including the local community).
36. As part of the implementation of the scheme and associated access to the scheme, a bespoke Governance process has been in place and this will be continued as the scheme is developed.
37. There is no effect of the decision on children and young people as the scheme is for older people.
38. Local schools / children will be involved as part of the community engagement work proposed during the construction phases of the scheme.
39. It is also anticipated that local schools / children will work with the housing and care operator once mobilised with inter-generational activities / opportunities and learning.

## **Human Resources/Organisational Development**

40. There are no Human Resources / Organisational Development implications as part of this report / project.

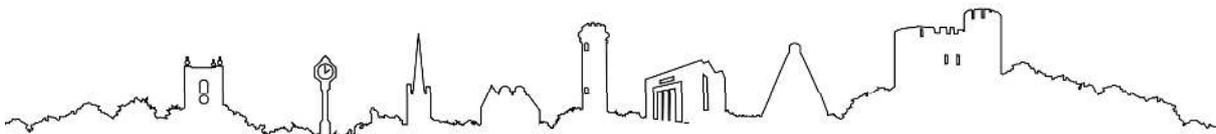


## **Commercial/Procurement**

41. The proposed identification of a Registered Housing Provider and a Care Provider will be managed through the Intend system with support from the Procurement Team.
42. External support from Bevan Brittan has been sourced to ensure that the suite of documents / tender provides the Council with assurances around the management of risks as part of the arrangement whilst ensuring that any prospective Registered Provider will be able to / can clearly demonstrate their ability to take on a long lease and effectively deliver a service.
43. The Procurement Management Group will provide guidance on the optimum route to market in line with the Council / Directorate requirements and will ensure compliance with Contract Standing Orders and Procurement Legislation.
44. The Council has been approached by the Developer and has proposed the scheme on site. This development falls outside of PCR 2015 in that this is a land deal only with no specification provided by the Council.
45. There will be an opportunity to provide a level of input into the build which will fall under the realm of tenant fit out.
46. Bevan Brittan have also been engaged to ensure that the Lease arrangement between the Council and E5 is in place and subsequent sub-lease protects the Council against any risks. This includes: -
  - Optimum length of arrangements
  - Relevant break clauses in favour of the Council in respect of the sub-lease
  - Maintenance of the building to agreed standards and sinking fund arrangements
  - Void costs associated throughout the duration of the arrangement
  - Ongoing sustainability of the scheme / contracts and liability

## **Risk Management**

47. The arrangement will provide the Council with a state-of-the-art new building to meet the ongoing demands for older people in Dudley. However, there are associated risks to the Council in entering the arrangement and are highlighted below.
48. Stamp Duty Land Tax liability



- The Council is potentially liable for circa £200k payment for SDLT

49. Mitigation

- This has yet to be confirmed and discussions with E5 may seek to passport this to the Developer
- Depending on the Registered Provider status (e.g. charity) may have an impact on the SDLT payable

50. Housing Benefit Levels at commencement

Housing Benefit levels at commencement may not cover the rents and service charges required for the Registered Provider to meet operating costs and underlease payments.

51. Mitigation

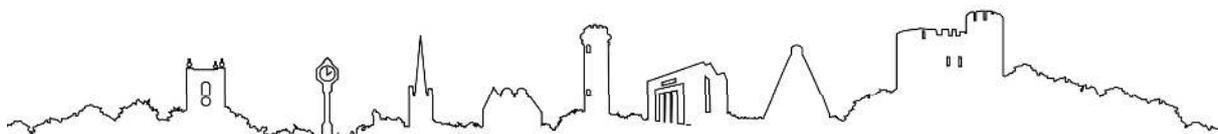
- The Council would only enter into a contract with E5 and a Registered Provider if the financial model were viable within Housing Benefit levels
- The procurement of a Registered Provider will indicate the business and operating models for the arrangement and whether these are achievable at commencement of the service
- The highest current Housing benefit levels for similar schemes in Dudley total £253 per week. The proposed day one charges amount to circa £270 per week. It is fair to assume that the gap between the 2 figures is closed considerably between now and commencement of service (in 2 years)

52. Ongoing Housing Benefit Levels

- The proposed arrangement sees the rent payable to E5 from the Council increasing on a yearly basis in line with the Housing Benefit increases
- However, the model assumes that movements in Housing Benefit levels are within the cap and collar arrangements proposed

53. Mitigation

- The Council have negotiated a cap and collar arrangement of between 0% and 4.65%
- The likelihood of the Government fundamentally changing the HB formula for Supported Living / Extra Care models will have a catastrophic impact on tens of thousands of schemes and tenancies across the country



- Discussions with E5 have taken place and legal wording will be inserted into the Lease should this event occur – to be signed off by DMBC Legal and contracted external solicitor (Bevan Brittan)

54. Failure of the Registered Provider

- Whilst the Council will offset its liability through a mirror lease arrangement with a Registered Provider there may be a scenario where the contracted Registered Provider fails to manage the scheme / is in breach of expected quality standards or exits the market

55. Mitigation

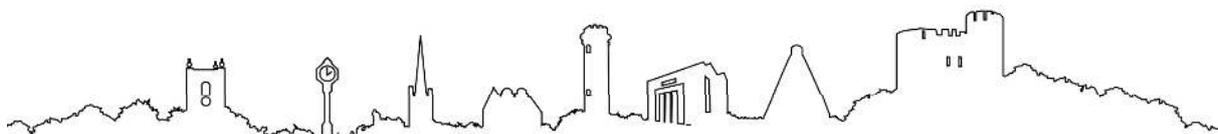
- The Council will incorporate a range of Key Performance Indicators and expected quality standards as part of the arrangement. This will enable the Council to monitor the contract pro-actively.
- A governance process will form part of the contract with the Registered Provider to manage the arrangement with appropriate escalation processes in place where necessary.
- The Council will have the ability to give notice on the Registered Provider contract and seek to reassign the lease to an alternative Registered Provider if it wishes to
- Expectations with regards to building maintenance / expected standards will be consistent with national practice and quality standards. This will be supplemented by a Quality Assurance programme (physical and self-certified) by DMBC.

56. Scheme viability / management of the building for the Registered Provider

- There will inevitably be a level of void flats and ongoing maintenance throughout the duration of the arrangement. This may present a risk to the Registered Providers ability to manage the schemes viability

57. Mitigation

- Both the accumulated void pot and sinking funds will be held in escrow – a legal arrangement whereby access to and ownership of the funding remains neutral. In the event of provider exit the void pot and sinking fund will remain with the scheme and not the exiting provider
- The year 1 rent free period will build both the void pot and sinking fund substantially to support ongoing viability



- The Council will seek to allocate Better Care Fund / CCG funding currently in place to support hospital discharge (P1/P2/P3). This scheme will service part of the requirements with full rent / service charge / care costs for up to 10 flats. This will give the housing provider a level of secure non-void income
- The building will have standard new build warranties and the Head Lease with E5 will incorporate indemnities for any structural / building issues
- Where applicable and appropriate warranties for the schemes features will be in place and agreed

### **Council Priorities**

58. The scheme development is in a priority area within the Borough (Brierley Hill) and will further enhance the regeneration plans within the area. The scheme will also work towards those priorities within Adults Social Care (promoting independence / reducing isolation) through the community model of Extra Care for older people as well those Health and Well-Being priorities for both tenants of the scheme and the surrounding neighbourhood who can access the scheme as a community facility.

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