

Cabinet Report 28 th July 2021	 TOWER HAMLETS
Report of: Ann Sutcliffe, Corporate Director, Place Directorate, Denise Radley, Corporate Director, Health, Adults & Community Directorate	Classification: Part Exempt (Appendices)
Authority to Renew the Lease at Sonali Gardens and to approve a direct contract award to the Peabody Trust to provide continuity of care at Sundial building	

Lead Member	Councillor Mufeedah Bustin, Cabinet Member for Planning and Social Inclusion (Job Share) - Lead on Social Inclusion Councillor Rachel Blake, Cabinet Member for Adults Health and Wellbeing
Originating Officer(s)	Stephen Shapiro, Head of Asset Management Aneta Wojcik, Senior Project Manager
Wards affected	All wards
Key Decision?	Yes
Reason for Key Decision	Financial threshold
Forward Plan Notice Published	8 June 2021
Strategic Plan Priority / Outcome	<p>Priority 1. People are aspirational, independent and have equal access to opportunities. Outcome 1: People access a range of education, training, and employment opportunities. Outcome 3: People access joined-up services when they need them and feel healthier and more independent.</p> <p>Priority 2 A borough that our residents are proud of and love to live in. Outcome 4: People feel they are part of a cohesive and vibrant community.</p>

Executive Summary

On 3rd March 2021 Cabinet approved a future care model that would see the two commissioned day care contracts provided in Sonali Gardens and Sundial buildings also providing community support hub and spoke facilities.

This item has 2 sections:

Section I seeks permission for a new lease agreement between the Council and Clarion, Sonali Gardens Landlord.

Section II relates to a permission to exempt the Peabody Trust from any tendering exercise relating to the improved and/ or reconfigured provision at Sundial.

In respect of Section I, it is proposed to enter into a new lease agreement of Sonali Gardens Building to ensure continued occupation of the building beyond 28th March 2022 when the current lease expires.

The intention of the lease agreement is to allow flexibility of providers and not limited to St. Hilda's (current provider). This will enable an open tender for the provision of care from Sonali Gardens and hence ensure best value is achieved for money invested in provision of care by the Council.

This permission will result in the Council incurring revenue expenditure in relation to Sonali Gardens Building which is anticipated to be in excess of £1,000,000 over the maximum 15 years life of the lease and hence it is key decision. Flexibility is being sought, but we are assessing this over the maximum duration.

Section II seeks approval to directly award a contract to the Peabody Trust for provision of day care and spoke activities element of the community support hub at Sundial building (owned by the Peabody Trust).

This permission will result in the Council incurring revenue expenditure at the estimated value of £2,100,000 over the maximum 6 years period (including all extensions).

Recommendations:

Cabinet is recommended to:

1. Note the position with regard to the proposed new contracts for the provision of day care and community support hub and spoke activities service.
2. Note that premises at Sonali Gardens, which the Council holds on a lease from Clarion Housing, are required as an on-going location for the service and that the existing lease expires in March 2022.
3. Agree that the Council enters into a new lease for a term of up to 15 years, whilst seeking flexibility in the lease, and on the basis of the rent and other main commercial terms set out in Exempt Appendix 1.
4. Delegate authority to the Corporate Director, Place Directorate to agree the remaining lease terms and any minor variations to the terms in Appendix 1.
5. Agree to issue a direct award to the Peabody Trust for the provision of day care at the maximum estimated value of £2,100,000 for up to 6 years (4+1+1 contract) at Sundial building and delegate authority to the Corporate Director, Health Adults and Communities Directorate, to agree the terms.

6. Agree that £135,000.00 funding (agreed by the Cabinet on 03/03/2021 to provide a community support hub service) will be added to the value of day care contracts in Sonali and Sundial to provide community support hub service. The proportion is yet to be determined.
7. Note that the contracts' value might increase in year 5 and 6 by a maximum of 3 % (based on forecasted inflation rate of the Retail Price Index in the United Kingdom from 2021 to 2025) of the contracts' value due to inflation.

1 REASONS FOR THE DECISIONS

Section I

- 1.1 The Council's lease with Clarion, Sonali Gardens Landlord, expires on 28th March 2022. The Council needs to agree Heads of Terms for a new lease with Clarion by Autumn 2021 to ensure continued occupation of the building and its ongoing availability as a location for Council-funded adult day services.
- 1.2 Any delays to agreeing a lease would delay issuing the tender for the new contract for provision of day care and community support hub facilities at Sonali Gardens from April 2022 and thereby the full implementation of the new service model and achieving best value for the money invested in provision of care.

Section II

- 1.3 The Peabody Trust is the current provider of day care at Sundial building which is in the ownership of the Peabody Trust. The Peabody Trust agreed to undertake capital improvements to the Sundial building to better meet the identified needs of the boroughs service users and enable the full implementation of the new service model.
- 1.4 Any delays to agreeing a direct award for provision of day care at Sundial building by the Peabody Trust, would risk the continuity of provision of day care provided and spoke activities element of the community support hub at Sundial building from April 2022 and thereby the full implementation of the new service model.

2 ALTERNATIVE OPTIONS

Section I

- 2.1 Following the Cabinet's decision on 3rd March 2021 to look at options for sites as part of a new procurement exercise that will impact day services provided at Sonali Gardens, Asset Management instructed external agents to undertake a search to identify options for community hub sites in LBTH. This site search concluded that alternative sites could only meet around 60-70% of community hub site requirements, and therefore this option was not considered appropriate.
- 2.2 A direct negotiation between Clarion and the current Service Provider was considered, but not recommended by Asset Management due to the fact that it would remove any link between the landlord and LBTH and reinforce the current service provider's tenancy, restricting future options for provision at Sonali Gardens.

Section II

- 2.3. Competitive procurement of day care at Sundial building was considered, but not recommended due to the fact that the Peabody Trust did not consent for another provider to supply day care at Sundial building. Peabody Trust have also signalled their intention to undertake capital improvement works, at their own cost, as a condition of a potential direct award. This would include the establishment of a fully accessible toilet, a facility which is lacking in this part of the borough.

3 DETAILS OF THE REPORT

3.1. Background

Section I

- 3.1.1. The current lease of Sonali Gardens building expires on 28th March 2022. As a result, the options are to either relocate or agree terms to renew the lease of the existing building.
- 3.1.2. The first option was not considered appropriate (as outlined in section 2 above) and, as a result, it was recommended that staying at Sonali Gardens was explored. Asset Management have entered into initial discussions with Clarion, the landlord at Sonali Gardens, to enter into a new lease and hence extend occupation beyond March 2022.

Section II

3.1.3. The number of providers with suitable premises that supply day care and can therefore bid in a procurement approach of an open tender is extremely limited as the most recent procurement exercise in 2019 showed.

3.2. Progress Update

Section I

3.2.1 Asset Management conversations with Clarion have indicated that Clarion would be agreeable, in principal, to the above proposal regarding the lease length and flexibility of operator. However, matters in respect of the rent and other associated terms still need to be progressed.

Section II

3.2.2. The Peabody Trust has instructed their capital improvements team to undertake structural survey to determine the scope of the capital improvements required. The capital improvements will ensure that the building design fully supports the change of use (from the provision of day care into provision of day care and community support hub spoke activities service) and continuous to support increasing demand for care and support offered from Sundial as well as changing care and support needs of Sundial service users.

3.3. Financial Sustainability

Section I and Section II

3.3.1. There is **£780,351.92** available annual commissioning financial envelope to provide day care at Sonali Gardens and Sundial buildings. There is also an additional £135,000.00 available annual social care financial envelope to provide a community support hub service at Sonali Gardens and spoke activities service at Sundial buildings approved by the Cabinet on 03/03/2021. The current costs of lease of the Sonali Gardens building are met through the Integrated Commissioning budgets.

3.3.2. There is a recognised need within the Integrated Commissioning Services to review the current model of care. The related plan of work was agreed, and the implementation has already commenced and aims to:

- Fully transform day care delivered from Sonali Gardens and Sundial buildings into day care and the community support hub. This will enable exploration of commercialisation/income generation opportunities as part of the new delivery model.
- Introduce a more reablement focused model of care by September 2021 from both Sonali Gardens and Sundial buildings. This will enable to continue meeting increasing demand for day care, maximise

opportunities for move on from day care into a more independent living and better prevent/delay transfer of care and related increased costs of care.

4. OTHER STATUTORY IMPLICATIONS

4.1. Best Value Implications

4.1.1. The Council has a duty of best value and this is applicable to a number of areas in this report.

Section I

4.1.2. The decision regarding re-procurement of day care was considered in the Cabinet report of March 2021. Sonali Gardens competitive procurement have been advised by Procurement Services to ensure value for money. Clarion is agreeable to a request to have no restriction on service provider on the lease agreement. This will enable the Council to issue an open tender for provision of care at Sonali Gardens and ensure best value for money invested by the Council.

Section II

4.1.3. The Peabody Trust has consistently complied with the current day care contract terms and conditions, including quality of care. Continuation of use of Sundial building will not incur the direct costs of rent. To enable the Council to deliver the new model of care agreed by the Cabinet on 3/03/2022, the Peabody Trust also offers capital improvement to the building at no costs to the Council. Hence, the direct award ensures Value for Money will be achieved.

4.2. Consultations

Section I

4.2.1 The decision on lease arrangement is interdependent to the Day Care Transformation Project and the day care provision itself has many stakeholders (internal and external). In developing the approach to the lease thus far, the Asset Management, Adults Social Care, Integrated Commissioning, Strategy Policy and Procedures, Finance and Procurement Services have been involved internally and the Legal Services will now also be involved. Externally, the Landlords of the comparable to Sonali Gardens sites, the current day care service users have been consulted and the views of residents were also taken into account in development of the future options for Day Care Transformation and related site arrangements.

Section II

4.2.2 In developing the approach to the new service model, consultation with service users and stakeholders were undertaken. These highlighted a need for capital investment to improve the quality of design of the Sundial building: provide fully accessible toilets and ensuring the Sundial design effectively supports managing any risks relating to widening the target customer group required as part of the new contract.

4.3. Risk Management

Section I and Section II

4.3.1. The current lease of the Sonali Gardens building offers no right to remain beyond 28th March 2022. The current contract with the Peabody Trust for provision of day care at Sundial, the building owned by the Peabody Trust, expires on 31st March 2022 and the Peabody Trust did not provide consent for the Sundial building to be used by any other day care provider.

4.3.2. There are no fully suitable alternative premises as an alternative to Sonali Gardens; and from previous market research there are no providers with buildings as an alternative to Sundial

4.3.3. Therefore, day care provision is at risk should we be unable to agree new terms with the Sonali Gardens Landlord Clarion, or the Sundial Landlord the Peabody Trust. To this end, it is important that LBTH requirements and terms are clear from the outset, to ensure a smooth and timely conclusion to negotiations.

4.3.4. To lower this risk, Asset Management have instructed external agents, who undertook the initial site search, to update this in case additional properties had become available since their first report. They have reviewed not only retail, but also light industrial and office units of over 4,000 sq ft (371.61 sq m) and have not identified anything within the Borough that could be considered suitable. As they previously commented, they were surprised that there were not alternatives, but it demonstrates the levels of demand within the borough for commercial properties. Should the search have identified anything, it could have been used as an alternative for either Sundial or Sonali Gardens, but it demonstrates the lack of suitable alternatives

Section I

4.3.5. There is a risk attached to dilapidations costs that might need to be met by the council as the landlord is concerned about historic lack of maintenance and are likely to serve an Interim Schedule of Dilapidations on LBTH/St Hilda's (current provider of care at Sonali Gardens). An element of this may be deferred when the new lease is agreed, but until the officers see what is incorporated, further advice cannot be provided.

Section II

- 4.3.7 There is a risk of appointing a provider without competition. By way of a mitigation, the same level of service specification, monitoring and break clauses will be applied as part of the direct award process as it would have been applied for an open tender procurement process.

5. COMMENTS OF THE CHIEF FINANCE OFFICER

- 5.1. The new Sonali Gardens Lease with Clarion will commence on expiry of the current lease in March 2022. Asset Management have been unable to identify alternative sites for the provision of the Day Opportunities Community Hub.
- 5.2. The costs of the Sonali Gardens lease are met through the Integrated Commissioning budgets within HA&C and a budget has been identified to meet the lease costs.
- 5.3. However, a budget pressure could be incurred because of a lack of maintenance of the building and the potential for dilapidations costs being incurred.
- 5.4. The current contract with Peabody Trust for Sundial Centre has a contract cost of £355k. The new Community Support Hub contract with Peabody Trust for this provision is estimated at £300k to £350k per annum for a contract period of 4 years plus 2 years extension. This will cost a maximum of £2.100 m over the life of the 6-year contract period (including the extension periods).
- 5.5. The current available annual commissioning budget for the provision of day care to be provided from Sundial and Sonali Gardens buildings is £780k per annum. The Sonali Gardens procurement of day care (called Community Hub Day Opportunities on the procurement forward plan) has been reported as part of the quarter 1 Cabinet procurement forward plan with a maximum value of £485,000.00 per annum and with the term of 6 years. This has gone already through CLT and is on its way to the Cabinet to be also approved on 28/07/2021. There is a further £135k reinvestment funding to provide a community support hub to be delivered from Sonali and spoke activities service from Sundial, totalling £915k per annum. The value of the Sonali and Sundial contracts will be increased by a proportion of the £135K budget. Costs will be confirmed by January 2022 to ensure that they are maintained within this financial envelope.

6. COMMENTS OF LEGAL SERVICES

- 6.1. The Council has the legal power to enter into the lease referred to in this report.

- 6.2. The Council has the legal duty to submit the purchase of the services of the type delivered and intended to be delivered at Sonali Gardens to competition. However, the nature of the tender exercise would ordinarily require the delivery of the service and sourcing of a building from which the services may be provided. By entering into this lease, the Council can safeguard the use of the building for the delivery of the tendered services.
- 6.3. Following entering into this lease and a subsequent tender exercise for the provision of the services only, the Council can then lease the Sonali Garden premises to the winning service provider who can then provide the services to service users from Sonali Gardens. The Council can consider transferring some of the obligations the Council owes to Clarion under the Council's lease to the service provider as part of the tender exercise. For example, elements of maintenance and repair and payment of rent and other outgoings.
- 6.4. The main risk with this arrangement is that the Council will continue to be ultimately responsible for the condition of the building to the landlord (Clarion). Therefore, the Council will need to regularly monitor the premises once it has been handed over to the service provider to ensure that the service provider abides by its lease obligations shown in the lease with the Council. Similarly, in the event that the service provider ceases to provide the services for any reason the Council will still be responsible for ensuring that rent is paid to Clarion.
- 6.5 The Council is unable to call for competition because, there are no alternative buildings or providers with buildings within the borough to accommodate the service. Thus, the Council is unable to call for competition.
- 6.6 In the absence of competition, the Council is advised to enter into direct negotiations with The Peabody Trust (incumbent) in accordance with the provisions of Regulation 32 (2) (b) (ii) (negotiated procedure without prior publication) of the PCR, as competition is absent for Technical Reasons.
- 6.7 During the negotiation for a direct award with the Peabody Trust, the Council must have regards to the statutory duty of best value in accordance with section 3(1) LGA 1999.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1: Exempt Information
- Appendix 2: Exempt information: Tower Hamlets Adults Day Care Centre Search

**Background Documents – Local Authorities (Executive Arrangements)
(Access to Information)(England) Regulations 2012**

- None.

Officer contact details for documents:

N/A