

CABINET	AGENDA ITEM No. 6
4 DECEMBER 2023	PUBLIC REPORT

Report of:	Stephen Taylor, Executive Director of Adult Social Care & Commissioning	
Cabinet Member(s) responsible:	Councillor Saqib Farooq, Cabinet Member for Adults Services and Public Health	
Contact Officer(s):	Ruth Miller, Senior Commissioning Manager	Tel. 07484520821

EXTRA CARE HOUSING CONTRACT AWARD

RECOMMENDATIONS	
FROM: Cabinet	Deadline date: 4 TH Dec 2023

It is recommended that Cabinet:

Approve the award of a care and support contract to Atlas Care Services Ltd, for three extra care schemes: The Pavilions, Friary Court and The Spinney; with an annual value of £1,711,454; to begin 1st April 2024 for a period of three years, with an option to extend, at the sole discretion of the Council for up to two years, with a total contract value of £8,557,270.

1. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet as this is a decision resulting in expenditure over £500,000 and as outlined on the Council's Forward Plan.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to seek approval to award the care and support contract for three extra care housing schemes in Peterborough: Friary Court, The Pavilions and The Spinney, to Atlas Care Services Ltd.

The contract will run from 1st April 2024 to 31st March 2027, with the option to extend up to two years (at the sole discretion of the Council) to 31st March 2029. The value per annum is £1,711,454, and includes per scheme:

- Housing Related Support: ensuring there are two people on site at any one time during the day and providing activities within the schemes.
- Two waking night members of staff, 10pm to 7am, 365 days a year.
- Spot purchase of hourly care for those residing in the schemes.

To ensure people are kept safe and their assessed needs are met, a new Provider must be awarded as the existing contract with Longhurst Group Ltd is due to end 31st March 2024 for all three schemes.

2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.5:

To make decisions on actions relating to the awarding, assigning and termination of contracts over £500k, and waiving or granting exemptions to Contract Regulations where contracts are

39 over £500k, with the exception any time-critical, operational, or routine decision, which may be determined by the relevant portfolio holder.

- 2.3 There is an exempt annex attached to this report that is NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 because it relates to the financial or business affairs (past or present) of a particular person (including the Council). The public interest test has been applied to the information contained within this exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO
---	-----------

4. **BACKGROUND AND KEY ISSUES**

- 4.1 Extra care housing (ECH) are specialist housing schemes for older people that have been specifically designed to maximise independence. All tenants have their own apartment with a front door and yet also benefit from the availability of the 24/7 onsite care and support service. The supportive environment in extra care enables older people to live independently for longer. It is an important aspect of the prevention agenda as people's health and wellbeing is maintained thereby delaying or preventing the use of residential care.
- 4.2 Currently, there are five extra care schemes in Peterborough where the Council commissions a 24/7 care contract. In three of the schemes (Friary Court, The Pavilions and The Spinney), Longhurst are both the landlord and the care provider. The remaining two schemes (St Edmunds and Bishopsfield) are not considered as part of this recommendation. JUL20/CMDN/18 gave authority for the Council to award the contract to Longhurst for three of the five schemes; Friary Court, The Pavilions and The Spinney, for a period of two years and seven months and an option to extend for seven months. By way of a further CMDN DEC22/CMDN/52, authority was given to extend the contract with Longhurst until the 1st December 2024. The Deed of Extension contained a break clause for Longhurst to end the Contract on the 31st January 2024, providing they served notice.
- 4.3 In December 2022, it was agreed that the contract would be extended for 1 year 10 months to 1st December 2024. Initial discussions with the provider had indicated they would be supportive of the extension. However, when the contract variation was issued by PCC Legal, the provider advised they could not sign the variation for such a long period as there was no provision in the contract for the provider to terminate the arrangement, which they required due to financial reasons. Therefore, it was agreed that an amended contract variation would be issued to give the provider an opportunity to serve notice to terminate the contract on 31st January 2024, providing the notice was issued by 1st June 2023. If this option was not taken, the provider would not have been willing to extend the Contract, leaving the Council without provision and thus having an impact on the service users and causing the Council to breach its duty under the Care Act 2014.
- 4.4 On 31st May 2023, Longhurst handed in their notice in order to invoke the break clause on three of the schemes (Friary Court, The Pavilions and The Spinney) due to not being able to negotiate an hourly rate that was sustainable for them with the Council. Therefore, in accordance with their notice, the existing contract with Longhurst ends 31st January 2024.

Current Situation

- 4.5 Since the termination notice, a fully compliant procurement has been completed in accordance with PCR 2015, with 12 bids submitted, seven of which were disqualified due to the selection criteria and five bids were evaluated and moderated by a panel. Unfortunately, none of the five bids met the quality threshold of 70%, with the highest being 60%. Although the pricing

schedules were not evaluated as part of the tender, it has been noted that all but one of the pricing schedules included hourly rates above the Council's existing ceiling of £18.31ph, currently paid to Longhurst for 2023/24.

- 4.6 As none of the providers met the quality threshold, a conversation was held with Longhurst Group to understand their requirements in order to continue with the service on uplifted rates, under the original contract (as extended) to run until 1st December 2024 and to extend further until the 31st January 2025, meaning they would withdraw their notice of termination. Unfortunately, Longhurst Group's Executive Leadership Team did not accept the proposal to extend on uplifted rates and instead wish to continue with their notice to terminate and withdraw from the extra care housing market completely. However, Longhurst Group have agreed to amend their termination to end 31st March 2024, rather than 31st January 2024, to allow for more mobilisation time for the new provider.
- 4.7 As a result, discussions were held between commissioning, procurement and legal in order to understand the best course of action following the unsuccessful tender exercise. It has been agreed that a direct award under the Public Contract Regulations 2015 Reg 32 (2) (c) is the best course of action. Regulation 32(2)(c) allows the Council to direct award, insofar as is strictly necessary, where, for reasons of extreme urgency brought about by events unforeseeable by the Council and where the time limits for a procurement process under the Public Contract Regulations 2015, cannot be complied with. The Council did not foresee that no bidders would qualify and if a further procurement process was undertaken at this time, it would not be concluded and services mobilised by the 31st March 2024. This would mean there would be a break in service, causing the Council to be in breach of its duties under the Care Act 2014.
- 4.8 Atlas Care Ltd is a provider under the Council's current care at home framework and the Council has no concerns over the quality of their care. Atlas Care has confirmed they can deliver the extra care service at the three schemes, for a period of three years (with the option for the Council to extend for up to two years, at its sole discretion). They are unable to deliver the service under contract for a lesser period of time due to the cost to implement the services and to give the service users the continuity of care they require.
- 4.9 In order to implement the contract, the incoming Provider will need to make substantial initial investments at the beginning, which the contract value doesn't necessarily cover in the beginning. The mobilisation of care provision such as this requires a lot of resource from the new provider, in order to manage the change for the service users, the staff and the wider system. The TUPE terms for the staff include pay above NLW, and above and beyond statutory leave allowances. There is also the possible need to recruit and train new staff, incurring costs; the setting up of new equipment, IT systems. This collectively results in higher upfront costs that will level out through the duration of the contract, resulting in the need for a three-year initial term.
- 4.10 The reasoning given by Atlas Care needing the specified contract term are detailed below:
- a) Impact of change on service users and their families for each time the contract transfers, so the more frequent the change then greater anxiety caused and more uncertainty;
 - b) Impact of change on staff loyal to the incumbent business for each time the contract transfers;
 - c) Their price is based on the term of three years and if the term is for a shorter period the charge rate would have been set higher to reflect this;
 - d) Short term change has an impact on possible CQC inspections and ratings – sustainability is a key part of their inspection process so this is possible risk;
 - e) Staff do not commit to providers who cannot display longevity and security, therefore the possible costs of high sickness levels and numbers exiting the service make the financial risks too high on a reduced term;
 - f) Atlas Care have spent additional monies in their branch offices on more robust internet links and Wi-Fi and will order tablets etc. for staff to work from; this is in line with the

- social care digitalisation programme, however these upfront costs are not recoverable in under the term originally set (again unless the hourly rate is significantly re-worked);
- g) There would be significant costs to the Council to re-tender again and this may clash with other possible high profile tenders (Domiciliary Care)

5. CORPORATE PRIORITIES

5.1 Consider how the recommendation links to the Council's Corporate Priorities:

1. The Economy & Inclusive Growth
 - Environment
 - Carbon Impact Assessment: Following completion of the Carbon Impact Assessment, no specific implications have been identified.
2. Our Places & Communities
 - Health and Wellbeing: This provision supports the health and wellbeing of residents by providing services for people with care needs to achieve better outcomes.
3. Prevention, Independence & Resilience
 - Adults: this provision allows people to remain living as independently as possible for longer and prevents admission into residential care.

Further information on the Council's Priorities can be found here – [Link to Corporate Strategy and Priorities Webpage](#)

6. CONSULTATION

- 6.1 A survey of the residents of the extra care housing schemes was used to inform the specifications for the tender. Soft market testing was undertaken in July/August 2023 to understand the market appetite for extra care and inform the method questions. Due to the limited time and the ending of shared services, consultation was limited to the above for this particular contract.
- 6.2 The remaining two of the five schemes (St Edmunds and Bishopsfield) end in February 2025 and will need to be tendered in 2024. There will be learning from this tender and engagement with the market will play a key role in a successful procurement next year. We will also have more time to prepare and create a specification that better meets the needs of the people in ECH and the Council. This will allow us to fully engage with the residents to understand what works well and what improvements need to be made. Also, to have the opportunity to engage more extensively with the market by means of supplier events to support a better tender outcome.
- 6.3 This recommendation has been considered by the below:
- Corporate Leadership Team (CLT) yes – 14th November 2023
 - Cabinet Policy Forum (CPF) yes – 20th November 2023

7. ANTICIPATED OUTCOMES OR IMPACT

- 7.1 Extra care housing is considered the best option as an alternative for those with care needs than going into residential care placements. People can remain independent with accessible support, have their own apartment and care can be flexed to personalise the level of care if and when their care needs fluctuate. It is also better value for money as residential settings are significantly more expensive than extra care housing.

As a result of this contract, people will be cared for in their extra care housing, ensuring the Council meets its statutory duty under the Care Act 2014.

8. REASON FOR THE RECOMMENDATION

8.1 The incumbent provider is leaving the market and the contract for extra care is ending 31st March 2024. Therefore, the Council must award another provider of care in the three schemes to fulfil the duties outlined in the Care Act 2014. The procurement exercise was not successful, which the Council did not foresee, therefore the recommendation to utilise Regulation 32(2)c of the Public Contract Regulations 2015 allows the Council to direct award a contract that ensures no break in provision for vulnerable people with care needs.

9. ALTERNATIVE OPTIONS CONSIDERED

9.1

Option 1. Remove or reduce the quality threshold and award on price.	
Benefits	Risks
No need to complete another tender, immediately; leaves us enough time to mobilise new contract; won't have to tender new contract for three years, or five years if extension is invoked; no break in service provision.	There is a risk of challenge if we reduce the quality threshold to allow for some of the bidders to get through, and others not. A question over how we would decide what the new quality threshold was, and in addition to this, there was no mention of being able to reduce or amend the quality threshold in the original tender documents. There are risks associated if the Council awarded to one of the five bidders on price alone, because the award is not in accordance with tender documents (there is risk of challenge from providers who bid, Longhurst Group for leaving them no choice but to terminate based on costs being unsustainable and the Council now paying above what they asked for); reputational damage for failing procurement and awarding on cost alone and not on quality of care; the duty of care placed on Councils within the Care Act 2014 is greater than duties under procurement regulations; the bid with the lowest price did not meet the minimum quality standard and therefore runs risk in failing within mobilisation as well as the quality of service delivery resulting in a high likelihood of provider failure and an adverse impact on the service users.

9.2

Option 2 (preferred). Direct award to Atlas Care Ltd, under Regulation 32(2)c. Inform the bidders they were not successful as they did not meet the quality threshold.	
Benefits	Risks
We know the standard of care Atlas Care Ltd are currently providing for care in the community is acceptable; there is very little risk of challenge, although not zero; less resource heavy than completing a mobilisation or full tender; ensures no breaks in provision. It also means we can retender for the other two schemes in 2024 for a period to end when this contract ends (1 st April 2027), so the contract live/end dates will coincide with one and other. When April 2027 comes, all five contracts will be due and extension or a retender.	There is still a low risk of challenge due to the nature of direct awarding.

9.3 Option 3. Complete another procurement exercise to get a provider that meets the quality threshold.	
Benefits	Risks
We will be able to get another provider in place in accordance with the Public Contract Regulations 2015, and we could have a contract to last longer; the new provider will meet quality standards, with little risk of failure;	With the existing contract ending 31 st March 2024 we have limited time to complete another full tender and we would have no mobilisation time for the new provider. This would result in a break in provision of approximately six to twelve months, that could be costly to the Council in terms of internal staffing costs to run the tender, as well as finding spot care to cover the costs of care provision.

9.4 Option 4. Do nothing.	
Benefits	Risks
No additional resources needed. Allow contract to end and do no more commissioning. Cost savings as we won't be paying for the block contract.	There will be no care in place for vulnerable people living in ECH, resulting in risk of harm to them. We will be failing to meet our duty of care under the Care Act 2014.

10. IMPLICATIONS

Financial Implications

- 10.1 The existing rates for Longhurst Group were uplifted for 2023/24, following a period of stagnation in rates. There was no contractual uplift, and the provider did not request any for a number of years. This resulted in the Council paying significantly lower rates than the active market rates and the service being unsustainable. The request for the uplifted rates for the schemes was rejected and as a result, the provider exercised their right to issue notice of termination of the contract. This led to a full procurement exercise being undertaken, which has heavy cost implications in itself in terms of Council resource, which was unsuccessful. The bids also demonstrated providers asking for much higher rates for the provision than we were paying or would have paid Longhurst Group if we had agreed their uplift. This has resulted in entering into a new contract, with a new provider, under a much higher set of rates. There is also consideration needed for the regular payment of the incoming new care provider to the landlord (in this case Longhurst group) for the rental, maintenance and cleaning of the staff communal areas within the schemes. This is a cost of approximately 52 to 67 pence per hour on the spot purchase of care hourly rate, depending on the scheme to cover fees.
- 10.2 The cost for Longhurst Group to run the three schemes was used to budget for 2023/24 and for the 2024/25 business planning. Awarding to Atlas Care creates a pressure of £249,289.13 per annum, details of which can be found in the exempt annex. The three schemes won't be considered for an uplift in 2024/25, so the inflation budget allocated to them will go towards accounting for some of the spend, however this will not cover the majority of it. Serious consideration for uplifts in 2025/26 would need to be had; as the contractual terms will not include a guaranteed uplift, any uplifts are at the Council's discretion and it would not be unreasonable to presume the submitted rates were to cover the costs through the contracts entire duration – or at least the first term of three years from April 2024 to 2027. With this in mind, the costs over the lifetime of the contract should equal out, providing we are scrupulous with uplifts.

Legal Implications

- 10.3 To direct award to Atlas under Regulation 32(2)(c) of the Public Contract Regulations 2015 is compliant. The Council can demonstrate that insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the Council, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with without there being a break in service. The Council has a high duty of care under the Care Act 2014 and must ensure it has the required service in place to meet the needs of the service users.

Equalities Implications

- 10.4 People receiving extra care housing and the staff who work there may be part of marginalised groups or those with protected characteristics. As a result, the Council complete due diligence checks upon award of contracts and regular contract monitoring visits and analysis to ensure people are treated fairly and equally, and there are policies and procedures in place and being used correctly to support people and ensure nobody is discriminated against.

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 11.1 None.

12. PROCUREMENT DN NUMBER - DN675403

13. APPENDICES

- 13.1 Exempt Annex

This page is intentionally left blank