

HEALTH, SOCIAL CARE AND INCLUSION SCRUTINY AND PERFORMANCE PANEL

DATE: 25 JANUARY 2007

GATEWAY REVIEW – REPROVISION OF RESIDENTIAL AND DAY CARE SERVICES FOR OLDER PEOPLE

Ward(s) All

Portfolios: Councillor A Paul

Summary of report:

Members will receive a report on the reprovion project. The previous review undertaken by members on the 28 September 2006 was a Gateway 3 review of the investment decision. Members were asked at the previous review to note that it was a partial review and could only be completed when further information was available around the decision to adopt a TUPE or secondment option and when formal consultation had taken place with residents and service users.

This report provides a update on progress and provides the additional information and recommendation around:

- 1) Outcome of user consultation
- 2) Site selection and programme for site development
- 3) TUPE
- 4) Project timescale including contract approval date

It is anticipated that a further report will be submitted to Scrutiny on the 22 March 2007 which will conclude the Gateway 3 review of the investment decision

Members will be given an opportunity to question members of the project team at the meeting.

Reason for scrutiny:

Due to the longer term nature, this project has been and will continue to be the subject of scrutiny. In adopting the Gateway Review process members will be provided with the opportunity to consider the project at key stages in the procurement cycle.



Signed:

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Date: 16 January 2007

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1.0 Background Information

At the previous meeting of the Health Social Care and Inclusion Scrutiny Panel on the 28 September 2006, Members received updated information structured into a Gateway 3 review format, and presented by the Head of Older People Services and members of the project team relating to progress and a report which was due to be submitted to Cabinet on the 18 October 2006.

Members were advised to note that this was a partial review of the investment decision and could only be completed when further information was available around the decision to adopt a TUPE or secondment option and when formal consultation had taken place with residents and service users.

Following the review by Scrutiny Panel, Cabinet on the 18 October 2006 gave approval to:

- (1) The commencement of statutory consultation with residents with regard to the reprovion programme in general and the current proposals being made by Housing 21.
- (2) Receive a report on the outcome of the consultations at its meeting on the 28 February 2007
- (3) The continued negotiations with Housing 21 on the basis of a transfer of the service from the commencement date of the contract under either a secondment or TUPE arrangement of the staff.
- (4) Note the details in relation to the bids received, and to inform Housing 21 of their status as the sole bidder and the Council's intention to move forward to the next stages of the procurement, with the aim of achieving project close. Such tasks will include:
 - further negotiation with a view to firming up details around the bids in relation to cost, risk and affordability.
 - enabling Housing 21 to commence the due diligence process and move forward with the necessary planning applications and approvals, and various consultations.
- (5) Receive a further report to Cabinet on 28 February 2007 which, subject to consideration of the outcome of the consultation process and subject to demonstrating affordability and vfm, will seek approval to enter into a contract

The purpose of this report is to update Members of progress being made on the project in working towards the recommendations to Cabinet on the 28 February 2007 with particular emphasis on the likely transfer of staff under either a Secondment or TUPE arrangement.

The current position is considered in the following sections under the headings of:

- Outcome of User Consultations
- Consultations with Ward Members

- Site Selection and Programme for Site Development
- TUPE or Secondment Option
- Project Timescale including Contract Approval Date

2.0 Outcome of User Consultations

Age Concern is compiling the feedback information from residents and relatives in an advocacy role. The Council is awaiting the formal report and a meeting is to take place between Officers and Age Concern on the 17 January 2007, accordingly further details of the outcome will be provided to the Scrutiny Panel at the meeting.

Presentations were delivered to all of the residential homes between the 24 October 2006 and the 13 November 2006. An additional evening presentation took place at the Central Methodist Hall on the 7 December 2006 for “all care homes” so that those relatives unable to attend during the day were given an opportunity to do so.

The presentation was delivered to the staff team only at Rushall Mews Intermediate Care Unit, which is intended to remain much as it is. The unit has 3 residents.

The presentation team consisted of the Service and Assistant Service Managers Older Peoples Services WMBC, Senior National and Regional Care Service Managers from Housing 21. Human Resources Officers and Managers from both organisation, and welfare benefits officers from WMBC. A team from Age Concern attended each presentation.

The presentations set out the proposals that would form the reprovision of residential and day care services. Additionally they projected a range of preferences and principles that the Council will carry into negotiations with Housing 21. It was pointed out that the Councils plans are still at a formative stage and whilst the proposals are the Councils ‘current preferences’ these are subject to negotiations with the ‘single provider’ and the outcome of the consultation exercise.

As new more up to date information and opportunities arose these were incorporated into the presentations.

Resident’s attendance at the presentations ranged between 20 – 40% with a similar percentage of relatives attending.

All residents were issued with a presentation pack.

3.0 Consultation with Ward Members

Following the briefing on the Reprovision Project to the Political Groups, it was considered that elected members expressed a preference to be kept informed of progress at a local level and how it might affect their ward.

A number of meetings (see below) have taken place with ward members most affected, to explore and discuss possible implications of the likely proposals.

- Bentley and Darlaston North (Bentley)
- Bloxwich East (Sanstone),
- Bloxwich West (Mossley)
- Darlaston South (Castlevue)
- Rushall – Shelfield (Rushall and The Limes)
- Short Heath (Meadow House and Short Heath)

Drawings and details for various sites are being provided to elected members where available and as requested. Where Care services are to be re-provided on other sites, ward members have expressed a desire to know the Council's intention regarding the planned usage at the end of the transitional period for the old sites, and whether for example existing buildings will be demolished.

4.0 Site Selection and Programme for Site Development

A meeting took place with the Council's Development Team and Housing 21 and their Consultants on the 14 December 2006. The sites considered in detail were Mossley, and Short Heath. A further meeting has been organised for the 1 February 2007 to discuss amended drawings, established principles and the other sites, which include the Delves, Goscote, Baytree and the WHG site at Brownhills.

The preference is for the WHG vacant site at Brownhills, with its better development potential and location, to the otherwise previously identified Northgate site, accordingly WHG are taking an item to their January 2007 Board meeting at the end of this month to seek and confirm approval to make the site available.

By utilising the two sites which are not currently operating as residential care homes in the West and East, the previously programmed construction and transitional period can be reduced from approximately 5 to 3.5 years which results in time, cost, and decanting efficiencies, and with consequential reduced disruption to service users.

Construction works would be likely to commence in Summer 2007 and finish in early 2011.

On the 22 November 2006 Council Officers, together with Housing 21 presented the Reprovision project to the Housing Corporation's investment clinic.

The Housing Corporation continues to be very supportive of the scheme and complimentary with regards to the Council's approach and the strategic clarity and thinking which underpins the proposals. It found the funding structure and proposals attractive, whereby the Council was likely to contribute the land at no cost (125 years lease) and that Housing 21 would be investing in the project. The Housing Corporation therefore considered that the request for Social Housing Grant appeared to represent good value for money, and therefore invited the Council and Housing 21 to submit a formal application for its inclusion within the Corporation's forward funding pool. It would then be considered for inclusion within their funded programme for 2008 – 2010.

It is intended to submit the formal application in early February following the meeting with the Council's Development team. Whilst not at this stage a firm commitment to provide grant funding this is a promising development.

A meeting took place with Housing 21 on the 14 December 2006 to specifically review the Reprovision programme and progress, the selection of the sites and to discuss the workshop held on the 27 November 2006 and therefore whether TUPE or secondment was preferable from a Council perspective.

The master plan for the development of the old Goscote Hospital site has been delayed and is unlikely to be available until early March 2007 at the earliest, accordingly the application for planning approval has been put on hold until such time that the master plan is completed and available. It will be necessary for all parties to explore the desirability and merits of a contract commencement date prior to all planning permissions being in place.

The provisional programme agreed with Housing 21 which identifies the sites and the start and completion dates is included within Annex B

5.0 TUPE or Secondment Option

Members will recall that the invitation to negotiate document identified 3 basic standard bid options which were effectively based on either a TUPE or secondment option.

There is now consensus and a recommendation from Officer's and the Council's professional advisers that the TUPE Day 1 transfer option is preferable to the secondment option in minimising risk to the Council.

This is in the main due to the vires, legal, and practical implications and difficulties presented by the Secondment option which is detailed within the Annex to this report prepared by the Council's legal adviser.

In seeking to arrive at a robust analysis of whether to proceed with a TUPE or secondment option for the Reprovision project, it was considered that using the framework contained within the Council's risk management strategy offered a good basis for analysis.

A number of different perspectives and opinions were sought as to the advantages and disadvantages of proceeding with a TUPE and secondment option through identifying and considering the different risks, and in this way the data produced formed the basis for further consideration and analysis.

The perspectives and areas requested for consideration and analysis were;

- Human Resources
- Financial
- Pensions
- Risk Management and Insurances
- Legal

- Trade Unions (T&GW, Unison , GMB)
- Housing 21

To assist analysis a standard pro-forma was used. The Trade Unions whilst not completing the standard pro-forma which was issued to them, expressed their preference for the secondment option. Housing 21 completed the pro-forma and expressed a preference for the secondment option.

A workshop was held on 27 November 2006 with the intended outcome of facilitating the completion of an Officer report that would provide recommendations and a conclusion as to which of the options was likely to offer the best solution for the project from the Council's perspective.

In analysing the returns and responses for the two options the comments from the different stakeholders were identified as either advantages or disadvantages. What quickly becomes apparent is that whether the characteristics associated with a TUPE or secondment option is an advantage or disadvantage, depends on the stakeholder's perspective.

There was a strong consensus at the workshop and recommendation from Officer's and the Council's professional advisers that the TUPE option was preferable to the secondment option in minimising risk to the Council.

It was considered by those at the workshop that the vires, legal, and practical implications and difficulties presented by the Secondment option made the TUPE option more attractive.

Whilst TUPE itself carries risks, from a purely employment perspective, it was considered to be a "cleaner" option than secondment as the secondment option requires ongoing management on a day to day basis by the Council which carries resource and cost implications in addition to the possible vires and legal issues.

Due to potential uncertainties around responsibilities it was also considered by the advisers that there could be potential issues around insurable and non insurable risks.

Both options currently being considered assume that transfer will take place on day 1. Housing 21's preference for secondment is in the main as a consequence of the reduced risk to them (and consequently greater risk remaining with the Council). They indicated at the December meeting however that they are willing to proceed on the basis of a day 1 TUPE transfer should the Council so require, subject to a number of issues being clarified. Officers will be seeking to clarify these with Housing 21 in the weeks ahead.

It was however considered that whilst the front line services and staff should transfer from day 1 that there may be advantages to both Housing 21 and the Council for the Council to continue operating a number of the back office service to the existing residential care homes during the transitional period, as the Council has in place an existing infrastructure of contracts and support. It also enables the Council to reduce any associated corporate overhead costs in a phased way.

Housing 21 have stated that they would wish to use the Council's existing NVQ training centre during the transitional period, with the option to continue beyond through a service level agreement.

From a financial perspective it has been estimated that the Council's total support costs connected with the reprovion programme within the context of a TUPE and secondment option, are in the region of £90K of which £57K are related directly to employee related functions (HR, payroll, pensions, employment support etc) with the balance being for services such as ISS, audit and finance. The additional cost for a secondment, rather than the TUPE option, is considered to be in the order of an additional £103,000 per year.

6.0 Project Timescale including Contract Approval Date

A further series of meetings are programmed with Housing 21 to firm up a number of the legal and commercial issues for presenting to Cabinet on the 28 February 2007.

A key decision to enable the Project Agreement to be further developed and negotiated upon, and for the proposed contract sum and unitary charge (annual cost) to be made more certain, through clarifying a number of the legal and commercial issues, is whether to proceed on the basis of a TUPE or secondment transfer.

Additionally whilst details were forwarded to the West Midlands pension fund actuaries for a risk assessment and contribution rates, are unlikely to be available until the middle of February 2007.

Due consideration also needs to be given to the outcome of the statutory consultation process which will be presented to Cabinet on the 28 February 2007.

It is therefore anticipated that a further final report will be presented to Scrutiny on the 22 March 2007 and that approval will be sought from Cabinet on the 18/04/07, subject to demonstrating affordability and value for money, to enter into a contract with Housing 21 with a likely contract commencement date of June 2007.

7.0 Conclusion

Members are invited to ask questions of the project team, to comment as they consider is appropriate and asked to note the contents of the report and project progress particularly in relation to:

- the outcome of the consultations
- site selection and programme for site development
- the recommendation to proceed on the basis of a TUPE transfer
- The project timescale and contract approval date

ANNEX A

REPROVISION OF RESIDENTIAL DAY CARE

LEGAL ANALYSIS OF TUPE AND SECONDMENT OPTIONS

This annexe sets out the legal advice on the TUPE and Secondment options and also incorporates the discussions that took place at a “TUPE/Secondment Workshop” on 27 November 2006.

1. Summary

The general consensus reached at the Workshop was that the TUPE option is preferable to the Secondment option for moving staff to Housing 21 (assuming that their appointment as preferred bidder is confirmed) to deliver the Reprovision of Residential Day Care Project (“the Project”). In summary, it was felt that the vires, legal, and practical implications and difficulties presented by the Secondment option was a greater burden than the pensions difficulties presented under the TUPE option.

TUPE itself carries risks (as identified below) but from a purely employment perspective, it is a “cleaner” option than Secondment as the Secondment option requires ongoing management on a day to day basis by the Council. This carries resource and cost implications in addition to the vires and legal issues.

It should also be noted that the discussions took place without the benefit of knowing precisely what structure will be required by Housing 21 going forward. My understanding is that the up to date TUPE lists have now been finalised by the Council and the Council, in conjunction with Housing 21, will be working to ascertain the differences and similarities between the TUPE list and the requirements of Housing 21 in terms of employees going forward. My further understanding is that the Council’s expectation is that, assuming there is to be a TUPE transfer and that the TUPE transfer is to take place on Day 1, there will not be any significant changes to the structure or the working arrangements immediately post transfer. The new service will instead evolve over time.

As we are aware, Housing 21 expressed a strong preference for a Secondment arrangement at our meeting in early October 2006 and it may be necessary to revisit the position following further discussions with Housing 21. I should also point out that I am not a pensions specialist. I appreciate that the Council does have its own pensions specialists but should the Council require any advice from us on pensions issues then I will be more than happy to involve one of my pensions colleagues.

2. TUPE

The purpose of this letter is not to provide any detailed advice on the application and implications of TUPE but in summary, and following the

implementation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (which entirely replace the former 1981 Regulations) for there to be a transfer under TUPE, there must be:-

- a business or “undertaking” capable of transfer which does in fact transfer from one person to another, retaining its identity; or
- a change in contractor where services carried out by one service provider cease and are carried out instead by another.

We briefly tested the issue as to whether or not TUPE is likely to apply to this Project. Again, the overwhelming consensus, based on my advice, is that there is little or no merit in pursuing any argument that TUPE will not apply. The factual position is that the service will initially be run almost exactly on the same basis by Housing 21 as it is currently being run by the Council. Clearly, over the life of the contract, the service will evolve but issues around the application of TUPE at the expiry of the contract will be dependent on the factual position at that time.

We also briefly explored the possibility of a series of TUPE transfers of part of the service. It is entirely possible to have TUPE transfers of part. However, the view here is that this is one service and it will be very difficult if not impossible to break down the service into a number of discreet economic entities that will facilitate a series of TUPE transfers. If it becomes necessary at a later date, we can explore this in more detail.

I advised that, following the House of Lords decision in *Celtec v Astley* the notion that there could be a “phased” TUPE transfer over a period of time is now highly questionable in law. The House of Lords in this case decided that a TUPE transfer has to occur at a single point in time (i.e. on a given date) as opposed to over a period of time. I would therefore strongly advise the Council against considering a phased TUPE transfer but if necessary this can again be reviewed at a future date.

It is worth noting that under the new TUPE Regulations, pre-existing case law has been confirmed in that “purely administrative” transfers within the public sector are not covered by TUPE. My view is that this Project is an outsourcing and clearly not a purely administrative transfer within the public sector.

Further, and in any event the Cabinet Office Statement Of Practice, January 2000 (“the Statement”), provides that within the public sector, even though TUPE may not strictly apply, the matter should be dealt with as if it does. Specific protection is also applied to pension rights. The Statement has no force of law but is followed in practice.

Further, in local government, the then ODPM Best Value Circular, March 2003 (containing the Code of Practice on Workforce Matters) provides protection for transferring staff (including regarding pensions) and also seeks to preclude a “two tier workforce” i.e. new starters being recruited on less favourable terms than their colleagues who were formerly employed by the local authority.

Sections 101 and 102 of the Local Government Act 2003 give the Government the power to make directions as to local authority staff transfers.

My understanding is that the Council has every intention to abide by the principles of the Code of Practice on Workforce Matters. At a later date, it will be necessary to determine precisely how the Council interprets the Code of Practice on Workforce Matters and to ensure that appropriate provisions are included in the contract documentation to ensure that Housing 21 abides by the provisions of the Code of Practice.

The effect of TUPE in broad terms is that the contract of employment of any employee who transfers is deemed to operate after the transfer as if it always existed between the employee and the transferee. Continuity of employment is also preserved. With regard to Union recognition, any voluntary recognition of an independent Trade Union by the Council will transfer to Housing 21 if the undertaking or part undertaking transferred maintains its identity distinct from the remainder of the Housing 21 undertaking. Further, any collective agreements in which the Council is a party to in relation to the affected employees will, in its application to transferred employees, also transfer to and must therefore be honoured by Housing 21 unless and until that agreement is lawfully ended. If the terms of the collective agreement have been incorporated into an employee's contract of employment, those terms will survive the termination of the collective agreement unless and until the transferee validly varies the terms of the employee's contract.

Liabilities arising in connection with the employment relationship, for example, arrears of wages or a negligence claim will transfer to Housing 21 and statutory rights and liabilities will also transfer such as breaches of the employees' rights under employment rights, discrimination, personal injury and other legislation. This will usually be the subject of warranties and indemnities in the contract documentation.

TUPE is effectively a snapshot in time and preserves terms and conditions of employment as at the date of transfer. There is nothing within TUPE itself which provides any guarantee with regard to changes to terms and conditions of dismissals going forward. There are inbuilt restrictions in TUPE as to when and how terms and conditions can be changed and how dismissals can be effected. Dismissals or changes which are TUPE related will be void and/or automatically unfair dismissals unless an economic, technical, or organisational reason entailing changes in the workforce can be established. Again, I will be more than happy to provide further advice on this going forward as necessary.

Note that there are also specific information and consultation obligations under TUPE which are applicable to both the Council and Housing 21. My understanding is that this process has already been commenced but I will be more than happy to input into this process as necessary.

3. **Secondment**

The other main alternative to a TUPE transfer is a Secondment arrangement. There are a number of different types of “Secondment” and it is also possible to have more informal arrangements whereby employees from both Housing 21 and the Council continue as employees of their respective employers (Housing 21 or the Council as the case may be) but work side by side on an “informal” basis. It is important to note that it is a fundamental principle of employment law as it stands (albeit that there are some movements away from this) that there can only be one employer per employee over one contract of employment. It is possible to have dual contracts of employment where the employee genuinely undertakes part of his or her time for one employer and part for another employer. This is effectively two contracts of employment with two different employers sitting side by side. However, it is not at present possible to have two organisations undertaking the role of an employer over the same contract of employment.

Traditionally, Secondments have been used by organisations to “loan” individuals to another employer for a relatively short period of time. The Council will undoubtedly be seconding employees internally and externally on a daily basis and there will be a fairly standard Council Secondment Agreement to regulate this arrangement.

Secondment, as identified above, does carry with it vices; legal and practical implications. Should the Council be minded to pursue a Secondment arrangement, my advice is that this should closely resemble the Retention Of Employment Model (“ROE Model”) which has been pioneered quite successfully in the NHS.

Until the Local Government Act 2000 was introduced there were constraints on the legality of Secondments from public to private sector. However, Section 2 of that Act has made the position more straightforward by introducing a wide ranging power of wellbeing which now makes Secondment more feasible. However, assuming that the 2000 Act provides the power, or vices, to undertake Secondments, the Council will still need to be satisfied that it is exercising its power for proper public law reasons (i.e. correct motive and is acting reasonably). It will also need to satisfy itself that this method promotes wellbeing and delivers best value in the context of the Council’s community strategy.

The next critical issue is whether Secondment works in law where part of the Council’s undertaking is being outsourced to a private contractor. In many cases, including this Project, there is the significant risk that the outsourcing arrangement will constitute a relevant transfer for the purposes of TUPE. In this scenario, the contracts of employment of employees wholly or mainly assigned to the outsourced service would transfer to the private transfer by operation of law regardless of the wishes of the parties. This is subject to the right of employees to object to a TUPE transfer. However, by objecting to a TUPE transfer, ordinarily an employee loses all his or her employment rights

unless the employee can demonstrate that the reason for objecting is that they would suffer a significant detriment by virtue of the transfer.

It is because of the automatic transfer principle that the ROE Model requires staff who wish to be retained in the NHS to make a formal objection to the transfer of their contracts of employment pursuant to TUPE. It is hoped that the effect of this is to prevent the automatic transfer occurring by essentially terminating the existing contract of employment with, simultaneously, the member of staff being re-employed by the NHS under a new contract which makes arrangements for the employee to be seconded to the contractor.

The ROE Model provides for staff who work in defined soft facilities management services at non-managerial level to have the option to remain as employees of the NHS and be seconded to the private sector. The ROE Model does not apply to management grade and nor does it apply to facilities management services. This may not be appropriate to this Project. If management staff were to be seconded then this could increase the risk of Housing 21 becoming the employer in law.

It is hoped that the Tribunals and Courts will not see reason to interfere with the ROE Model arrangements as they are intended to benefit rather than prejudice the staff who are retained by the NHS. However, it is recognised that there is a risk that the objection mechanism might be seen by a Tribunal or Court as a device to get around TUPE in which case these arrangements could be declared void as being in breach of TUPE. TUPE provides that any attempts to contract out of TUPE is void.

The decision in the *Celtec v Astley* case above has cast further doubt on the legality of the objection method as a basis for the ROE. This case suggests that an objection to transfer to the private provider's employment, while in practice agreeing to work for the private provider on a secondment basis, will in fact fall foul of the automatic transfer principles under the Acquired Rights Directive and TUPE (TUPE derives from the European Acquired Rights Directive). However, even if this is the case, there is an argument that, under Regulation 4(1) of TUPE 2006, TUPE only applies to transfer employees if their employment contracts "would otherwise be terminated by the transfer". A strict reading of this wording would suggest that a Secondment arrangement should be valid, on the basis that employment does not need to be terminated by the Council; or rather the Council can continue to employ the employees while seconding them to the private provider (Housing 21). On the face of it, this analysis appears to cut across the automatic transfer principles but if in practice employees have given free consent to the Secondment arrangements then arguably this should not defeat the purpose of TUPE, namely to protect employees. Further, and in any event, it is unlikely in such situations that any employee or indeed the Trade Unions would challenge the position.

As discussed in the Workshop however, it should be noted that even if a Secondment option is pursued, employees could still maintain that they have a right to transfer under TUPE. In practice, this is usually not an issue as the

employees will generally prefer to be retained by the Council. I am however mindful that Housing 21 is a “quasi” public sector organisation.

Assuming that the vires and legal issues can be defended, there are still practical implications associated with the Secondment option. In summary, these include responsibility for making sufficient staff available to perform the services; responsibility for day to day management; responsibility for dealing with disciplinary and grievance issues; responsibility for recruitment; and issues around risk, both in terms of employment law liabilities and also liabilities to third parties.

The ROE Model typically affects terms and conditions in the following way:-

- NHS Trusts determine the terms and conditions of seconded employees.
- NHS Trusts’ procedures for disciplining employees are followed and implemented by the private sector partner.
- NHS Trusts retain the right to terminate the seconded employees’ contract of employment.
- The private sector partner can in certain circumstances terminate a particular employee’s Secondment but this will not necessarily result in the dismissal of the seconded employee.
- The private sector pay seconded employees as agents for the NHS Trust.
- The private sector partner is responsible for recruitment of new staff to work in the services as the agents for the NHS Trust on the basis that the private sector partner must comply with the Trust’s recruitment policies.

None of these issues are insurmountable but they do require careful consideration and appropriate drafting to reflect the position in the contract documentation. There is a balance to be struck between providing the private contractor with sufficient autonomy to properly manage the employees but at the same time for the council to retain sufficient employment responsibilities so as to reduce the risk of employees being deemed to be employees of Housing 21. There is a huge amount of case law, particularly in the field of agency employees, as to who is the correct employer.

There are also potential issues with regard to ensuring compliance with the Statutory Dispute Resolution Procedures both in terms of dismissal and grievance. With regard to discipline, the better view is that as long as the ultimate decision on dismissal is by the original employer (the Council in this case), then, all things being equal, a Tribunal should not find that procedures have been breached in this respect. With regard to grievances, employees might be best advised to raise grievances with both the Council and Housing 21 and the Council would be advised to retain a minimal level of involvement

in all workplace grievances from seconded staff particularly where there is a possibility that the Statutory Grievance Procedure could apply.

The scope of third party liability is beyond my expertise but clearly appropriate insurance provisions will need to be in place. With regard to recruitment and promotions generally and agreement would be necessary as to how this is to take place in practice. The ROE Model does potentially effect the career development prospects of the seconded employee. As management staff are not subject to the ROE Model, the only way that top services non-management employees can progress to a management position is by ending their NHS employment and taking up employment with a private sector partner. There are also issues around potential industrial action depending on exactly who the dispute is with.

There are practical issues as well in terms of managing the Secondment at the outset and in particular that the sequence of objecting and signing contracts of employment is right so as to minimise any risk of liability. This is something that I would be happy to advise further on.

Finally, consideration will have to be given as to what is going to happen at the expiry of the current contract. The position will be governed by the factual position as at that time, in particular whether TUPE (or whatever legislation may be in place by then) applies. There is clearly a risk that the Secondment will terminate at that stage and the Council will be left with having to re-house seconded staff. Due to the nature and length of this particular Project, the likelihood is that most employees will have left by that stage but there may be employees who have stepped into the shoes of seconded local authority employees.

Huw Rolant Jones

EVERSHEDS LLP

29 November 2006

ANNEX B**SCHEDULE OF SITES UNITS AND START AND COMPLETION DATES – 18/12/06**

Start on Site	Finish on Site	Site location And Centres (Ctr)	Alternative		Extra Care	Standard Tenancies	Respite	Inter - mediate	Interim	Dementia Care	Existing Places & (days per week)	Proposed Places & (days per week)
July 08	August 09	Brownhills WHG	Northgate	New	52	50	2			(10)	15 (5)	25 (5)
Sept 08	October 09	Delves Resource Ctr	No change	New	52	50	2				15 (5)	20 (5)
July 07	August 08	Mossley	Sanstone	New	54	52	2			(10)	15 (5)	20 (5)
Sept 08	October 09	Short Heath Resource Ctr		New	60	58	2				20 (7)	20 (7)
Nov 09	Dec 10	Baytree Resource Ctr		New	37	35	2				15 (5)	20 (7)
		Streets Corner (omitted)		existing							25 (5)	0 (0)
		Total			255	245	10			(20)	105	105
											565	605
					Non extra care							
August 07	Sept 08	Goscote - DCU	No change	New	40		10	10		20	0	20 (7)
Float – n/a	Float – n/a	Rushall Mews	No change	Existing	26	0		16	10			
		Total Reprovision Units			321	245	20	26	10	20 (20)	105	125
											565	745

SCHEDULE OF NEW SERVICE LOCATION

Existing Sites	New Service Location
Delves Resource Centre	Extra Care Housing scheme on existing site. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
Short Heath Resource Centre	Extra Care Housing scheme on existing site. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
Baytree Resource Centre	Extra Care Housing scheme on existing site. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
Rushall Mews	Minimal change to existing intermediate care facilities
Streets Corner	Day care facilities and places to be integrated and provided on Brownhills WHG site and / or at Baytree
Meadow House	Extra Care Housing Scheme at Short Heath. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
Sandstone Resource Centre	Extra Care Housing Scheme at Mossley. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
St James Resource Centre	Extra Care Housing Scheme at Brownhills WHG site. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
Bentley Resource Centre	Extra Care Housing Scheme at Short Heath. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
The Limes Resource Centre	Extra Care Housing Scheme at Brownhills WHG site or Baytree. Specialist Dementia Care Unit & Day Care Centre at Goscote. Intermediate care provision at Rushall Mews
Castlevew	Extra Care Housing Short Heath, Mossley or Delves. Specialist Dementia Care Unit and Day Care Centre at Goscote. Intermediate care provision at Rushall Mews