

**AGENDA ITEM: 10**

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Meeting	Cabinet Resources Committee
Date	6 December 2007
<b>Subject</b>	<b>Care Home Contract – Catalyst Housing</b>
Report of	Cabinet Member for Community Services
Summary	Officers are seeking approval to terminate the lease for the residential care home on the Rosa Freedman site. The Home has 18 residential care places. Residents will be offered places in other Catalyst homes run by the Fremantle Trust. Permission is sought to grant a new lease to Catalyst for the running of the day centre only operating on the Rosa Freedman site.

Officer Contributors	Brian Reynolds – Executive Director of Environment and Regeneration Glynnis Joffe - Assistant Director Social Services Dave Stephens – Strategic Property Adviser
Status (public or exempt)	Public
Wards affected	Borough Wide
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not Applicable

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## **1. RECOMMENDATIONS**

### **1.1 That the Committee agrees to:**

- i. the current excluded lease of Rosa Freedman held by Catalyst Housing Group being terminated; and**
- ii. Catalyst being granted a new two year lease of the Rosa Freedman day centre at a peppercorn rent but with the lease being excluded from the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Council 23.10.2000 – agreed the selection of Ealing Family Housing Association to take a transfer of the majority of the Council’s elderly persons residential care homes and day centres on the basis that these would be replaced with modern facilities.
- 2.2 The handover of homes and responsibility for care took place on 2<sup>nd</sup> April 2001. All homes were freehold transfers save Rosa Freedman being a housing property which was a leasehold transfer. This was due to both the Cricklewood Regeneration and the building providing sheltered housing on the same site. The lease has expired and Catalyst has been holding over on the previous lease.
- 2.3 Cabinet 5.11.2002 – approved the swap of sites in Claremont Road, NW2 and East Road, Burnt Oak with Ealing Family Housing Association upon which to develop replacements for the Perryfields and Merrivale elderly persons care homes and day centre.
- 2.4 Cabinet Resources Committee 26 September 2005 - in considering the tender offers for the sale of the majority of the Hendon Football Club site in Claremont Road, received an up-dated projection of the costs which could be incurred by the Council consequent upon the Perryfields/Claremont Road and Merrivale/CGC sites swaps agreements with Catalyst.
- 2.5 Officer delegated powers report of 5 June 2006 - Elderly Persons residential and day care contract - reporting the appointment of Franklin and Andrews to advise the Council upon the increase in revenue contributions requested by Catalyst.
- 2.6 Cabinet Resources Committee of 3<sup>rd</sup> September 2007 -That subject to the Deputy Chief Executive being unable to reach a negotiated settlement with Catalyst, that the areas of dispute and disagreement with Catalyst be noted and that the appropriate Chief Officers be instructed to arrange:
  - (i) To refer the disputed 2001/2006 Care Fees adjustment claim to arbitration in accordance with the provisions of the Care Contract dated 2 April 2001;
  - (ii) That if the recently received Care Fees adjustment claim for 2006/2007 is not resolved by 1 October 2007, it similarly be referred to arbitration;
  - (iii) That the disputes with Catalyst in respect of the Perryfields/Claremont Road and Merrivale/Child Guidance Centre sites swaps agreements, and the Project and Abortive Costs claims arising therefrom, be referred to arbitration and/or independent expert as appropriate.

### 3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 This strategy supports the Corporate Priorities:  
Supporting the Vulnerable – Supporting vulnerable adults to live independent and active lives.
- 3.2 Living Longer, Living Better in Barnet – A joint plan for older people and their carers 2006-2009 – endorsed by Cabinet 3<sup>rd</sup> April 2006.
- 3.3 18 June 2007 - Action Plan: Choice and Independence – A Vision for Adult Social Services.

### 4. RISK MANAGEMENT ISSUES

- 4.1 On 14 August 2006 Catalyst submitted a claim for an adjustment to the care fees to recover an operational deficit, subsequently revising this upwards on 2<sup>nd</sup> April 2007. A further claim was made in July 2007 for 2006/07. A claim for an adjustment to the **care fees** (hereafter referred to as a Deficit Claim) may be made under the terms of the contract with Catalyst where expenditure exceeds income by more than 10% in each year. This clause was included in the contract to give some comfort to the provider in a complex contract where the transfer of care staff, the rebuild of 5 care homes and four day centres, and the decant of residents from old homes to new, all needed to take place seamlessly alongside the provision of care to a highly vulnerable client group.
- 4.2 Catalyst has attempted to mitigate future losses through a high profile change to staff terms & conditions from 1<sup>st</sup> April 2007 onwards. However it is unclear how successful – in financial terms – this has been. Losses present an ongoing and increasing budget risk to the council, and demonstrate that Catalyst cannot provide the service within the budget allocated and that the situation is not improving.
- 4.3 Since CRC in September there has been some progress in agreeing some options for mitigating losses. As part of this negotiation, the Council and Catalyst are in discussion about the level of beds the council should be contractually obliged to purchase. Reducing the number of beds in the contract will help mitigate both void losses, and changing patterns of demand. Officers and Catalyst have agreed that the closure of the Rosa Freedman is an option to help Catalyst with the overall issue of void places.
- 4.4 Both parties have agreed in principal that the overall contract will be renegotiated and officers are currently working on future commissioning requirements.
- 4.6 Changing expectations of older people has meant that there is a decline in the number of older people choosing to go into residential care, with many more now opting for a less institutionalised style of care often referred to as “extra care sheltered housing”. The Council will have access to over 90 new tenancies of this kind from the Spring of 2008, and it is likely that the numbers of new people taking up residential care placements will drop further.
- 4.7 The Direction on Choice requires the Council to provide choice to older people requiring care home placement. Some older people and their families are choosing a non Fremantle home because of reasons of location near to the family or religion or culture.
- 4.8 When a date for the closure of the homes is decided a project plan will be developed to manage the closure of the Residential Home. This includes

consultation with residents and their families. Fremantle have managed other home closures successfully and will take the necessary steps to ensure that disruption for service users and their families resulting from a move will be limited as far as possible. All residents and their families will be offered alternative care.

- 4.9 If the care beds at Rosa Freedman are closed and the Council takes a surrender of the current lease to Catalyst, it will mean that the Council will have to manage a part empty building until it is required for the Cricklewood regeneration scheme.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The current service is inclusive and provides a service to all older people eligible for residential care.
- 5.2 The Fremantle run homes have specialist units for people who have dementia, are learning disabled and an Asian unit.

## **6. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS**

- 6.1 Rosa Freedman is owned freehold by the Council. It provides a care home in part, a day centre and sheltered housing. The care home part and day centre were let on lease to Catalyst at a peppercorn rent for residential care and day care purposes. The lease was for a term of 5 years from 2<sup>nd</sup> April 2001 but excluded the right for Catalyst to the grant of a new lease or the payment of compensation upon expiry of the term.
- 6.2 The new lease of the day centre part will similarly be at a peppercorn rent and will exclude the provisions of Sections 24 to 38 of the Landlord and Tenant Act 1954.
- 6.3 The closure of the residential care part of Rosa Freedman could result in staffing issues. Fremantle will be responsible for these issues under the terms of the Staff Agreement with Fremantle Trust and Catalyst.

## **7. LEGAL ISSUES**

- 7.1 None.

## **8. CONSTITUTIONAL POWERS**

- 8.1 Constitution, Part 3 – Responsibility for Functions, Section 3 – Powers of the Executive, paragraph 3.6 – terms of reference of the Cabinet Resources Committee.

## **9 BACKGROUND INFORMATION**

- 9.1 The Council provided residential care to some 330 older people from 11 care homes and four attached day centres. The Care Standards Act 2000 gave rise to improved physical standards (such as en suite rooms, a minimum space standard of 10 sq metres; etc) which the Council would have been unable to meet within the existing building stock. It was estimated that some £18m would need to be invested within the stock to meet the new standards.

- 9.2 The Council accordingly decided to seek an external partner to reprovide those Homes. On 11 October 2000, a report to the Policy and Implementation Committee recommended that a contract be awarded to the winning consortium of Ealing Family Housing Association (now Catalyst) and their care partner The Fremantle Trust. On the 2 April 2001 the freehold transfer of 11 homes, four day centres, the grant of the lease of the Rosa Freedman care home and day centre, and the TUPE transfer of some 300 staff was fully completed and a 15 year contract for care home provision commenced.
- 9.3 At the time of the transfer, not only was a significant capital liability avoided, but the Council achieved annual revenue savings of some £750,000 per annum in the running costs of the Homes, and some 120 units of affordable housing on the sites not needed for the new Care Homes.
- 9.4 The transfer contract provided for the provision of 5 new, larger, care homes. New homes have been built at Dellfield Court in Etchingham Park Road, Apthorp Lodge in Brunswick Park, and at New Meadowside in West Finchley. The new Homes provide accommodation to a very high standard. Delays beyond Catalyst's control have led to the delay in reproviding the two remaining Homes at Perryfields and Merrivale.
- 9.5 In February 2006 Catalyst approached the Council to indicate that there was poor financial performance on the contract and that they would be submitting a deficit claim. They gave as the principal reason for this performance the lower than anticipated rate of turnover amongst TUPE transferred Barnet council staff. Accordingly, over the last 18 months or so Catalyst/Fremantle have negotiated new terms and conditions for the ex council staff that bring them more into line with existing Fremantle employees.
- 9.6 On 14 August 2006, Catalyst submitted a Deficit Claim for the period 2001/2006, revising this upwards on 2<sup>nd</sup> April 2007. A further claim was made in July 2007 for 2006/07. A Deficit Claim may be made under the terms of the contract where expenditure exceeds income by more than 10% in each year. However, any claim must be timely, reasonable, properly evidenced, and Catalyst must show that they have taken action to mitigate losses as best they can.
- 9.7 Following the rejection of the first Deficit Claim on 26<sup>th</sup> January 2007 Catalyst confirmed their intention to go to arbitration, but did not do so. At Cabinet Resources Committee 3<sup>rd</sup> September 2007, members gave authority to officers to go to arbitration if a negotiated solution could not be achieved. Since then discussions have begun on developing a framework to enable negotiation between the parties on the Deficit Claim and to renegotiate the contract.
- 9.8 Catalyst has agreed to the closure of Rosa Freedman.
- 9.9 The Day Centre at Rosa Freedman is well used. The Day Centre service is currently needed in order to provide stimulation and care to older people with high care needs and respite to their carers. The building is located within the Cricklewood redevelopment area and it is anticipated that it will be required for demolition within the next five years. Officers are currently working on the future commissioning intentions for care homes places and day care with due regard to the commissioning strategy for older people being presented to Cabinet 12<sup>th</sup>

December 2007. This will form the basis for the negotiation on the level of service required for the future contract.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None.

Legal: PJ  
CFO:HG