
Meeting	Cabinet Resources Committee
Date	20 June 2012
Subject	Future management of the Flightways building
Report of	Cabinet Member for Adults Cabinet Member for Resources and Performance
Summary	This report sets out a series of recommendations in respect of the future operation of the Flightways building following the creation of the Local Authority Trading Company.

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Status (public or exempt)	Public
Wards affected	All
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 Council leases the Flightways building to The Barnet Group Ltd on a two year lease at a peppercorn rental on terms to be agreed between the parties to include:**
- I. The Barnet Group Ltd being responsible for non-structural repairs and maintenance.**
 - II. permitting the The Barnet Group Ltd to licence the use of parts of the building to other organisations and retain the income receivable from such users.**
 - III. requiring the The Barnet Group Ltd to ensure all organisations using the building occupy under the terms of a licence, such licence to be in an approved form.**
 - IV. Authorising the Council's legal department to prepare and complete the relevant legal documentation to effect the recommendations.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1** Cabinet (29 November 2010, decision item 8) approved the decision to develop a full business case for the implementation of a Local Authority Trading Company, which would result in the transfer of Learning Disability Services, Physical and Sensory Impairment Disability Services and Mental Health in-house provider services to the Local Authority Trading Company.
- 2.2** On 24 May 2011, Cabinet Resources Committee approved the Adults In-House Service Review Business Case and initiation of a full business plan (decision item 12). It was resolved; that the Cabinet Resources Committee approved the Adult In House Services Business Case to transfer the adult social care service provision from the management of the Council to the Local Authority Trading Company following approval of the business plan.
- 2.3** Cabinet Resources Committee, 16 January 2012, Decision Item 5, approved the business plan for the Local Authority Trading Company, the Barnet Group Ltd and the business plans for the two subsidiary companies, Your Choice Barnet Ltd and Barnet Homes Ltd. This decision allowed for the transfer of the in house services from Adult Social Care to Your Choice Barnet Ltd from 1st February 2012 which included Barnet Independent Living Service delivered from the Flightways building on the Grahame Park Estate.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 4.1** The establishment of the Local Authority Trading Company (LATC) on the 1st of February 2012 is consistent with the Council's Corporate Plan priorities of 'Sharing Opportunities and Sharing Responsibilities' and 'Better Services with Less Money'.
- 4.2** The new LATC through being able to trade with service users who have a direct payment and through involving disabled people and family carers at all levels of the organisation, including as members of the Your Choice Barnet Board can promote greater choice and control for users of adult social care services.
- 3.3** In addition, through bringing Barnet Homes Ltd into the LATC as a subsidiary of The Barnet Group Ltd, the Council is achieving its objective of delivering better services with

less money, through sharing of management overheads so as best able to continue to deliver valued services which continue to be affordable.

4. RISK MANAGEMENT ISSUES

- 4.1 The Flightways building is in the Grahame Park regeneration zone and is due for demolition as part of that regeneration scheme. There are currently a number of users of the building, predominantly voluntary and charitable organisations providing services to the local community in addition to Barnet Independent Living Service (BILS). However, some of the existing users do not have formal agreements in place for their use of the building. To avoid the risk of one, or more users, claiming formal tenancy rights and delaying the regeneration plans it is essential that short term licences are issued to all users as soon as possible to regularise the position.
- 4.2 At present the Council is legally responsible for the Flightways building as there is no formal arrangement in place for the LATC to operate the building or collect income from service users. However, Your Choice Barnet Ltd, through the transfer of the BILS is actually fulfilling this responsibility – the BILS Manager is managing the facilities and overseeing the users of the building. Without a formal agreement in place there is a risk the Council could be held liable for any issues which arise e.g. a breach of health and safety regulations.
- 4.3 There is a risk that the cost of repairs and maintenance on the building will exceed the income receivable. Whilst this risk will sit with Your Choice Barnet Ltd the Council will, under the LATC agreement, continue to underwrite a LATC deficit. If this agreement is not entered into the Council will remain responsible for such costs. Hence, the overall risk remains the same.
- 4.4 The approvals requested in this report will mitigate the risks at 4.1 and 4.2.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Under the Equality Act 2010, the Council has a public sector equality duty to have due regard to three specified matters when exercising its functions:
 - 5.1.1 stopping unlawful discrimination, harassment and victimisation;
 - 5.1.2 promoting equality of opportunity between people who share protected characteristics and those who do not; and
 - 5.1.3 promoting good relationships between people who share protected characteristics and those who do not.
- 5.2 The service is inclusive and provided to people with a range of disabilities to help them live independently. It is however necessary for the Council to ensure that all premises that are used for the provision of services to disabled people are compliant with the requirements under the Disability Discrimination Act 1995 (DDA). The Council through its capital programme has made available funding to ensure that the Flightways building is fully compliant with the DDA. Remedial works are being undertaken during 2012/13 funded from the Council's approved capital programme and it will be the responsibility of the leaseholder to ensure that the building remains fully accessible.
- 5.3 The Council has, in accordance with its statutory obligations, considered the impact on equalities arising from the proposals. The Community Equalities Impact Assessment concluded 'Neutral Impact' and this will continue to be monitored by Your Choice (Barnet) Limited. It has been recognised that as

the Council moves to a more consumer led model, services provided by Your Choice (Barnet) Limited could be subject to change if demand decreases in the long run. In this case Your Choice (Barnet) Limited will conduct further Equalities Impact Assessments as part of any proposed change in order to mitigate any potential risk of inequality.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The approval of the recommendations in this report will not impact on the Council's budget as the income receivable from occupants of Flightways has already been transferred to Your Choice Barnet Ltd in accordance with the LATC contract. With The Barnet Group Ltd accepting responsibility for repairs and maintenance on the building the risk of such costs exceeding the income receivable will sit with Your Choice Barnet Ltd although the Council will, under the LATC agreement, continue to underwrite a LATC deficit.

7. LEGAL ISSUES

- 7.1 The legal position is quite complex as there are a number of factors to be taken into account, as follows:
- State Aid. State aid rules prevent all but minimal support to be provided to commercial organisations. The Barnet Group Ltd as a LATC is a private company and thus is defined as a commercial organisation. External legal advice received has confirmed that there is a sound argument for applying the de minimis rules which allow for 200,000 Euros of 'support' to be provided in each three year period. This would cover the £55,000 per annum commercial lease valuation for the building and allow a peppercorn rent to be charged.
 - Duty to obtain best consideration. Section 123 of the Local Government Act 1972 places a duty on local authorities to obtain best consideration on all asset disposals. However, given the planned future demolition of the Flightways building as part of the regeneration scheme, the intention would be for the lease to the LATC to be for 2 years. The proposed 2 year lease being a short term tenancy for less than 7 years, is excluded from the requirements of the Act.
 - Article 2(3) of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009. This requires the Council to recover the cost of any accommodation it supplies to the LATC. The Order does not define what is meant by accommodation costs. External legal advice is that as the costs to be included in the Article are not defined, the most practical step would be to look at how other documents indicate such costs should be calculated which effectively means The Code of Practice on Local Authority Accounting and The Best Value Accounting Code of Practice and Service Reporting Code of Practice.
 - Section 2.34 of the Best Value Accounting Code of Practice and Service Reporting Code of Practice. This clearly states that "*charges to be made for the supply of services, supplies, works and facilities (eg accommodation) have to cover all of the costs of doing so*". This is how the charges made to the LATC in respect of other services and accommodation are made in that the Council's policy is to add up the total operating costs for each building and allocate it to users based on either floor space occupied or number of staff based in the location. No mention is made in the Code as to the need to charge rentals for accommodation.
- 7.2 On balance, it can be concluded that if The Barnet Group Ltd were to be leased the

building on a peppercorn rent but were to be responsible for all costs relating to that building this would comply with the Code. As the Code is a reasonable basis on which to determine the meaning of accommodation costs in Article 2(3), the provisions of Article 2(3) are also being complied with. The authority not to charge a commercial lease is further covered by the de minimis rules on State Aid and the duty to obtain best consideration is not required due to the short term nature of the lease.

8. CONSTITUTIONAL POWERS

- 8.1 The Council's constitution, Part 3, Responsibility for Functions, paragraph 3.6 states the terms of reference of the Cabinet Resources Committee, which include "all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council".

9. BACKGROUND INFORMATION

- 9.1 On 1 February 2012 Barnet Council transferred a number of adult social care services into the LATC, Your Choice Barnet, a wholly owned subsidiary of The Barnet Group Ltd. This arrangement was underpinned by a contract between Barnet Council and The Barnet Group Ltd. The contract required the provision of support to adults with learning disabilities through the provision of day opportunities (resource centres or community activities), short breaks, supported housing services and floating support.
- 9.2 One of the services transferred was the BILS which has operated from the Flightways building for a number of years. The Manager of BILS has been responsible for the management of the facilities and has overseen the use of the building by other organisations providing services to the local community. The Your Choice Barnet Ltd business plan and budget assumed this role would continue with the LATC leasing Flightways from the Council on a short-term lease and receiving the income from users of the building in return for maintaining the premises. Hence, incentivising Your Choice Barnet Ltd to maximise the use of the building in order to achieve the income levels necessary to maintain the property.
- 9.3 Due to the need to clarify some of the legal issues set out above this arrangement was never formalised in the contract with the LATC and hence whilst their budget includes income from users of the building there is no formal agreement for them to operate the building or to charge users. In order to correct this position and minimise the risk of current users claiming tenancy rights approval is sought to:
- Lease the Flightways building to the LATC on a two year lease at a peppercorn rental.
 - Include terms in the lease that make the LATC responsible for non-structural repairs and maintenance.
 - Include terms in the lease that allow the LATC to licence the use of the building to other organisations and retain the income receivable from such users.
 - Include terms in the lease which require the LATC to ensure all users of the building have a licence.
 - Authorise the Council's legal department to prepare and complete the relevant legal documentation to effect the recommendations.