

Meeting	Safeguarding Overview & Scrutiny Committee
Date	10 th September 2012
Subject	Day Opportunities for Older People Neighbourhood Model – Progress Update
Report of	Cabinet Member for Adults
Summary	The report sets out the process used for consultation with the existing Older Adults provider group on implementing the Older Adults Day Opportunities Neighbourhood Model as agreed by Cabinet Resources Committee on the 17 th July 2012.

Officer Contributors	Caroline Chant, Joint Commissioner for Older Adults, Adult Social Care and Health
Status (public or exempt)	Public
Wards affected	All
Enclosures	Appendix 1 – Equalities Guidelines
Reason for urgency / exemption from call-in	Not applicable
Key decision	Not applicable

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1. RECOMMENDATION

- 1.1. That the Committee considers the Older Adults Day Opportunities Neighbourhood Model implementation process and makes comments and recommendations as appropriate

2. RELEVANT PREVIOUS DECISIONS

- 2.1. Cabinet Resources Committee, 22nd July 2008 (decision item 11) – approved changes to voluntary sector commissioning arrangements
- 2.2. Cabinet Resources Committee, 8th December 2009 (decision item 7) – approved the strategic document ‘Looking after Yourself’ – a prevention framework for Barnet as the basis for the commissioning of preventative services by Adult Social Care and Health.
- 2.3. Cabinet Resources Committee, 24th May 2011 (decision item 6) – approved the Estates Strategy 2011- 2015 and corresponding action plan. This includes, among other targets, to complete a public sector/community assets plan in the Borough and develop the longer term strategy with action plan to co-locate and manage community assets more effectively with our partners.
- 2.4. Cabinet 17th July 2012 (decision item 11), Agreed the Older Adults Day Opportunities Model for Older People. This included an addition of £150,000 to the older adults’ prevention to support the neighborhood model, and a report to be given to Cabinet no later than the 27th September 2012 on the implementation plan developed with existing older adults’ day care providers.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1. The new model for day opportunities, will also support the Corporate Plan objective ‘Supporting residents to lead healthy and live independent lives’ in particular the aim to ‘work with community groups and service providers to develop mutual support’
- 3.2. The Joint Strategic Needs Assessment for Barnet has identified that the population of people aged 65 and over is set to increase by 21% over the next 10 years, and for the 90 plus age group to increase by 55% whilst at the same time resources to the Council to meet the needs of Barnet’s residents are set to decrease in line with the Government’s Comprehensive Spending Review.
- 3.3. Barnet’s draft Health and Well Being Strategy (HWBS) has two overarching aims: ‘Keeping Well’ - a strong belief in ‘prevention is better than cure’ - and ‘Keeping Independent’. Barnet’s voluntary sector has a key role to play, building resilience in families, the community and neighbourhoods. Together with the Ageing Well, the new model for older adults’ day services will improve access to information and advice on a range of health and well being services, will assist to develop mutual support between citizens and increase inclusion, and develop neighbourhood and community based support networks for older people.
- 3.4. The Council’s Estates Strategy 2011–2015 includes a target to complete a public sector community assets plan in the borough and develop the longer term strategy

with an action plan to co-locate and manage community assets more effectively with the council's partners. This reflects the approach required for the neighbourhood model, and indeed the Ageing Well programme; where the aim is to have venues open to all, accessible and flexible, with a brokering service to link services and opportunities to venues.

4. RISK MANAGEMENT ISSUES

- 4.1. Commissioning neighbourhood services with the Barnet Provider Group (BPG) using a lead provider model has been explored as part of developing an implementation plan which will be presented to Cabinet Resources Committee on the 27th September 2012 for approval.
- 4.2. The council has long standing relationships with many of the funded voluntary organisations providing support to older people; they are delivering services of considerable value to Barnet's population of older people. Engagement and consultation with providers has shaped the proposed services and commissioning future provision through the existing provider group, will create the conditions for integrated working between the partners.
- 4.3. There is also a risk that entering into a partnership contract to commission and or provide neighbourhood services directly with the BPG could result in challenge (s) being brought against the council. This risk has been mitigated by testing the provider led proposal against the draft specification and an evaluation process that consisted of presentations to a group of officers, representatives from the Older Adults Partnership Board and specific service user groups. The council has also put in additional support to all of the existing provider group to ensure that they understand the nature of the relationship between individual organisations and the lead provider in this model.
- 4.4. The risk is reduced in view of the following; the fact that Providers approached the council with their 'offer', the provider group self selected the lead provider, the council provided a 'critical friend' who was available to meet with individual organisations (in particular the smaller and minority organisations) to facilitate discussions within the group and to provide additional clarification on the expectations of the council. In addition each organisation was provided with a commissioning 'relationship' manager who could be contacted to advise on wider market opportunities and commissioning intentions to inform decision making.

5. EQUALITY AND DIVERSITY ISSUES

- 5.1. The public sector equality duty in the Equality Act came into force on 5 April 2011. Pursuant to section 149 of the Act, the council has a public sector obligation to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation.
- 5.2. The report follows Cabinet's decision on 17 July 2012 which agreed the Older Adults Day Opportunities Model and instructed the Cabinet Member for Adults to develop in partnership with local providers of Older Adults services an

implementation plan for the Older Adults Day Opportunities Strategy for consideration by Cabinet Resources Committee. In making this decision, Cabinet took into account a full Equality Assessment.

- 5.3. The council has conducted a full equality assessment and prepared an Equality Action Plan.

6. USE OF RESOURCES IMPLICATIONS (Financial, Procurement, Performance and Value for Money, Staffing, IT, Sustainability)

- 6.1. The neighbourhood service which is being commissioned initially for 3 years currently has an annual base budget of £550,000. The total contract value for the 3 years is £1.65M. It is currently funded from the prevention budget in the Adult Social Care and Health budget and section 256 budget for the additional £150,000 for neighbourhood services agreed at Cabinet agreed on the 17th July 2012.
- 6.2. The Council's Contract Procedure rules provide that contracts of the values indicated in paragraph 6.3 should be awarded following a tender process or other approved route. In considering the recommendations to waive this requirement the Committee must be satisfied that the waiver would fall within one or more criteria specified in Paragraph 5.8 of the Contract Procedure Rules:
- *5.8.1 The nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or*
 - *5.8.2 The contract is for works, supplies or services that are required in circumstances of extreme urgency that could not have been reasonably foreseen; or*
 - *5.8.3 The circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or*
 - *5.8.4 There are other circumstances which are genuinely exceptional*
- 6.3 The services to be provided under the neighbourhood model represent a justifiable departure from the Contract Procedure Rules for a number of reasons as articulated under the risk management section. Essentially, the BPG arrangement will ensure a smooth transition from existing services to the neighbourhood model by creating the conditions for service continuity, and retaining the local knowledge and experience. The arrangement will also minimise the potential loss of substantial numbers of volunteers, who are aligned to the existing providers. The combined provider group has a resource of up to 2000 volunteers, who form the backbone of the services provided to older people. The replacement of existing organizations by a new group can result in the loss of volunteers who are not prepared to continue volunteering. These circumstances are consistent with the criteria at (5.8.1 and 5.8.4) as above.

7. PROPERTY

- 7.1. The Council's Estates Strategy 2011 – 2015 includes a target to complete a public sector community assets plan in the borough and develop the longer term strategy

with an action plan to co-locate and manage community assets more effectively with the council's partners.

7.2 Two elements of work are being undertaken within the Council which relate to the delivery of community buildings:

- i. As part of the Estates Strategy discussed at Cabinet Resources Committee on 24 May 2011, council-owned community buildings are undergoing a programme of compliance. This programme is expected to end during November and will inform the forthcoming Community Buildings Strategy.
- ii. Cabinet at its meeting in November will consider the new Community Rights to Challenge, Bid and Buy, further considering the use of community assets within the context of the Localism Act, and a decision will be made at that meeting.

7.3 The Council owns and controls a number of the buildings in use by providers currently delivering day opportunities services. Some may become surplus to requirements as part of the reconfiguration, whilst new premises may need to be sourced in additional locations in order to meet the requirements of the neighbourhood model.

7.4 In order to assist with the reconfiguration of these services and drive the neighbourhood agenda forward, whilst these programmes of work complete, Adult Social Care and Health will work jointly with the sector and with corporate colleagues to actively look at options. This will include seeking out opportunities for sharing and supporting full use of premises and in doing so costs aiming to reduce cost, minimise risk and achieve ongoing sustainability of services.

7.5 Additional premises opportunities may be derived from which others may benefit, for example the recommissioning of Mental Health Day Opportunities or the delivery of Barnet's Ageing Well programme. This work therefore should be undertaken in conjunction with CommUNITY Barnet and the wider provider sector, and contribute to the overall delivery of the Council's Community Buildings Strategy.

8. LEGAL ISSUES

8.1. The services to be commissioned fall under Annex B of Schedule 3 to The Public Contracts Regulations 2006 (as amended). This means that the procurement will not be subject to the full EU tendering rules.

8.2. The Council has carried out Equality Impact Assessments on the proposals and in doing so has had due regard to the goals set out in the equalities/ discrimination legislation as set out above.

8.3. An Equality Impact Assessment has been completed for the neighbourhood model and developed in the light of responses from the public, voluntary sector and service users of day centres and this demonstrates a commitment to ensure that due regard is given to the impact of proposals on all groups with protected characteristics as set out in the EIA. The feedback from consultation has informed the areas of focus of future discussion with service providers and users.

- 8.4 The council is required to have due regard to goals set out in the Equality Act 2010, particularly s149 which sets out the public sector equality duty which came into force on 5 April 2011. The general duty on public bodies states that a public authority must, in the exercise of its functions, have due regard to the need to:
- i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.5 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- i. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - ii. take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - iii. encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 8.6 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- i. tackle prejudice, and
 - ii. promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

- 8.7. The relevant protected characteristics are:
- i. age;
 - ii. disability;
 - iii. gender reassignment;
 - iv. pregnancy and maternity;
 - v. race;
 - vi. religion or belief;
 - vii. sex;
 - viii. sexual orientation.
 - ix. It also covers marriage and civil partnership with regard to eliminating discrimination.

- 8.8 'Due regard' as required by legislation is more than 'regard'; it requires more than simply giving consideration to the issue of disability, race or gender, the law requires a rigorous and open minded approach. There are also statutory Codes of Practice issued by the Equalities and Human Rights Commission.
- 8.9 The Equality and Human Rights Commission guidance has stated that the essence of the new duty remains the same, to have due regard to achieve the three general duty aims. It also states, amongst other matters that public authorities should:
- i. have an adequate evidence base for decision making and to consider what engagement needs to be undertaken with people who have an interest in tackling discrimination, advancing equality and fostering good relations
 - ii. analyse the effect of a policy or practice on equality
- 8.10 The Council is following the Codes and taking the guidance into consideration in formulating its proposals for consideration by Cabinet.
- 8.11 The Council will keep under review whether in developing the new services these statutory duties are relevant.
- 8.12 Attached to this report are guidelines laid down by the Court in the case of **R (OTA Brown) v Secretary of State for Work and Pensions [2008] 3158 (Admin)** which also gives decision makers some additional guidance when considering their equality duties. See Appendix 1.
- 8.13 As a matter of public law the Council is required to put out to consultation, the proposals for changes to the groups affected by those changes. The consultation must be undertaken at a time whilst the proposals are in a formative stage and give sufficient reasons for the proposals and sufficient time for consultation to allow those consulted to be able to give a considered response. The results of that consultation have been taken into account when the final decision is made. The council has been in compliance with this requirement and has worked through the proposals with a group of providers and users.

9. CONSTITUTIONAL POWERS

- 9.1. The scope of the Overview and Scrutiny Committees/Sub-Committees is contained within Part 2, Article 6 of the Council's Constitution; the Terms of Reference of the Overview and Scrutiny Committees are included in the Overview and Scrutiny Procedure Rules (Part 4 of the Council's Constitution).

10. BACKGROUND

- 10.1. Prior to the Cabinet meeting in July 2012 a proposal was received from the Barnet Day Services Provider group (providers contracted with the council to provide day opportunities) requesting that Cabinet consider that a new contract for day services be allocated to existing providers working together. They proposed that one member of the group would be the contracting organisation but the group as a whole would provide services.

- 10.2. Cabinet responded in July by instructing the Cabinet Member for Adults to develop, in partnership with local providers, an implementation plan for the Older Adults Day Opportunities strategy for consideration by Cabinet Resources Committee (CRC). Cabinet also agreed the four models for delivering future day opportunities in Barnet, with the intention that they will begin operating from 1st April 2013.
- 10.3. This section describes what work has been done with providers to develop the neighbourhood model and the implementation plan, and describes the market-testing event held on 15 August 2012.

Older Adult Provider Group and the Neighbourhood Model

- 10.4. A meeting was arranged by council officers on the 23rd July 2012 in order to provide a briefing on the outcome of the Cabinet meeting, next steps and some group work to test the viability of the proposal submitted by the Barnet Provider Group (BPG) as described above. 22 organisational representatives attended along with 2 representatives from the Barnet Older People's Assembly. Council officers explained that the BPG are invited to develop their offer to Cabinet and present this to a stakeholder panel on the 1st August 2012. During that meeting there was a general consensus from organisations present, including the largest ones, that lead provider model should be developed.
- 10.5. In order to support the providers group to develop their proposals a 'critical' friend role was implemented; this is being undertaken by the Councils' Carers Lead. In addition each provider has a commissioning manager relationship lead for individual questions until the end of September 2012. A draft specification for the neighbourhood model was shared with the provider group on 26th July 2012.
- The testing of the neighbourhood model took place on the 1st August 2012 and then a further presentation was made on the 6th August 2012. On these two days a stakeholder panel, which consisted of commissioners, service user and Older Adults Assembly group members, evaluated their presentation and had the opportunity to ask questions of the Older Adults' Provider Group. In addition a further presentation and discussion has taken place between the provider organizations and the Cabinet Member for Adults to discuss their proposals.
- 10.6. The council has written to all contracted providers asking them for confirmation that they have signed up to the BPG proposal and that they have had sufficient information to help them make the decision.
- 10.7. Barnet Provider Group (BPG) are articulating a vision where the neighbourhood model aims to rebuild and re-connect individuals with community support networks that may have been disrupted or disappeared through a recent move from home into supported living, or re-location from another area, a lengthy hospital stay, recent disability or life limiting condition, loss of family support or a life long partner, or any other factor that may have left an individual feeling lonely, isolated, and vulnerable.

Next steps – Neighbourhood Model

- 10.8. Subject to Cabinet Resources Committee's approval on 27 September 2012, the provider partnership group with a lead provider will be tasked with undertaking the following further work for completion by the 1st December 2012:

- i. A worked up detailed operational specification for the neighbourhood model, including schedules of indicative staffing and activities, designed to deliver the outcomes defined in the high level neighbourhood model specification (already sent) within the funding envelope
- ii. A detailed transition plan
- iii. Arrangements for transfers of existing contracts into the new arrangement by April 2013, with the lead provider model
- iv. Transitional arrangements for any existing providers who have decided not to participate in the new arrangements, as they will not be able to rely on council funding after April 2013 to fund their services
- v. Joint communication plans so people who use services are clear about the offer available in neighbourhoods

11. LIST OF BACKGROUND PAPERS

11.1 None

Cleared by Finance (Officer's initials)	MC/JH
Cleared by Legal (Officer's initials)	LC/TE

Guidelines laid down by the Court in the case of R (OTA Brown) v Secretary of State for Work and Pensions [2008] 3158 (Admin) which also gives decision makers some additional guidance when considering their equality duties.

Firstly, those in the public authority who have to take decisions that do or might affect (disabled) people **must be made aware of their duty to have “due regard”** to the identified goals... Thus, an incomplete or erroneous appreciation of the duties will mean that “due regard” has not been given to them...

Secondly, the “due regard” duty **must be fulfilled before and at the time that a particular policy that will or might affect (disabled) people is being considered by the public authority in question.** It involves a conscious approach and state of mind... Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision, are not enough to discharge the duty...

Thirdly, the duty **must be exercised in substance, with rigour and with an open mind.** The duty has to be integrated within the discharge of the public functions of the authority. It is not a question of “ticking boxes”...

Fourthly, the duty imposed on public authorities that are subject to the section 49A(1) duty is **a non-delegable duty.** The duty will always remain on the public authority charged with it. In practice another body may actually carry out practical steps to fulfil a policy stated by a public authority that is charged with the section 49A(1) duty. In those circumstances the duty to have “due regard” to the needs identified will only be fulfilled by the relevant public authority if (i) it appoints a third party that is capable of fulfilling the “due

regard" duty and is willing to do so; and (ii) the public authority maintains a proper supervision over the third party to ensure it carries out its "due regard" duty...

[95] Fifthly, and obviously, **the duty is a continuing one.**