

# Cabinet

5 MARCH 2012

**LEAD MEMBER  
FOR COMMUNITY  
CARE**

*Councillor Joe  
Carlebach*

**REMODEL OF DAY SERVICES**

**Wards:  
All**

This report is in two parts:

**1. The remodel of Ellerslie Road and Nubian Life day services**

Following a 12 week consultation with service users and carers, this report outlines the resulting recommended changes to the Ellerslie Road and Nubian Life day services. It recommends that, in light of the outcome of the consultation, Nubian Life should relocate to 50 Ellerslie Road and share the premises with the existing mental health drop-in.

**2. Procurement proposals for Elgin Resource Centre**

This section will outline the procurement proposals for Elgin Close Resource Centre, which is a day centre for older and disabled people.

**CONTRIBUTORS**

AD FOR ASC  
EDFCG  
ADLDS

**Recommendations:**

- 1. That approval be given for the existing mental health drop-in to continue to operate from 50 Ellerslie Road and share the premises with Nubian Life day service, and to minor improvements to the building to accommodate the needs of the respective service users to be done in consultation with the users of both services.**
- 2. That the Council negotiates and awards a contract with the current providers (Nottingham Housing Trust) for the management of Elgin Resource Centre for a period of a further 18 months and that authority be delegated to the Cabinet Member for Community Care and the Executive Director of Adult Social Care to approve final terms.**
- 3. That approval be given to waive Contract Standing Orders for the reasons detailed in the report (contract annual value £278,200).**

**HAS AN EIA BEEN  
COMPLETED?  
YES**

**HAS THE REPORT  
CONTENT BEEN  
RISK ASSESSED?  
YES**

## **PART ONE:**

### **1. BACKGROUND TO THE REMODEL OF ELLERSLIE ROAD AND NUBIAN LIFE DAY SERVICES**

- 1.1. In February 2011, Cabinet gave approval for changes to some of the borough's day services, which included developing day care options for all care groups that involved activities and support away from traditional building based day centres. Following this Cabinet decision, there has been further progress in the modernisation of day care, specifically for people with mental health needs.
- 1.2. Further consideration has also been given to the buildings currently used for day care. A thorough review of these buildings demonstrated that three of them have become unsuitable for the care groups that are currently using them. These are:
  - 1.2.1 **280 Goldhawk Road** (used by the Options learning disabilities service). This building is Grade II listed and therefore has restrictions on how it can be adapted for wheelchair users. This means that since the recommissioning of this service, which saw the service change to one specialising in people with profound and multiple learning disabilities, the whole of the large upstairs area cannot be accessed by service users.
  - 1.2.2 **50 Ellerslie Road** (used by mental health services users) has capacity for more services to be located from it because traditional mental health day services are not needed as they once were. 50 Ellerslie Road is a large, purpose built, fully accessible day centre and is currently being used on a regular basis by just 20 service users at any one time.
  - 1.2.3 **50 Commonwealth Avenue** (used by the Nubian Life Resource Centre for a range of African Caribbean older peoples' services) is a building that is in a very poor state of repair, being some 20 years past its original lifespan. Nubian Life is a thriving service and cannot continue to run from such a poor building. The upstairs is inaccessible for most service users because there is no lift. It would be prohibitively expensive to repair and adapt the building, so a new location needs to be found for the service.
- 1.3 Buildings-based day opportunities services are reducing because the prevalent opinion is now that people should be supported to engage in activities within the community rather than in a dedicated building.
- 1.4 The need for dedicated buildings has not disappeared but it has reduced significantly. Last year the Council decided to rationalise the use of day centre buildings for older and disabled people by concentrating that service on two sites rather than three and at the same time introduce a community access service. This has successfully been put into effect and 147 Stevenage Road is no longer used as a

day centre. This same change in philosophy equally applies to mental health services and the proposal in this report is a consequence of that change in thinking about service need.

- 1.5 Original consultation proposals suggested that the Ellerslie drop-in could manage without a dedicated staff resource. However following feedback from service users and interest groups, the recommendation is for the drop-in to be staffed at a level that is deemed appropriate for the service.
- 1.6 Because of the reduced need for buildings based day services for people with mental health needs, there is also a reduced need for the staffing numbers. There is a proposal to reduce the Ellerslie staff team and the Medium Term Financial Strategy assumes a reduction in expenditure on the staffing of the service. The staff will be consulted about the reduction, following the formal Council organisational change process, in due course. The reduction in staffing is a separate and distinct issue from the use of the space available at Ellerslie Road. There are no financial implications identified in the Medium Term Financial Strategy from the proposal that the building be shared with Nubian Life.
- 1.7 It is possible that the manager of Nubian Life may be asked to manage both services in the building. Any decision on staffing numbers and their management arrangements will be taken as a Cabinet Member Decision and no approval for it is being sought in this report.
- 1.8 The building review and intention to remodel mental health day services as a consequence of the change in thinking about service need, prompted a consultation about changes to day services, which took place over 12 weeks from 3 October to 23 December 2011. The original consultation questionnaire can be found in appendix 1 and the consultation process in appendix 2.

## **2. ORIGINAL CONSULTATION PROPOSALS:**

- 3.1 Turn the Ellerslie Road building into a Resource Centre, providing space for a learning disabilities services, an all-age physical needs service and a small mental health support group (for existing Ellerslie Road users only). This proposal would involve the following actions:
  - 3.1.1 Move Options from 280 Goldhawk Road into Ellerslie Road, to occupy the ground floor. The service would also have access to the main garden.
  - 3.1.2 Move Nubian from 50 Commonwealth Avenue into Ellerslie Road, to occupy part of the first floor. The service would also have access to the commercial kitchen.

- 3.1.3 Move the existing Ellerslie Road drop-in service users from the ground floor to the first floor, so they would have access to one main room and shared office space.
- 3.1.4 Each service would have its own entrance to the building.
- 3.1.5 The Options service manager would be the overall manager of the Ellerslie Road Resource Centre, coordinating the three services within the building.
- 3.2 Reserve space in the Ellerslie Road building for a small, existing cohort of mental health day service users to continue to meet regularly to provide each other with support in the familiar space they have been used to for many years. This would be self-managed by service users, therefore unstaffed.

### **3. CONSULTATION FEEDBACK AND OUTCOMES:**

- 3.1 The consultation highlighted strong opposition to the original remodel proposals from the majority of the service users and carers of the three day services affected. Full consultation feedback, both quantitative and qualitative can be found in appendix 3, but the main objections were:
  - 3.2 There is not enough space at Ellerslie Road to accommodate three services. Each service would have to reduce in numbers;
  - 3.3 The Options (learning disabilities) service users and carers strongly believed that a learning disabilities day service could not share a building with other care groups, because the needs of the service users are too different and the service would be compromised;
  - 3.4 Although the Nubian Life service users and carers largely supported a move, they believed that the original proposal of only two activity rooms at Ellerslie would not accommodate their service needs.
  - 3.5 The reasons for the objections, coupled with a thorough assessment of the space at 50 Ellerslie Road, influenced officers to change the original proposal for Options to move into Ellerslie Road. The original reasons for the proposals still stand; however during the consultation it was concluded that it is not possible to resolve all of the problems faced by the three day services by moving them all into one building. Therefore the Ellerslie Road building is no longer being considered for the Options (learning disabilities) day service.
  - 3.6 As a result of the consultation, this report recommends that Nubian Life and Ellerslie drop-in will share the day centre building at 50 Ellerslie Road. This proposal will involve the following actions:

- 3.6.1 Nubian Life will be offered a lease for 50 Ellerslie Road, with sole use of the ground floor space for Nubian Life services and activities.
  - 3.6.2 Nubian Life will provide space for the existing Ellerslie mental health drop-in on the first floor.
  - 3.6.3 Nubian Life and Ellerslie drop-in service users have started negotiating how the entire building can be shared by all service users in order for residents to benefit from all activities and opportunities that the centre will house. These negotiations will continue to be led by Nubian Life as the leaseholder of the building.
  - 3.6.4 Both services – Nubian Life and the Ellerslie drop-in will share the main entrance to the building.
  - 3.6.5 Options day service remains at 280 Goldhawk Road. As there is no change to this service, it is not included in the accompanying Equality Impact Analysis.
- 3.7 It should be noted that the proposals to remodel day services were taken to the Health, Housing and Adult Social Care Select Committee both during the consultation and once the consultation was concluded. Select Committee members and the public showed a keen interest in the remodel proposals and influenced the final recommendations to Cabinet.
- 3.8 Positive feedback in support of the proposals to reduce building-based day care for people with both physical and mental health needs was received from interest groups in response to the consultation. This feedback is detailed in appendix 3.

#### **4. CHANGES TO ELLERSLIE ROAD DAY SERVICE**

- 4.1 It is proposed that the first floor of 50 Ellerslie Road is maintained for the Ellerslie mental health drop-in.

#### **5. CHANGES TO NUBIAN LIFE DAY SERVICE**

- 5.1 Nubian Life will be offered a lease for Ellerslie Road. The current Nubian Life service should be unaffected by the move – the same numbers of people will attend to start with and it is hoped that the service will expand. This will be dependent on service users choosing to purchase the service with their personal budgets.
- 5.2 The award of the lease will be executed under existing delegated powers, which enable officers to agree terms for the letting or renewal

of lettings not exceeding a term of 7 years to Voluntary Organisations funded by the Council or registered charities subject to the appropriate budget adjustment having been made. This is delegated to the Assistant Director Building and Property Management in consultation with the CEO/Director of Finance and Corporate Services and the Service Director.

- 5.3 It should be noted that as part of the consultation the Nubian Life service users agreed with a 76% majority that their service should be changed to accommodate people of all ages. Therefore in future people of all ages with physical day care needs could be referred to Nubian Life. It should also be noted that in 2011 Nubian Life changed their constitution in order to be able to offer a service to all local residents.
- 5.4 Although the 50 Commonwealth Avenue building, which is owned by the Council, will be surplus to the requirements of Adult Social Care day services, it is unclear at this stage what the future intentions for this building are.
- 5.5 It is intended that Nubian Life and the Ellerslie drop-in integrate to create inclusive services where day time activities and all building facilities are shared. An implementation plan will be followed leading up to the move, which will include workshops and meetings for the users and staff of both services to plan how service integration and shared use of space will work in practice.

## **6. PART TWO:**

### **PROCUREMENT PROPOSALS FOR ELGIN RESOURCE CENTRE**

- 6.1 Nottingham Housing Trust have been the provider of day services for Elgin Resource Centre since 2002.
- 6.2 There have been a number of extensions to this contract, with the final extension expiring in June 2011. At this time a tender was in the planning stage and this has now been completed.
- 6.3 The tender was unsuccessful as insufficient providers submitted an acceptable PQQ. Subsequent enquiries with providers found that the new model of service delivery and the payment structure were new to the market and they were reluctant to commit to these in the current financial climate.
- 6.4 The project board for remodelling day services have considered this and propose to continue to test the new model of service delivery with Imperial Wharf Resource Centre (which is currently an in-house provision) and to engage with the market on this. This engagement will also involve the payment structure and how the Council can move from

block provision to something that is more flexible for those service users wishing to operate a direct payment.

- 6.5 It is anticipated that this engagement and testing of the service model could take up to 18 months.
- 6.6 We are therefore requesting permission to negotiate a contact with the current provider on the same terms and conditions as the existing (expired) contract to cover this period.
- 6.7 This proposal would allow continuity for service users during the period of engagement with the market and testing of the new model. As there would be no change to the service, it is not included in the accompanying Equality Impact Analysis.
- 6.8 The proposal, however, does carry a level of risk of challenge as we have not followed procurement rules by opening this service contract to the market. A tender is likely to take at least six to nine months and this would mean the new provider would be in place for a maximum of a year. This is likely to be unattractive to the market. It would be very disruptive to the service users, with two possible changes of providers in a short period of time and would not be cost effective to the Council.

## **7. RISK MANAGEMENT**

- 7.1. The 50 Ellerslie Road building has been assessed by the corporate Health and Safety team and by the Disability Forum, to check that it is suitable for more than one service to occupy it. It has been concluded that there are no health and safety risks to Nubian Life and the Ellerslie mental health drop-in sharing the building. Some recommendations for small adaptations have been made.
- 7.2. The procurement proposals for Elgin Resource Centre do carry a level of risk as we would not be following procurement rules. However this can be mitigated with the need to continue a vital service to older and disabled people and the overriding need for continuity. In addition we have been to out to tender and failed to appoint a new provider.

## **8. EQUALITY IMPLICATIONS**

- 8.1 An Equality Impact Analysis (EIA) has been carried out on the impacts of moving the services as outlined in this report and summarised at recommendation 1 ('the remodel of Ellerslie Road and Nubian Life Day Services') on the front page of this Cabinet Report.
- 8.2 The EIA has found that the proposal to remodel the above day services will on the whole have a positive or neutral impact on each of the protected groups, and will be of more relevance to some groups than to others, such as Age, Race and Disability.

- 8.3 The positive impacts will reach people currently using Nubian Life who have physical disabilities in particular - the move to Ellerslie Road will offer superior facilities to meet their day care needs. People with disabilities under the age of 55 will be advantaged because the Nubian service that is currently unavailable to them will be opened up for people of all ages. Those over 55 will still be able to access a service for their age group, as given in the EIA.
- 8.4 Negative impacts mostly concern the transition for all service users that will be affected by sharing a building with new people. Older people and people with mental health needs often find change hard to cope with, so staff will need to be very supportive to ensure a smooth transition. Workshops, opportunities to mix and share activities will be available to the Ellerslie drop-in and Nubian Life service users before the move happens.

## **9. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE AND CORPORATE GOVERNANCE**

- 9.1 As detailed in the report, the remodelling of day services requires two delegated decisions around the awarding to Nubian Life of a lease for 50 Ellerslie Road and the awarding of the contract extension for the management of Elgin Resource Centre. Both decisions will detail the financial implications of the proposed changes.
- 9.2 Detailed in the report is the need to reduce the staffing numbers for the mental health drop-in service at Ellerslie Road. The proposal to reduce the staffing numbers and the Medium Term Financial Strategy assumes a reduction in expenditure on the staffing of this service of £290k which will be a separate Cabinet Member's Decision report on the delivery and management of the remodelled service.

## **10. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)**

- 10.1 For those people who are ordinarily resident in the borough and have an assessed need for such services this Authority has a duty to provide day centres and other facilities.
- 10.2 That duty arises under two statutory provisions. Firstly under s29 National Assistance Act 1948 and in accordance with guidance under LAC(93)10 at Appendix 2 para 2(1)(c), which refers to the duty "to provide, whether at centres or elsewhere, facilities for occupational, social, cultural and recreational activities." Secondly under s2(1)(c) Chronically Sick and Disabled Persons Act 1970 which includes the duty to provide recreational facilities outside the home, and to assist in taking advantage of educational facilities.



- 10.3 The proposed remodelling of older and disabled persons services required full consultation. There is case law guidance as to what constitutes proper consultation. Consultation should include the following:
- (a) It should be carried out when the proposals are still at a formative stage.
  - (b) Sufficient reasons should be given for the proposals to allow those consulted to give intelligent consideration and an intelligent response
  - (c) Adequate time must be given for responses
  - (d) The product of consultation must be conscientiously taken into account when the ultimate decision is taken.
- 10.4 The comprehensive consultation process followed is set out in Appendix 2 and the product of the consultation is set out in detail in Appendix 3 and summarised in paragraph 3 of this report.
- 10.5 When making a decision as to changes in service provision this Authority must comply with the public sector equality duty provisions of the Equality Act 2010 which came into force on 5 April 2011 and widened the general equalities duties with which a local authority has to comply.
- 10.6 The protected characteristics to which the general equalities duties apply now include age as well as the grounds on which the previous equalities legislation already protected people from discrimination by local authorities (i.e. disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sexual orientation, religion or belief and sex). It is clear that the general equalities duties apply to the current users of the three day services affected.
- 10.7 Section 149 of the Act provides (so far as relevant) as follows:
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
    - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
    - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
    - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
  - (3) 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:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) 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;
- (c) 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.

10.8 Case law has established the following principles which Cabinet will need to take into account:

(i) Compliance with the general equality duties is a matter of substance not form. However for a decision such as this it is necessary for the duties to be consciously addressed and the consideration given to them fully documented.

(ii) The duty to have "due regard" to the various identified "needs" in the relevant sections does not impose a duty to achieve results. It is a duty to have "due regard" to the "need" to achieve the identified goals.

(iii) Due regard is regard that is appropriate in all the circumstances, including the importance of the area of life of people affected by the decision and such countervailing factors as are relevant to the function that the decision-maker is performing. The weight to be given to the countervailing factors is in principle a matter for the authority. However in the event of a legal challenge it is for the court to determine whether an authority has given "due regard" to the "needs" listed in s149. This will include the court assessing for itself whether in the circumstances appropriate weight has been given by the authority to those "needs" and not simply deciding whether the authority's decision is a rational or reasonable one.

(iv) The duty to have "due regard" to disability equality is particularly important where the decision will have a direct impact on disabled people. The same goes for other protected groups where they will be particularly and directly affected by a decision.

(v) The general equality duties do not impose a duty on public authorities to carry out a formal equalities impact assessment in all cases when carrying out their functions, but where a significant part of the lives of any protected group will be directly affected by a decision, a formal equalities impact assessment ("EIA") is likely to be required by the Courts as part of the duty to have 'due regard'. The EIA is available to Cabinet electronically and will need to be read and taken into account in reaching a decision on the recommendations in this report. Additionally the equality implications are summarised at paragraph 8 of this report.

(vi) The duty to have “due regard” will normally involve considering whether taking the particular decision would itself be compatible with the equality duty and whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on any particular protected group. It may also require consideration to be given to treating any particular affected group more favourably.

## **Legal comments relating to Part 2: Procurement proposals for Elgin Resource Centre**

- 10.9 It is noted that it is proposed to further extend the contract with the Notting Hill Housing Trust for the provision of day services at the Elgin Resource Centre. Whilst the services provided under this contract are categorised as Part B services, and are therefore not subject to the full regime of the Public Contract Regulations 2006, the Council is still required to comply with the general EU treaty principals of transparency and non-discrimination. This requires the Council to carry out a competitive process for the procurement of the services. A failure to comply with these principles leaves the Council at risk of challenge (including a claim for damages) under EU procurement rules.
- 10.10 It is also noted that the client department has attempted to carry out a competitive process to award a new contract for this service but was unsuccessful as the market was not, on the whole, willing to provide the service in accordance with the cost model proposed by the Council. The client department has set out in the main body of this report the justifications for extending the current contract as an interim measure whilst a new service model is tested.

## **11. COMMENTS OF THE ASSISTANT DIRECTOR PROCUREMENT AND IT STRATEGY**

- 11.1 In accordance with the Council’s Contract Standing Orders (CSO’s) a prior written waiver to the CSOs may be agreed by the appropriate Cabinet Member(s) and Leader of the Council for an estimated contract value of more than £100,000 if they are satisfied that a waiver is justified.
- 11.2 The waiver to CSO is for the following reason(s):

“the nature of the market for the works to be carried out, or the goods to be purchased, or the services to be provided has been investigated and is demonstrated to be such that a departure from these CSOs is justifiable”

## APPENDICES

### 1. REMODEL OF DAY SERVICES QUESTIONNAIRE

### 2. CONSULTATION PROCESS

### 3. CONSULTATION FEEDBACK

#### LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext holder of file/copy	of of	Department/ Location
1.	<b>HHASC Select Committee report – Remodel of day services</b> January 2012	Hannah Carmichael x5384		QCP Commissioning
2.	<b>CMD to consult on the remodel of day services</b> September 2011	Hannah Carmichael x5384		QCP Commissioning
3.	<b>Key Decisions Cabinet report – Changes to day services</b> February 2011	Hannah Carmichael x5384		QCP Commissioning
4.	<b>Equality Impact Analysis – 20/01/2012</b> Available online	Hannah Carmichael x5384		QCP Commissioning
<b>CONTACT OFFICER:</b>		<b>NAME: Hannah Carmichael</b> <b>EXT. x5383</b>		