# NHS England
## Project Initiation Document

<table>
<thead>
<tr>
<th>TITLE OF SCHEME</th>
<th>Transfer of Properties for People with Learning Disabilities from NHS Property Services to Westminster City Council: Flats A, B and C 291 Harrow Road/1-2 Elmfield Way</th>
</tr>
</thead>
</table>
| SPONSORING NHS ORGANISATION (S) | Sponsor 1: Central London Clinical Commissioning Group  
Sponsor 2 West London Clinical Commissioning Group |
| CONTACT DETAILS | Provide details of lead sponsor officer for the scheme (name/title/office & mobile phone number/email address)  
Cath Attlee, AD Joint Commissioning, NHS NWLCSU  
Cath.attlee@nwlcsu.nhs.uk  
0790 3956961 |

## BRIEF SCHEME DESCRIPTION

*Include description of:*

(a) *location*

(b) *scope*

(c) *objectives and benefits* – these may be financial and/or non-financial

(d) *wider stakeholders and their interest* e.g. potential occupants

Flats A, B and C 291 Harrow Road and 1-2 Elmfield Way are adjacent residential properties in North Westminster currently providing accommodation for 19 adults with learning disabilities and autism.

The transfer of these assets is the final part of the transfer of commissioning and funding of social care for adults with learning disabilities originally initiated by the **Valuing People Now** government programme 2008 which was unfortunately not completed prior to the cessation of the PCT.

The commissioning responsibility and funding for these services is already with Westminster City Council (WCC). This proposal is seeking a s256 grant to enable the transfer of the capital assets to complete the transfer of responsibilities as envisaged in the Valuing People Now programme.

The transfer will enable WCC to proceed with the development of the site, along with an adjacent vacant site currently owned by the Department of Health, to provide 27 units of accommodation for people with learning disabilities, physical disabilities and autism (an increase of 8 units), and to provide 64 affordable housing units on the remainder of the site; a mixed housing development at a scale which provides appropriate support for vulnerable adults and much needed housing for key workers.
STRATEGIC NEED

Provide justification for the scheme

Valuing People Now: From Progress to Transformation proposed the transfer of responsibilities for the commissioning of services for people with learning disabilities was to be transferred from primary care trusts to local authorities over a period of three years, culminating in March 2011. This has now been completed and revenue funding relating to learning disabilities services now flows direct to local authorities rather than through primary care trusts.

A DH Letter of August 2008 and detailed annexes set out the policy and legal framework for the transfer. Paragraph 16 referred to capital asset values and read as follows:

“The majority of the NHS funding for people with learning disabilities was previously used to fund long stay hospital provision. Some of the services developed to replace that provision therefore have capital grants associated with them, where the PCT holds an interest in the property on behalf of the Secretary of State. In implementing this transfer, it is important that: Any revenue funding that supports the associated capital estate is identified and is also transferred. For campus re-provision this may form part of the transfer from April 2009 or April 2020, in those areas where campuses re-provision is still underway;

The capital interest in properties is transferred from the NHS to local government to reflect the changed commissioning responsibilities.”

Further guidance was issued in June 2009 on the Transfer of Commissioning and Funding of Social Care for Adults with Learning Disabilities – Capital Transfer (copy attached Appendix A).

Proposals for the transfer of the Westminster properties were considered and approved by the INWL PCT Sub-Cluster Board in September 2011. Westminster City Council has formally approved the transfer, subject to agreement on terms.

The NWL PCT Cluster Board discussed the transfer in January 2013 and, while generally supportive, minuted concerns relating to ensuring that the sites continued to provide accommodation for people with learning disabilities in the future, and that appropriate restrictions were put on the property to ensure that this takes place.

The land transfer agreement to be put in place includes the necessary conditions around future use of the assets to ensure that the provision of care for people with learning disabilities is sustained locally and to a high standard.

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1 Gateway reference 9906
2 Gateway reference 12088
The CCG and NHSPS lawyers, DAC Beachcroft, have already been briefed following a decision by NHS Westminster in 2010 and a draft transfer agreement is attached at Appendix B.

The agreement contains contractual obligations on WCC to repay the s256 funding (or a proportion thereof) if it uses the Site for less than 19 learning disabilities places. WCC will be under an obligation to keep NHSPS/CCG informed as to the current amount of learning disabilities places available at the Site. Notwithstanding the s256 requirements, the obligation to repay will fall away after 20 years from the date of purchase of the site. [still to be agreed with NHSE]

Notwithstanding the s256 Requirements, the s256 funding will not be secured by way of a legal charge against the site because any such charge would be void under s13 of the Local Government Act 2003) but by a Land Registry restriction. The restriction will prevent WCC from making any disposals of the whole or any part of the Site or granting any leases without seeking the consent of NHSPS/CCG. However, NHSPS and the CCG will be obliged to consent in certain circumstances, e.g.: where there are more than 19 learning disabilities places being provided at the Site (but not where there is a disposal of the whole). The restriction will not “catch” changes in the use of the Site but NHSPS/CCG will have the opportunity to monitor the situation every time WCC applies for the necessary consent. Like the capital grant agreement, the restriction will fall away 20 years after purchase of the Site. [still to be agreed with NHSE]

NHSPS will require WCC to pay overage if WCC sell the Property without undertaking the redevelopment of the Site within 7 years of the date of sale then WCC will pay NHSPS 70% of the difference between the new sale price and the Price (increased by RPI) after deduction of WCC’s relevant expenditure including any abortive planning costs.

The requirements of the PCT Board have now been met, and in line with Valuing People Now, the transfer should now take place. To enable the transfer to take place the s256 capital grant is required to enable the council to purchase the properties in line with the original guidance.

CONSISTENCY WITH COMMISSIONING AND ESTATES PLANS

Include confirmation of whether formal public consultation is required.
Include confirmation of whether any planning permission (including change of use) is required.
Include confirmation that the proposed scheme is consistent with the sponsor organisations clinical and (where appropriate) estate strategies.

These two properties [291 Harrow Road and 1-2 Elmfield Way] are part of a development proposal to re-provide and extend accommodation for people with learning disabilities combined with physical disabilities, and for people with autism. The Outline Business Case for this proposal was approved in 2009 and
signed off by NHS London with responsibility for implementation at that stage passing to WCC. Procurement of a developer is about to commence and it is therefore necessary to complete the transfer of the capital assets at this stage to provide assurance to potential developers.

The transfer of the two properties to Westminster City Council, along with the concurrent transfer of the neighbouring vacant site from the Department of Health, will enable the whole site to be developed to provide new and additional accommodation for people with learning disabilities plus additional affordable housing units, for key workers and other eligible residents.

Fit with key policies/strategies:
- Valuing People Now
- PSA 16 Housing Delivery Plan (2010-11)
- WLDP Big Plan 2009 – 2013
- National Indicator 145 – Adults with Learning Disabilities in settled accommodation
- Westminster Learning Disabilities Housing and Support Operational Pathway 2012-2015
- The Housing Renewal Strategy February 2010
- Local development framework

A draft planning brief covering the combined sites was prepared in response to a request by NHS Westminster and Westminster Corporate Property as a result of the development opportunity presented by the assembly of all three sites. The Draft Planning Brief was published for public consultation from 7th July to 18th August 2011 and comments were invited formally, by letter, from all key stakeholders and interested parties. The results were reported back to planning sub-committee and the adopted Planning Brief was signed off by the Cabinet Member for Built Environment on 8th November 2011.

A planning application will be submitted by City West Homes on behalf of WCC and will be informed by the adopted planning brief. The planning exhibition board presentation is attached at Appendix C to demonstrate the overall development plan which will provide positive outcomes for all partners.

The two Clinical Commissioning Groups established in April 2013 have supported the transfer and proposed development of new and additional accommodation for people with learning disabilities, physical disabilities and autism.
COST ESTIMATES
(Inc. VAT)

<table>
<thead>
<tr>
<th>Year</th>
<th>13/14</th>
<th>14/15</th>
<th>15/16</th>
<th>Total</th>
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<tr>
<td>Total Capital Cost: (to NHS)</td>
<td>£2,143,102</td>
<td>£2,143,102</td>
<td>£2,143,102</td>
<td>£2,143,102</td>
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<tr>
<td>Net Recurrent Revenue Impact: (to NHS)</td>
<td>£nil</td>
<td>£nil</td>
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<tr>
<td>Estimated lifecycle costs: (to NHS)</td>
<td>£nil</td>
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A s256 Grant for the sum of £2,143,102 is sought by the CCGs to enable the transfer of the assets from NHS Property Services Ltd to Westminster City Council, in line with Valuing People.

ANTICIPATED CAPITAL SOURCES

- NHS England: £2,143,102
- NHS Property Services Ltd: £nil
- Community Health Partnerships/LIFTCo: £nil
- GLA Contribution: £960,000
- Other (specify) Westminster City Council: c £17,700,000
- Total: £19,900,000

The proposed transaction entails the transfer of landholdings from NHS Property Services and the Department of Health (DoH) to Westminster City Council for the re-provision of specialist housing for clients with learning disabilities together with the provision of intermediate affordable housing, both for general needs and for key-workers from the NHS and other public sector bodies.

Three sites are proposed to be transferred, two in the ownership of the NHS Property Services, and the remaining one in the ownership of the DoH, to Westminster City Council. Any land transaction will need to demonstrate that "best consideration" has been received under s123 of the Local Government Act 1972. WCC will be paying the DoH, £1,680,690, the value of the N3 site including 10% overage.

The transfer of the NHS sites has been approved in principle originally by the PCT, and subsequently by the newly formed Central and West London Clinical Commissioning Groups, subject to agreement on the terms. It is understood that this will be at nil cost to the Council as it is in accordance with DoH Guidance on the transfer of responsibilities for people with learning disabilities from the NHS to local authorities. The figure for the NHS sites comprises £2,143,102 – the current valuation of the site.

The two land transfers are interdependent; only if both go forward can the development proceed, unlocking the additional value and benefit to all parties.

The legal agreements of transfer are in draft form and currently being finalised between DAC Beachcroft Solicitors, on behalf of NHS Property Services Ltd and the Department of Health, and Nabarro on behalf of WCC. The draft agreements are appended.

Once City West Homes has secured planning consent and
exchanged on the transfer of the 3 sites for development, City West Homes, on behalf of WCC, will issue invitations to tender for the construction project. WCC will use the GLA framework to tender for a successful constructor partner.

Once the successful completion of the transfer of the three sites from NHS Property Services (NHS PS) and the Department of Health (DoH) to WCC has been achieved, these sites will be held in the General Fund and the revenue generated from rents on the new development will be retained by the General Fund.

Based on current total projected development costs of £19.9m and allowing for other sources of funding being provided as set out above, it is anticipated that prudential borrowing of circa £8.8m will be required by the Council which will result in a viable self financing scheme, spread over 40 years, giving a return of £11.5m at 6% NPV over the period.

**REVENUE AFFORDABILITY**

*Net Recurrent Revenue Impact: £xk (Outline any additional costs and any planned offsetting savings)*

Specify funding source for any adverse net impact

The Recurrent Revenue impact relating to the Learning Disabilities Accommodation will be retained by Westminster City Council, as it has been since the Valuing People transfer in 2008-09.

There will be no recurrent revenue impact for the NHS.

**ESTIMATED PROJECT DEVELOPMENT COSTS (Inc. VAT)**

<table>
<thead>
<tr>
<th>Already incurred by Project Sponsor(s)</th>
<th>£390,525</th>
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<tbody>
<tr>
<td>(NHS Westminster – predecessor to CCGs)</td>
<td></td>
</tr>
<tr>
<td>Further estimate to achieve OBC/Stage 1 LIFT approval</td>
<td>£ n/a</td>
</tr>
<tr>
<td>Further estimate to achieve FBC/Stage 2 LIFT approval</td>
<td>£ n/a</td>
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**PROPOSED PROCUREMENT STRATEGY**

*Where available attach a key milestones plan e.g Date of procurement Planned start of works Estimated completion date*

In February 2013 a contract was awarded for the provision of “Project Planning Design Services for the design and planning stages (A-D) for the redevelopment of the three sites for the period of one year.

The appointed company, Tibbalds, have now taken the design through to stage C, and are preparing the planning application for submission in November 2013, having undertaken consultation with local stakeholders. It is hoped to issue the ITT
The procurement route to award the contract for a constructor to build the scheme will be through running a mini competition from the Greater London Authority (GLA) framework for development partners, known as the London Development Framework.

The London Development Framework was procured using an OJEU compliant process two stage Restrictive Procedure – ref OJEU 2012/ S 69-113942. Despite not being directly named on the OJEU notice WCC have been generically named under the heading of the 32 London Boroughs. The framework was awarded in May 2013 and has tenure for 4 years, expiring in May 2017.

The GLA designed the framework to primarily provide a panel of development partners to provide new housing schemes and infrastructure projects that include a land consideration. In addition to this, the framework also provides construction services.

The mini competition will be conducted once WCC has exchanged contracts on the land that it is acquiring from NHS Property Services and the DoH.

The project plan is attached as Appendix D.

**KEY RISKS**

The key risks identified in the Risk Register relate to potential development cost over-runs; the ability to achieve the rental income assumed in the model; confirmation of the transfer of the land from the DoH and NHS Property Services.

However, the land transfer agreements have now been drawn up and agreed, with completion subject to the s256 grant application being confirmed since this will enable the transfers to take place.
Note: By endorsing the Project Initiation Document below the project sponsor(s) commits to reimbursing project costs incurred by a third party if the sponsor(s) subsequently decides not to proceed with a viable project.

<table>
<thead>
<tr>
<th>ENDORSED BY:</th>
<th>Organisation</th>
<th>Name</th>
<th>Signature</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>SPONSOR ORG 1</td>
<td>Central London Clinical Commissioning Group</td>
<td>Clare Parker</td>
<td></td>
<td></td>
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<tr>
<td>DIRECTOR OF FINANCE</td>
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<td>/ CHIEF FINANCIAL OFFICER</td>
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<tr>
<td>SPONSOR ORG 2</td>
<td>West London Clinical Commissioning Group</td>
<td>Clare Parker</td>
<td></td>
<td></td>
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<td>DIRECTOR OF FINANCE</td>
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<tr>
<td>NHS PROPERTY SERVICES REGIONAL</td>
<td>Westminster City Council</td>
<td>Tony Griffiths</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DIRECTOR</td>
<td></td>
<td></td>
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<tr>
<td>OTHER (Please specify)</td>
<td>West London Clinical Commissioning Group</td>
<td>Ben Denton, Executive Director of Housing and Regeneration</td>
<td></td>
<td></td>
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<tr>
<td>NHS ENGLAND REGIONAL DIRECTOR OF</td>
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<tr>
<td>FINANCE</td>
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PRIORITISATION (For regional use only)
TRANSFER OF COMMISSIONING & FUNDING OF SOCIAL CARE FOR ADULTS WITH LEARNING DISABILITIES – CAPITAL TRANSFER

Gateway Reference: 12088

Transfer of Learning Disability Capital from the NHS to Local Authorities or Registered Social Landlords

Guidance on the transfer of NHS assets both across and outside of the NHS can be found in the following documents:

1. Health Building Note 00-08 - Estatecode

   http://www.info.doh.gov.uk/doh/finman.nsf

3. Managing Public Money
   http://www.hm-treasury.gov.uk/psr_mpm_index.htm

The above provides a central government framework for handling, in most instances, the transfer of capital from the NHS to Local Authorities (LAs) or registered social landlords (RSLs).

Working within the above, the terms of any Learning Disability (LD) capital transfer from the NHS to LAs or RSLs is a matter for local discussion following national policy. This is because we recognise that there will be many different issues with differing solutions, the relevance of co-production and subsidiarity to the successfully delivery of this programme. There is a need to ensure the ‘spirit’ of Valuing People Now (VPN) results in better services for people with a LD.

Below is a series of Question & Answer (Q&A), which are designed to answer the majority of capital transfer questions that have been raised.

1. Do all LD property/assets have to be transferred to local authorities or social responsible landlords?

VPN has been designed to enable the NHS to focus on their primary responsibility of meeting service users’ health needs. Therefore, due to the need to ensure business and service continuity, (fixed) assets used by NHS organisations for providing learning disability services, which are covered in the revenue transfer, are also transferred as part of this programme. The actual requirement to transfer fixed assets will however depend on local services plans and estate configurations.

2. What if the property/asset is owned by a PCT?
The transfer of Learning Disability capital from a PCT to a LA or RSL should take effect at market value via a PCT **grant mechanism**. Only PCTs can make grant transfers.

The PCT should grant the LA/RSL an amount, equal to the market value of the assets to be transferred, on the condition that the LA/RSL uses it to buy back the asset at market value.

The PCT should then take a legal charge on the property. The function of the charge is to give the PCT a continued say in the use of what was NHS property, and, importantly, to ensure that it cannot be disposed of subsequently without the NHS' consent. The PCT, in discussion with their LA/RSL, should agree the content and structure of the legal charge.

3. What if the property/asset is owned by an NHS Trust (excluding Foundation Trusts)

In this case, a transfer to their local PCT should take place, with the intention that the PCT then transfers it on to the LA or RSL as explained in Q 2. From an accounting perspective, the transfer from an NHS Trust to a PCT will be a circular flow of funds with zero net effect on the NHS balance sheet.

4. What if the property/asset belongs to an NHS Foundation Trust?

As outlined in Q1, the NHS will only be responsible for meeting the health needs of people with learning difficulties and all other services will be administered by LAs.

Agreement between LAs and PCTs should now have been reached via PCT and LA governance arrangements on the revenue amounts to be transferred for 2009-10. All of this will enable the allocation of these social care resources to be made directly to LAs from 2011.

It is envisaged that NHS Foundation Trusts should enter into any discussions with PCTs / LAs, and recognising the various freedoms and obligations NHS Foundation Trusts have, agreements around the lease or transfer of property/assets should be reached within the spirit of VPN to enable successful delivery of this policy. This could be in accordance with the procedure in Q3 or that outlined in Q5 & 6.

5. Does the property/asset have to be sold to the LA/RSL?

As per Q3 above, the PCT grant mechanism is specifically designed to enable this kind of transfer of capital assets.

However, other options for all NHS organisations and LAs/RSLs include:

- The LA or RSL may purchase the capital asset outright without the receipt of a grant from a PCT or
- NHS organisations may lease the asset to the LA or RSL.

These are discussed further below.
6. What happens if an NHS organisation does not agree to transfer the property/asset?

There may be instances where the asset concerned is an important component of a wider asset base, or the NHS Foundation Trust, NHS Trust and/or PCT have earmarked it for future alternative use. In this instance, a lease arrangement may be more appropriate though the rent and other occupancy charges should normally be set so as to be sufficient to cover the NHS landlord’s reasonable costs of holding the building and making it available to the tenant. This will continue to enable uninterrupted LD service delivery whilst the LA seeks alternative asset provision.

The lease terms should be drawn up to enable LA/RSL provision of LD services to continue at a reasonable charge.

7. What happens if the LA does not agree to take transfer of the property/asset?

LAs play a lead role in delivering VPN and this role will be strengthened when resources are aligned enabling better-tailored services around the needs of the individual. The LA, possibly in discussions with the RSL or other external service providers, can also take ownership (again via a grant mechanism or leasehold) where agreed.

The discussions around the transfer of any capital asset should therefore be in the best interests of LD service users. For example, in certain circumstances all parties may agree to further investment in the capital assets to be transferred, which enables the transfer to be approved and the function of the social care services to continue to meet the best interests of LD service users. Ultimately, this is a matter for local decision-making and agreement.

8. What happens if the use of the asset/property is expected to change?

If the property is transferring via the grant mechanism, then the structure and content of the legal charge will address this issue. For example, it is expected that the transferred property will be sold in say 12 months time, to enable a more suitable property to be acquired. See also Q2.
9. What happens if the property/asset concerned already has a NHS legal charge on it and the LA or RSL wishes to sell the property in order to purchase another more suitable property

If the LA/RSL decides in the best interests of the LD users to transfer the LD services to another more suitable property/asset, then the NHS legal charge should be transferred to the new property. The function of the legal charge is to ensure the continued use of a property for LD. In these cases, the content and structure of the legal charge is subject to local agreement – see Q2.

10. Can a PCT or NHS Trust or NHS Foundation Trust retain the property & lease it to the LA/RSL?

Yes, see Q6. This may well be the most appropriate way forward where the property is key to the development of the NHS organisation’s estate strategy.

11. What if the property/asset is part of the campus closure programme?

As per questions 3 and 4, it is recommended that the property/asset should in the first instance transfer to the local PCT. This then enables the PCT to transfer it to the LA/RSL via the grant mechanism if required – see Q2.

12. What if I still can't resolve capital transfer issues?

For NHS organisations (except Foundation Trusts), the recent letter from NHS Chief Executive David Nicholson CBE (Gateway reference number 9906 – August 2008) outlines the measures that can be taken where there are disagreements. Strategic Health Authority capital estates colleagues should be contacted for further direction.

In respect of Foundation Trusts, where it is a matter of policy then the case may be referred to Monitor. In all other cases of dispute, we would envisage these would be settled through a recognised dispute resolution service rather than formal arbitration proceedings.

June 2009
Add Transfer Agreement for Flats A, B and C 291 Harrow Road and 1-2 Elmfield Way
Attach Project Plan for the Development