



Agenda Item

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

5 May 2022

**THE FUTURE OF DIRECT CARE HOMES FOR OLDER PEOPLE –
CONSULTATION RESPONSES AND RECOMMENDATIONS**

(Adult Social Care and Health)

1. Divisions Affected

1.1 County-wide

2. Key Decision

2.1 This is a Key Decision because it is likely to:

- a) result in the Council incurring expenditure which is, or making savings which are, significant having regard to the budget for the service or function concerned; and
- b) be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

3. Purpose

3.1 To inform Cabinet of the response to the consultation on the future provision of accommodation for older people, including the possible closure of the following seven homes:

- Ladycross House (Sandiacre)
- Beechcroft (West Hallam)
- East Clune (Clowne)
- Holmlea (Tibshelf)
- The Spinney (Brimmington)
- Goyt Valley House (New Mills)

- Gernon Manor (Bakewell)

To inform Cabinet of the outcome of the Equality Impact Analysis.

To make recommendations about the preferred course of action.

To make recommendations about the proposed next steps.

4. Information and Analysis

Background and Context

4.1 On 18 November 2021 Cabinet approved the following:

- a) Commencement of a 12-week public consultation, including consultation with current residents and their families, on the proposals for the future of the seven residential care homes for older people identified above.
- b) To receive a report on conclusion of the consultation including a full Equality Impact Analysis.

4.2 The report to Cabinet on 18 November 2021 set out three viable options available to the Council when considering the future of the seven homes listed above.

- To rewire and carry out major works to refurbish the homes including a full reinstall of the boiler and heating system, removal of any asbestos, the fitting of sprinklers in the ceiling, the replacement of all bathrooms, a kitchen refit and full decoration. This option would require current residents to move out for a period of up to 40 weeks.
- To close the homes and support residents to move to 'local' and 'suitable' alternative provision as recommended by the Improvement and Scrutiny Committee – People.
- To close the homes and support residents to move to any suitable alternative provision.

4.3 The report also set out that, in light of the following factors, the closure of the seven homes, subject to securing local reasonable and suitable alternative provision for the current residents, was perceived to be the preferred and most viable option.

- a) Cabinet has previously made a decision to only close the homes if a local care home or alternative provision was available to replace them.
- b) To ensure that all people requiring residential care can access high quality care in appropriate facilities a full rewire is required in the 7 homes to bring them up to standard.

- c) The homes require significant expenditure in the short and medium-term in order to address urgent maintenance and refurbishment issues. This includes rewiring as a priority, but also heating/boiler replacement, roof works, fire safety improvements and kitchen ventilation works, which cannot be delayed indefinitely. The Corporate Property Department has advised that arrangements to replace the current wiring must be completed by September 2022 to ensure the electrics are brought up to the required standard within a reasonable timeframe.
- d) The homes are no longer fit for the purpose they were originally designed for and do not meet the design requirements set out in the Commissioning Strategy. Even if they are refurbished, they do not have the space, facilities or capability to be adapted to meet the needs of increasingly frail older people, which impacts upon the Council's ability to provide high quality care.
- e) As a result of abridged timescales to complete this essential work, any residents living in the homes in September 2022 would need to move out on a temporary basis for a period of up to 40 weeks whilst a full rewire or refurbishment is undertaken, causing significant disruption and disturbance for residents and their families and for staff who would need to be redeployed during this period. Current residents could return to the homes to live there in the longer-term following completion of the work.
- f) There is currently an oversupply of residential care beds in Derbyshire and in February 2021, 37% of the Council's providers reported occupancy rates below 80%. Local demand is following national trends and shows a period of decline prior to the pandemic which appears to have been accelerated by the pandemic.
- g) There is sufficient capacity in the market to provide alternative provision for the current residents.
- h) In accordance with the expressed wishes of the majority of people consulted in Derbyshire about their future care needs, the Council will be seeking to offer alternatives to residential care through increased community based services and via engaging with the market in relation to the identified undersupply of housing with care provision to 2035.
- i) Significant expenditure on those homes which there is diminishing strategic need for and, even if refurbished, will still not be fit for purpose, is not the best use of public money.

The consultation

4.4 Given the potential impact of any decision there was a clear requirement and need to consult all interested stakeholders and the general public about the proposals and to analyse all the responses before any decision could be made by the Council in relation to each of the homes.

4.5 The formal public consultation on the future of the seven care homes ran for a 12 week period between 8 December 2021 and 4 March 2022. Detailed consultation was undertaken with residents of each of the seven homes, their families, friends and informal carers. Comprehensive consultation also took place with a wider group of

stakeholders through written correspondence and the public through virtual consultation meetings in localities.

Responses to the Consultation

4.6 In total, 483 people responded to the consultation either by attending and contributing to the debate during a virtual meeting or by completing a questionnaire, writing a letter or email or by contacting the Council by phone. Detailed information about the consultation and the feedback received is set out at Appendix 2 and must be read alongside this report.

Analysis

4.7 The feedback received, which has been reviewed and analysed in detail, has been collated into key themes as set out at Appendix 3. The consultation responses have not identified any other viable options the Council has not considered.

Having considered the feedback, the response to each key theme is also set out at Appendix 3, alongside specific responses relating to the feedback and considerations for each home.

Recommendations

4.8 It is recommended that Gernon Manor, Beechroft, Ladycross, Goyt Valley House, Holmlea, The Spinney and East Clune are closed on a permanent basis after the current residents are supported to find local, reasonable and suitable alternative accommodation for the reasons below and as set out at Appendix 3.

4.9 The Council has considered all the responses provided during the consultation and reviewed them alongside the feedback from engagement with the people of Derbyshire. Whilst it is acknowledged that the majority of respondents to the consultation are not in favour of the homes closing, it is recognised that the majority are directly impacted by the proposals and the Council must also consider the feedback from the wider population of Derbyshire who consistently tell us that they want to live independently and in their own homes for as long as is possible. The Council has to balance these competing factors, at the same time needing to deliver on its own stated objective to support people to maximise and maintain their independence whilst ensuring that the accommodation available for people that do require residential care, meets modern standards. This objective is set out in the Housing, Accommodation and Support Strategy 2019 - 2035, which is based upon a strategic vision developed in 2018 following a significant engagement exercise seeking the view of the people of Derbyshire and which was last updated in August 2020. A further citizen engagement exercise was conducted in 2021 by Sortified, an independent organisation commissioned by the Council, providing an opportunity for local people to tell us what is important to them. The feedback from this engagement exercise reinforced previous messages that local people wanted to live independently in their own homes for as long as possible.

4.10 The Council needs to ensure the people of Derbyshire have access to buildings which enable dignified care within a residential setting for people with more complex

needs. Good quality residential care should include en-suite facilities for all residents, including level access showers, and bedrooms that are no smaller than 12m square, with sufficient room for visitors and for carers to access both sides of the bed with easy use of any equipment that is required, such as rotundas and hoists. There should be disabled toilet facilities, accessible outdoor space for residents and they should be dementia friendly in design. To deliver to the Council's Housing, Accommodation and Support Strategy, these are the factors that need to be at the forefront when commissioning new or refurbishing existing residential care in the future. The seven buildings would not meet these requirements even if they were fully refurbished.

4.11 Information about current occupancy demonstrates that there are sufficient vacancies within local care homes to be able to offer current residents local alternatives and meet future projected demand. The information contained within the last report regarding vacancies has been updated and is at Appendix 4. Information about vacancies in local homes is constantly changing and the social care workforce supporting residents and their families to choose a suitable alternative will have easy access to all the latest information. The ability of residents to maintain links with their family and friends will be a significant part of this work and consideration will be given to the accessibility of alternative options for family and friends.

4.12 In summary the reasons for the recommendations to close the homes continue to be as follows;

- a) The expressed wishes of the majority of people consulted in Derbyshire about their future care needs was that they wanted to be cared for in their own home for as long as possible. The Council must seek to offer alternatives to residential care through increased community-based services and via engaging with the market in relation to the identified undersupply of housing with care provision to 2035.
- b) There is currently an oversupply of residential care beds in Derbyshire and in February 2021, 37% of the Council's providers reported occupancy rates below 80%. Local demand is following national trends and shows a period of decline prior to the pandemic which appears to have been accelerated by the pandemic.
- c) The homes require significant expenditure in the short and medium-term, estimated to be approximately £31.000 million in total, in order to address urgent maintenance and refurbishment issues. This includes rewiring as a priority, but also heating/boiler replacement, roof works, fire safety improvements and kitchen ventilation works, which cannot be delayed indefinitely. Significant expenditure on those homes which there is diminishing strategic need for and, even if refurbished, will still not be fit for purpose, does not deliver the Council's Housing, Accommodation and Support Strategy and is not the best use of public money.
- d) The homes are no longer fit for the purpose they were originally designed for and do not meet the design requirements set out in the Commissioning Strategy. Even if they are refurbished, they do not have the space, facilities or

capability to be adapted to meet the needs of increasingly frail older people, which impacts upon the Council's ability to provide high quality care.

- e) There is sufficient capacity in the market to provide alternative provision for the current residents. Detailed information about the current vacancies in the relevant areas is at Appendix 4. The current residents and their families will be supported through the process of finding suitable alternative accommodation locally by officers who will be working in accordance with the Major Change Guidance at Appendix 5 and the Council's Pledges to Residents at Appendix 6.

4.13 The Council acknowledges that asking residents to move home, whether this is on a temporary or permanent basis, is likely to cause disruption and distress for residents and their families and this concern is evidenced by the number of responses to the consultation on this theme. The Council has experience of successfully relocating residents and through adherence to the commitments made in the Pledges to Residents which are set out at Appendix 6, it is satisfied that all of the financial, emotional and practical impacts identified in feedback can be mitigated and minimised successfully. Through careful, detailed, person centered planning, suitable alternatives can be found for current residents with as little disruption and distress as possible and arrangements will be made to ensure that families and friends can continue to maintain contact and that friendship groups remain connected. As such the Council is satisfied that for the majority of residents, any negative impact of the move can be sufficiently mitigated and will be relatively short lived.

4.14 Social workers will continue to work with current residents and their families to support them to move to suitable alternative accommodation before September 2022. The Council is satisfied that there is local, reasonable and suitable alternative provision available for current residents of the seven homes. Because residents will be required to move out of their current accommodation by September 2022 as a result of the need to make arrangements to re-wire the properties by this date, interim options will be found where requested by residents and their families.

4.15 Any cost implications for families will need to be carefully considered and fully appraised. The Council understands how important this will be in providing residents with the support and comfort they need while they settle into their new accommodation, whether this is on a temporary or permanent basis.

Proposed next steps

4.16 If a decision is taken to close the homes on a permanent basis work would commence immediately to undertake an evaluation of each building and site in order to identify potential alternative usage options that will support the Council's commitment to working with partners to ensure that the Older Adult's Housing, Accommodation and Support Strategy is delivered.

5. Consultation

5.1 The Council conducted a public consultation exercise, including consultation with the current residents and their families, between 8 December 2021 and 4 March 2022. The detail of the responses received and analysis is set out in Appendix 2 and 3. The consultation has enabled the Council to:

- Provide information on the options and seek views and concerns; and
- Understand whether there are any other viable options the Council has not considered;

5.2 The Improvement and Scrutiny Committee - People also wished to consider the proposals during the consultation period and provide its views to Cabinet. On 10 January 2022, the Committee considered the report to Cabinet dated 18 November 2021 and following debate resolved to advise Cabinet that to carry out all of the necessary repairs and refurbishments would not make the seven homes fit for purpose in order to provide good and appropriate care for the residents of Derbyshire, it would seem inappropriate to undertake that work.

6. Alternative Options Considered

The option of refurbishing the homes and finding temporary alternative accommodation for residents whilst works are undertaken has been considered but is not considered to be the best course of action for the reasons set out in this report and in the report dated 18 November 2021.

7. Implications

Appendix 1 sets out the implications that have been considered in the preparation of the report, including how the Council will fulfill its obligations under the Care Act 2014 to:

- promote individual well-being (section 1 (1)),
- assess individual needs for care and support (section 9 (1)), and
- consider how best to meet the eligible needs of those individuals requiring care and support in the area (sections 8 and 13 (3))

8. Background Papers

Older People's Housing, Accommodation and Support: a commissioning strategy for Derbyshire 2019 - 2035

Interim Market Position Statement for Older People's nursing, residential, extra care and homecare services 2021 – 2022.

Cabinet on 23 January 2020 – Report of the Executive Director for Adult Social Care and Health; Revised vision and future strategy for Direct Care homes for Older People 2020 – 2025

Cabinet 4 June 2020 – Report of the Executive Director for Adult Social Care and Health; Outcome of the consultation on the future of Direct Care Homes for Older People

Cabinet 10 December 2020 - Report of the Executive Director for Adult Social Care and Health; Direct Care homes for older people: update on actions

Cabinet 11 March 2021 – Report of the Chairman of the Improvement and Scrutiny Committee – People; Scrutiny of the next steps in relation to Direct Care Homes for Older People – update on progress

Cabinet 18 November 2021 – Report of the Executive Director of Adult Social Care and Health regarding The future of Direct Care Homes for Older People in Derbyshire.

9. Appendices

- 9.1 Appendix 1 - Implications
- 9.2 Appendix 2 - Consultation Report on the future of Direct Care Homes in Derbyshire
- 9.3 Appendix 3 – Analysis, response to feedback and recommendations
- 9.4 Appendix 4 – Vacancy Information
- 9.5 Appendix 5 – Major change and closure guidance – Accommodation and support for older people – DCC Adult Care
- 9.6 Appendix 6 – The Council’s Pledges to Residents
- 9.7 Appendix 7 – Indicative timeline for staff engagement
- 9.8 Appendix 8 – Equalities Impact Assessment

10. Recommendation(s)

It is recommended that Cabinet:-

- 1) Following consideration of the full report on the consultation responses received at Appendix 2 to the report; the detailed analysis of the feedback at Appendix 3 and the response to that feedback on a thematic basis and with respect to each individual home and the content of the Equality Impact Assessment, approves the permanent closure of The Spinney, East Clune, Holmlea, Ladycross House, Goyt Valley House, Gernon Manor and Beechcroft, subject to;
 - (i) the current residents of the homes being supported to find suitable, local and reasonable alternative accommodation or any alternative

accommodation of their choice based on individual preferences and circumstances; and

- (ii) before proceeding with the permanent closure of any of the homes, the Council shall ensure that alternative arrangements have been made for all of the residents at each of the homes which meet the Council's obligations under the Care Act and any other relevant legislation or guidance.
- 2) Agrees that further work is undertaken for each property to fully evaluate potential alternative use of the sites including options to support the development and delivery of the Older Adult's Housing, Accommodation and Support Strategy.
 - 3) Notes that a formal consultation with staff and trade unions representing staff affected by the closures will commence and every effort will be made to assist employees in seeking suitable alternative roles to minimise the number of redundancies.

11. Reasons for Recommendation(s)

11.1 The reasons for the recommendation to close the homes are;

- a) The expressed wishes of the majority of people consulted in Derbyshire about their future care needs was that they wanted to be cared for in their own home for as long as possible. The Council must seek to offer alternatives to residential care through increased community-based services and via engaging with the market in relation to the identified undersupply of housing with care provision to 2035.
- b) There is currently an oversupply of residential care beds in Derbyshire and in February 2021, 37% of the Council's providers reported occupancy rates below 80%. Local demand is following national trends and shows a period of decline prior to the pandemic which appears to have been accelerated by the pandemic.
- c) The homes require significant expenditure in the short and medium-term, estimated to be approximately £31.000 million in total, in order to address urgent maintenance and refurbishment issues. This includes rewiring as a priority, but also heating/boiler replacement, roof works, fire safety improvements and kitchen ventilation works, which cannot be delayed indefinitely. Significant expenditure on those homes which there is diminishing strategic need for and, even if refurbished, will still not be fit for purpose, does not deliver the Council's Housing, Accommodation and Support Strategy and is not the best use of public money.
- d) The homes are no longer fit for the purpose they were originally designed for and do not meet the design requirements set out in the Commissioning Strategy. Even if they are refurbished, they do not have the space, facilities or capability to be adapted to meet the needs of increasingly frail older people, which impacts upon the Council's ability to provide high quality care.

e) There is sufficient capacity in the market to provide alternative provision for the current residents. Detailed Information about the current vacancies in the relevant areas is at Appendix 4. The current residents and their families will be supported through the process of finding suitable alternative accommodation locally by officers who will be working in accordance with the Major Change Guidance at Appendix 5 and the Council's Pledges to Residents at Appendix 6.

11.2 To ensure the Council complies with its legal obligations under statute or guidance.

11.3 To ensure that the future use of each property is carefully assessed.

12. Is it necessary to waive the call-in period?

12.1 No

Implications

Financial

1.1 The total budget in 2021/22 of these seven homes was £7.269m. If our homes were 90% occupied the cost of buying places in the PVI sector for all those residents would be £6.828m. However, the cost to purchase 65 beds in the independent sector for the current number of residents in the seven homes would be £2.035m.

The total refurbishment costs for the seven homes are indicated to be in the region of £31.043m

These figures don't include provision for potential redundancy costs, site clearance/security costs or potential receipts from sale of land/property which are not included. In addition the future maintenance liability of these properties would be avoided.

Legal

2.1 The Care Act 2014 imposes a general duty on local authorities to promote an individual's well-being (section 1 Care Act 2014).

'Well-being' is a broad concept but particular reference is made to an individual's control over day-to day life (including over care and support and the way in which it is provided) domestic, family and personal relationships and also the suitability of living accommodation (section 1(2)(d), (g) & (h) Care Act 2014). Local authorities are also required to have regard to particular matters regarding well-being, including the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being; the individual's views, wishes, feelings and beliefs; and the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate (section 1(3)(a), (b) and (e) Care Act 2014).

Local authorities must promote diversity and quality in the provision of services. There is a duty to promote the efficient and effective operation of the market, which includes ensuring that there is a variety of high quality services and providers to choose from (section 5 Care Act 2014).

An assessment of needs must be carried out where it appears to the local authority that a person may have needs for care and support. The assessment must identify whether the adult has any needs for care and support. If there are, the assessment must state what those needs are. (Section 9(1), Care Act 2014.) A Local authority must also assess any carer (current or prospective) where it appears they may have need for support. Section 10(1) Care Act 2014.

After assessing what the needs of an adult or carer are, a Local Authority must consider whether the needs meet the eligibility criteria for a provision or service (section 13(1), Care Act 2014). The criteria does not specify the types of care and support that a Local Authority must provide to meet eligible needs. Prior to any individual moving accommodation, their needs assessment and care and support plan should be reviewed. In offering alternative accommodation the Local Authority should have regard to the Care and Support and After-care (Choice of Accommodation) Regulations 2014.

The Gunning principles set out the common law principles to be observed when undertaking consultation. R v London Borough of Brent ex parte Gunning [1985] 84 LGR 168 established these principles, which set out that a consultation is only lawful when these four principles are met:

1. Proposals are still at a formative stage - A final decision has not yet been made, or predetermined, by the decision makers.
2. There is sufficient information to give 'intelligent consideration' - The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response.
3. There is adequate time for consideration and response- There must be sufficient opportunity for consultees to participate in the consultation. In the absence of a prescribed statutory period, there is no set timeframe for consultation, though it is widely accepted that twelve-week consultation period is sufficient. The adequacy of the length of time given for consultees to respond can vary depending on the subject and extent of impact of the consultation.
4. 'Conscientious consideration' must be given to the consultation responses before a decision is made. Decision-makers should be able to provide evidence that they took consultation responses into account.

Following the consultation Members will now need to take careful account of the views expressed in arriving at their decision. In addition, any final decisions must also take into account the rights of service users as set out in the Human Rights Act 1998, specifically Article 8, "Right to respect for private and family life".

In coming to a decision, the Council should also have regard to its statutory duties under the Care Act 2014 set out above and the Public Sector Equality Duty (PSED) under the Equality Act 2010.

The PSED requires public authorities to have "due regard" to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 (*section 149(1a)*).

- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (*section 149(1b)*). This involves having due regard to the needs to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic (*section 149(3)(a)*);
 - 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 (*section 149(3)(b)*); and
 - 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 (*section 149(3)(c)*).

A full Equality Impact Assessment has been prepared during the consultation process reflecting issues raised during the consultation process and is appended to this report. Cabinet members must have due regard to this report to ensure that it is satisfied that any adverse impact and the proposed mitigation allows it to meet the legal obligations set out above.

Human Resources

- 3.1 Any resultant staffing changes will be approved by the Executive Director for Adult Social Care and Health in conjunction with the Director of Organisation Development & Policy, Director of Finance & ICT and Director of Legal & Democratic Services.

For information, the proposal to close the seven homes, if approved, will result in the reduction of 204 staff (headcount) (131.98 FTE) at a maximum, placing all impacted employees at risk of redundancy. The Council will meet its legal obligation to reduce the number of compulsory redundancies and consider appropriate alternative employment in accordance with statutory requirements

An indicative timeline is outlined in Appendix 7.

Engagement has taken place with those employees affected and the joint trade unions and formal consultation will be undertaken on the proposals with both these stakeholder groups should this report be approved. This formal consultation will be undertaken in accordance with section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and will be covered by the Council's corporate notification to the Secretary of State of potential redundancies under Section 193 of the Act.

Formal employee consultation, both group and individual, will be carried out and in order to facilitate this process it is proposed, subject to Cabinet approval, that the report be released to affected employees and the trade unions.

Information Technology

4.1 None directly arising.

Equalities Impact

5.1 A full Equality Impact Analysis has been undertaken and is at appendix 8.

Corporate objectives and priorities for change

6.1 In the Council Plan 2021 – 2025 the Council states that listening to, engaging and involving local people in order to ensure services are responsive and take account of what matter most to people, as being a core value.

6.2 The Council commits to work together with its partners and communities to be an enterprising council, delivering value for money and enabling local people and places to thrive, and to spend money wisely making the best use of the resources that it has.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 As set out in the report.