



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**IMPROVEMENT AND SCRUTINY COMMITTEE - PEOPLE**

**2 December 2024**

**Report of the Director - Legal and Democratic Services**

**Call in: Proposed redesign of residential care and day opportunities for older people**

**1. Purpose**

- 1.1 To consider a call-in in respect of the decision taken by Cabinet to approve the re-design of the way it delivers its residential care and day opportunity services for older adults.

**2. Information and Analysis**

- 2.1 The Council's Constitution provides for decisions to be called-in where Members consider that the decision-making principles set out in Article 7 (Decision-Making), which are set out at Appendix 2 to this report, have been breached. The Improvement and Scrutiny Procedure Rules set out in the Constitution require a call in to be requested by at least 4 councillors, from a minimum of 2 political groups

- 2.2 On 14 November 2024 the Cabinet considered a report of the Executive Director Adult Social Care and Health and agreed to:

- 1) Note the intention of the Council to focus its directly provided services upon providing specialist long term care, flexible day and overnight breaks for people with dementia and their carers, in addition to well-integrated short-term assessment and reablement services, to avoid hospital admission and maximise flow through hospitals;

- 2) Approve the cessation of long term and respite care at the following residential care homes: Briar Close, Castle Court, The Grange, Lacemaker Court (including an integrated day centre), The Leys, New Bassett House, Rowthorne and Thomas Colledge in accordance with the following process:
- a. the homes listed be offered for sale to the open market as a going concern for a period of up to eight weeks;
  - b. where the Council received offers for any of the care homes, authority was delegated to the Executive Director for Adult Social Care, in consultation with the Director of Finance and the Director of Property, who would determine whether the criteria set out at paragraph 4.8.4 of the report had been met;
  - c. where a determination was made that the criteria had been met, the option of selling the homes as going concerns, authority be delegated to the Director of Property to pursue and make arrangements for sale, should the value exceed £500,000;
  - d. if a sale fell through, the current residents be supported to find reasonable and suitable alternative accommodation; and steps (e), (f) and (g) below would be followed;
  - e. where a determination was made by the Executive Director for Adult Social Care, in consultation with the Director of Finance and the Director of Property, that the criteria set out at paragraph 4.8.4 were not met, the current residents be supported to find reasonable and suitable alternative accommodation and the care home would permanently close;
  - f. before proceeding with the permanent closure of any of the homes, the Council would ensure that reasonable and suitable alternative arrangements had been made for all of the long-term residents at each of the homes which met the Council's duties under the Care Act 2014 and any other relevant legislation or guidance;
  - g. once any care home was permanently closed, the outcomes for the buildings were considered and implemented by Property Services as business as usual in accordance with the Council's scheme of delegation. The Director of Property, in consultation with the relevant Cabinet Member, should be able to dispose of the property where the value exceeded £500,000.

- 3) Approve the cessation of long term and respite care at Bennerley Fields, enabling the repurposing of the entire building for the provision of community support beds, on the basis that the Council would ensure that reasonable and suitable alternative arrangements had been made for all of the residents currently living at Bennerley Fields which met the Council's duties under the Care Act 2014 and any other relevant legislation or guidance;
- 4) Approve the permanent closure of the following day centres for older people: Blackwell Day Centre, Fabrick Day Services, Jubilee Centre, Queens Court and Valley View Day Centre on the basis that before proceeding with the permanent closure of any Day Centre alternative offers of support had been made to people currently using the services in accordance with the Council's obligations under the Care Act and any other relevant legislation or guidance;
- 5) Approve that once day centres were closed, the outcomes for the buildings were considered and implemented by Property Services as business as usual in accordance with the Council's scheme of delegation. The Director of Property, in consultation with the relevant Cabinet Member, would be able to dispose of the property where the value exceeded £500,000. Should the buildings be leased by the Council, the Director of Property, in consultation with the relevant Cabinet Member, would be able to dispose of the leasehold interest should the value of the interest being surrendered was over £100,000;
- 6) Note that a formal consultation with staff and trade unions representing staff affected by any closures would commence and every effort would be made to assist employees in seeking suitable alternative roles to minimise the number of redundancies;
- 7) Approve the required program of consultation for a period of 6 weeks to explore entering into a Section 75 Agreement with Derbyshire Community Health Services, an NHS Foundation Trust, to jointly deliver a range of reablement services aimed at helping people remain independent at home for as long as possible;
- 8) Note that Cabinet would receive a further report following the conclusion of the consultation process, including an Equality Impact Analysis;
- 9) Approve the program of consultation for a period of 6 weeks on the two proposed options set out at Appendix 7 concerning the delivery of care provided at Ada Belfield, the Staveley Centre and Thomas Fields; and

- 10) Note that Cabinet would receive a further report following the conclusion of the consultation process, including an Equality Impact Analysis.
- 2.3 In accordance with the provisions of the County Council's Constitution, Councillors George, Burfoot, Dixon, Clarke Fordham, Kinsella and Mihaly have asked that the decision be called-in and considered by this Committee.
- 2.4 The call in has been requested on the basis that the decision breaches Articles:
- 7.2 (a) due regard to all relevant and material considerations and without regard to any irrelevant considerations;
  - 7.2 (b) where appropriate, the realistic evaluation of alternatives
  - 7.2 (c) proportionality (i.e. the action must be proportionate to the desired outcome);
  - 7.2 (e) respect for human rights and equalities
  - 7.2 (f) a presumption in favour of openness
  - 7.2 (g) clarity of aims and desired outcomes.
- 2.5 The principal objections, as given in the call-in notice, were stated as follows:
1. **The net savings of the decision are not detailed in the report and take no account of any increase in expenditure resulting from the decision:**

The aim of the decision is set out at 4.2 – *“Derbyshire is facing increasing financial pressures... It is essential therefore that the Council conducted a review to ensure that it can provide a sustainable adult social care service.”*

However the report is unclear as to how much money the decision will save and therefore lacks clarity as to whether it will achieve the savings required. The report fails to assess the additional costs of private sector care that will be required due to the closure of so many council provided beds – either for the current residents of the care homes that will attempt to be sold, or for future residents. Nor does it take account of rising costs of private care places that occur when the council exits the residential care market.

It also fails to assess the risk of causing a growth in demand for other, more expensive, services. Crisis intervention services are significantly more expensive than early help intervention and those additional costs should be modelled and taken into consideration when estimating the total budget savings arising from this decision. Yet the report includes no such modelling of the likely increase in demand for other services and, consequently, of any financial risks resulting from, for example,

more cases approaching Starting Point for crisis intervention measures. The Council's ongoing financial situation and need to save money means that a decision that runs a substantial risk of resulting in an immediate budget pressure should provide an analysis as to what that pressure might cost if it is able to demonstrate a clarity of desired aims and outcomes. As such the decision is unable to demonstrate that it is proportionate to the desired outcomes.

**2. The decision will have a detrimental direct effect on some of the most vulnerable older people in Derbyshire, including many who are living with dementia, who currently reside in the care homes which are due to be sold or closed down.**

The decision offers no guarantee that these current residents will be accommodated by the potential buyers of these homes. The uncertainty generated by the decision is already having a detrimental impact on the mental health and wellbeing of many current residents. Such uncertainty and the resultant anxiety exacerbates dementia and can cause residents to need more specialist care in future.

**3. The decision fails to take account of the increasingly elderly population of Derbyshire and the resultant increases in demand for all types of long term residential care as the reduction in proportions of people wanting to be in residential care is outweighed by the projected increase in the elderly population from 2018 to 2043 which is 42% more people aged 70-79, 85% more aged 80-89 and 225% more aged 90+. There has also been no analysis of the substantial gap between the proportion of older people in long term care in Derbyshire which is 37% less than the region and 44% less than in England. There is no explanation of whether this is due to reduced demand for long term care, or to appropriate quality provision bearing in mind that Derbyshire has a proportionately higher elderly population than the rest of the region or country. The claim that fewer people are choosing residential care and will choose it in future cannot therefore be substantiated.**

**4. Presumption in favour of openness:** there was no opportunity for pre-decision scrutiny. The scrutiny committee were provided with only a very brief outline of the scale of responses to the consultation and very general key themes. There was no detail of the responses and no equality impact statement provided to the committee so they could give due pre-decision scrutiny. The committee were told that their scrutiny was simply scrutiny of the consultation process.

2.6 The procedure to be adopted when a decision is called in is set out in the Call-in procedure set out in the Improvement and Scrutiny

Procedure Rules at Appendix 5 to the Constitution. This is attached at Appendix 4 to this report.

- 2.7 The Committee will need to determine whether or not the decision-making principles set out in Article 7.2 (a), (b), (c), (e), (f) and (g) have been breached in relation to the decision of Cabinet set out in paragraph 2.2 above.
- 2.8 If, having considered the matter, the Committee is satisfied that the principles have been followed, the decision of Cabinet can be implemented. If, however, the Committee concludes that the decision-making principles have been breached, it may:
  - refer the decision back to Cabinet for reconsideration; or
  - refer the matter to Full Council (only for decisions that have contravened the budget and policy framework).

The Committee must state in writing the nature of the concerns regarding the decision.

- 2.9 As with all Improvement and Scrutiny Committee meetings, the call-in process should be inquisitorial not adversarial.

### **3. Consultation**

- 3.1 Not applicable.

### **4. Alternative Options Considered**

- 4.1 To not consider the call-in request, however this would result in the Council failing to comply with the Constitution.

### **5. Implications**

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **6. Background Papers**

- 6.1 None identified.

### **7. Appendices**

- 7.1 Appendix 1 – Implications
- 7.2 Appendix 2 – Extract from Article 7 of the Constitution

- 7.3 Appendix 3 – Call in procedure set out in the Improvement and Scrutiny Procedure Rules
- 7.4 Appendix 4 – Report to Cabinet dated 29 April 2024

## **8. Recommendation**

That the Committee consider the call-in of the decision made by Cabinet on 14 November 2024 and determine whether or not the decision-making principles set out in Article 7.2 Article 7.2 (a), (b), (c), (e), (f) and (g) have been breached.

## **9. Reasons for Recommendation**

- 9.1 To comply with the Council's Constitution.

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**Implications**

**Financial**

1.1 None directly arising from the report.

**Legal**

2.1 The Council's Constitution sets out the procedures for 'call in' which must be followed and is based upon relevant paragraphs of the Local Government Act 2000 as follows:

- a) s9F(2) provides the general power for overview and scrutiny committees to review or scrutinise executive decisions;
- b) s9F(4) provides a specific power to review or scrutinise a decision made, but not implemented.

**Human Resources**

3.1 None directly arising from the report.

**Information Technology**

4.1 None directly arising from the report.

**Equalities Impact**

5.1 None directly arising from the report.

**Corporate objectives and priorities for change**

6.1 None directly arising from the report.

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

7.1 None directly arising from the report.



## **7.2 Principles of decision-making**

All decisions of the Council will be made in accordance with the following principles:

- (a) due regard to all relevant and material considerations and without regard to any irrelevant considerations;
- (b) where appropriate, the realistic evaluation of alternatives;
- (c) proportionality (i.e. the action must be proportionate to the desired outcome);
- (d) due consultation and the taking of professional advice from officers;
- (e) respect for human rights and equalities;
- (f) a presumption in favour of openness;
- (g) clarity of aims and desired outcomes; and
- (h) reasons being given for the decision, as appropriate.

## CALL-IN PROCEDURES

### Procedure to be Adopted when a Decision is Called-In

1. The Director of Legal & Democratic Services on receiving a request for the call-in will check that the call-in notice is signed by the requisite number of Members. The call-in notice must identify which principle(s) of decision making in Article 7 of the constitution have allegedly been breached and give reasons. This requirement will be checked by the Director of Legal & Democratic Services.
2. The Director of Legal & Democratic Services will arrange a meeting of the appropriate Committee, in consultation with the Chairman of that committee.
3. The Director of Legal & Democratic Services will acknowledge the call-in notice and notify the appropriate Cabinet member.
4. The Scrutiny Officer will invite the signatories to the call-in notice, the relevant Council Cabinet member(s) and the relevant Strategic Director to attend the call-in meeting. The call-in signatories and the relevant Council Cabinet member or a Cabinet member nominee would be expected to attend. The relevant Strategic Director may nominate a second or third tier officer to attend in his/her place. If none of the call-in signatories attend, the Committee will decide whether to proceed. If the Committee decides not to proceed, then the call-in will be decided on the basis that the Committee does not have any concerns it wishes to refer to the Council Cabinet, and the Council Cabinet will not be required to reconsider the decision.
5. The Scrutiny Officer will send copies of the call-in notice, minute of Cabinet/record of the Cabinet Member decision and any associated reports to members of the Committee with the agenda for the meeting.
6. The Scrutiny Officer will liaise with the Chairman and the Vice Chairman of the Committee over any other appropriate arrangements for the call-in, e.g. additional information, witnesses etc. If the Chairman or Vice Chairman have signed the call-in notice, the SO will liaise with another member of the Committee nominated by the Chairman or Vice Chairmen.
7. The aim of the Committee meeting when the call-in is considered should be inquisitorial not adversarial. The Meeting Procedure for a call-in of a Council Cabinet decision will be adopted.

## **Meeting Procedure for a Call-in of a Council Cabinet Decision The role of the Chair**

1. This procedure shall be implemented at the meeting by the Chairman and any deviation from this procedure will be at the discretion of the Chairman. The Chairman will advise attendees at a Call-in meeting of any reasonable intention to deviate from the procedure at the start of the meeting where possible.

2. In the absence of the Chairman, the meeting will be led by the Vice Chairman. In the absence of both, the Monitoring Officer or their representative shall facilitate a vote of Members so that a Chairman shall be appointed. The appointed Member will chair for the duration of the meeting or until the Chairman or Vice Chairman is present.

3. Where the Chairman is in attendance, the Vice Chairman shall be treated in the same way as every other Member of the Board.

### **Role of signatories to the Call-in notice and the Council Cabinet member**

4. Signatories to the Call-in notice and the Council Cabinet Member will be invited to provide evidence to the Committee, both in terms of a presentation and by answering questions put to them by the Committee.

5. There is no provision for either the signatories to the Call-in or the Cabinet Member to question each other, either directly or through the Chairman.

### **Role of officers in attendance**

6. Supporting Officers will be present from Democratic Services (providing procedural advice to the Chairman and Committee as required and recording decisions) and Improvement and Scrutiny (advising the Chairman and the Committee as required on relevant scrutiny of the decision under consideration). The Monitoring Officer or their representative may also be present and may undertake any of these duties in addition to providing any legal advice if required.

7. The Managing Director, Executive Directors or Assistant Directors or Heads of Service may provide support to the Council Cabinet Member and contribute to the meeting as required by advising the Committee on the strategic, technical or operational basis of decisions taken or considerations given relevant to the Call-in, or by responding to questions referred by the Council Cabinet Member to them.

## **Procedure at the meeting**

8. The signatories to the Call-in notice will be invited to address the Committee on the Call-in and will be required to focus on justifying why they considered the council's decision-making principles to have been breached as raised in the signed Call-in Notice lodged with the Monitoring Officer. The order in which signatories are invited to speak will be at the discretion of the Chair. Signatories shall limit their contributions to the reasons for the call-in

9. After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions.

10. The Council Cabinet Member will then be invited to address the Committee on the call-in by the Chairman and will be required to respond to the assertions relating to the council's decision-making principles as set out in the Call-in notice.

11. Members of the Committee to make any contributions they may wish prior to the vote being taken. Each member of the Committee shall be permitted to make one speech lasting no more than ten minutes.

## **Voting on whether decision-making principles have or have not been breached**

12. The Chairman shall then ask each Member in turn to state whether they consider the decision-making principles identified in the Call-in Notice were, or were not, breached giving reasons. Where a Member considers that a principle has been breached, they will be required, at this stage, to state which principles they consider to have been breached. This information shall be recorded by the Monitoring Officer or their representatives.

13. The Chairman may, at their discretion, state whether they believe the decision-making principles identified in the Call-in Notice were or were not breached, giving reasons.

## **Finding of no breach**

14. In the event that a majority of Members consider that there was not a breach, the Chairman will state that the Committee has resolved that the Council Cabinet Decision identified in the Call-in Notice did not breach the decision-making principles and close the meeting.

## **Finding of a breach**

15. In the event that a majority of Members consider that there was a breach in the decision-making procedure, the Chairman will invite the Monitoring Officer or their representative to address the Committee. The Monitoring Officer or their representative will state which decision-making principles were individually identified by Committee members as having been breached, and which of those principles were identified by a majority of Members present as having been breached.

16. The Chairman will declare the outcome of the vote and the resultant resolution and close the meeting referring the decision back to the next meeting of the Council Cabinet.

## **Consideration of multiple Call-in notices in relation to the one decision of Council Cabinet**

17. In the event that more than one Call-in notice is received in relation to a single matter, the Chairman will use their discretion to vary the procedure accordingly to afford signatories to all Call-in notices equal opportunity to state their case.