

Name of meeting: Cabinet
Date: 31st July 2017
Title of report: Options for the Future of Council Operated Older Persons Residential Care Facilities

Purpose of report

To consider options for the futures of two dementia care residential facilities (Castle Grange and Claremont House) and two Intermediate Care residential facilities (Ings Grove and Moorlands Grange) currently operated by the Council

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes If yes give the reason why The potential savings will be in excess of £250,000 The land has a value/ lease in excess of £250,000
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Yes If yes also give date it was registered 21 June 2017
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by Strategic Director & name Is it also signed off by the Service Director for Finance and Transactional Services? Is it also signed off by the Service Director for Governance and Commissioning Support?	Naz Parkar - 21.07.17 Debbie Hogg - 20.07.17 Julie Muscroft - 21.07.17
Cabinet member portfolio	Cllr Viv Kendrick, Adults and Public (Statutory Responsibility for Adults and Public Health) Cllr Graham Turner, Corporate(Place, Environment and Customer Contact Services)

Electoral wards affected: Crosland Moor & Netherton,
 Heckmondwike
 Mirfield
 Newsome

Ward councillors consulted: All members for above wards

Public or private: Public report with private Appendix B

1. Summary

The Council owns and operates four older persons residential/rehabilitation and dementia care homes all with 40 places and constructed in 2006:

- Ings Grove House, Mirfield
- Moorlands Grange, Netherton
- Claremont House, Heckmondwike
- Castle Grange, Newsome
(the "Care Homes")

Due to reductions to the Council's overall budget it is necessary to review how the Council delivers and pays for residential care, both intermediate and long term residential. This report sets out work that has already been done to look at the potential alternative delivery models, including a consultation exercise with residents and their families.

This report also seeks approval from Cabinet to delegate authority to certain officers of the Council to make the final decision as to the disposal of the Care Homes in line with the preferred option for each as set out in this report, in consultation with the relevant Portfolio Holders. Should the preferred options not be achievable then the Cabinet will be asked to make a further decision.

The preferred options are:

1. For Ings Grove House and Moorlands Grange (the '*Intermediate Homes*') to be transferred to a single provider;
2. For Claremont House and Castle Grange (the '*Residential Homes*') to be transferred to one or more private or third sector providers following a competitive procurement process.

2. Information required to take a decision - Background

The Care Act 2014 places responsibility on local authorities to have an oversight of the market including, quality, viability, outcomes and have a market shaping role. The demand is forecast to grow in line with a significant number of the population over 85.

The Council directly operates the Care Homes, but the overall provision in the Kirklees boundary is 145 homes.

The four Care Homes provide a range of intermediate, rehabilitation, respite and dementia care. Other not for profit service providers operate within the rehabilitation and respite homes, these services are commissioned by the Clinical Commissioning Groups (CCG's) and Council.

The Intermediate Homes have no permanent residents as they provide intermediate, rehabilitation and respite care. The CQC has rated both homes as '*Good*'.

Claremont House provides 30 residential places and 10 respite beds. The CQC have rated the home as '*Requires Improvement*'. Castle Grange operates as a 30 place dementia care home with 10 respite beds and is rated '*Good*' by the CQC. The 20 pre-bookable respite places operate at 60% occupancy.

The Council budget approved on 15 February 2017 requires £54.2m of savings in 2017/18.

The Council made a decision in the budget to make £1.25m of efficiency savings, over the Medium Term Financial Plan, from the older persons residential care provision.

The Council wishes explore a range of alternative delivery models for the Care Homes. To ensure it continues to meet and enhance its sufficiency provision, the Council will also consider further integration, the relationship and needs of the acute hospital trusts and the wider health public health integration. Protection of the occupancy rights of older people within the Residential Homes will be a key criterion.

Nationally the older persons care sector has faced significant challenges since 2010/11 with real term gross spending power being reduced; this has impacted on local authorities (who are the biggest purchaser of placements) and the not for profit and the private sector. Some of the critical challenges have been the increase in the living wage, regional variations in self-funders from 18% to 54% nationally and the financing agreements to acquire or lease assets.

Regional data from the Care Quality Commission (CQC) for Yorkshire and Humber includes 2892 homes, with 70 homes operated by local authorities.

The Council has a number of options available to it as to how the four Care Homes operate in the future:

1. Transfer ownership of all the Care Homes to another body through a long lease with no ongoing contract for beds;
2. Transfer ownership of all the Care Homes to another body through a long lease and an ongoing contract for a number of existing placements;
3. A mixture of the two options above;
4. Closure of one or more of the Care Homes; or
5. The Council retains ownership and management responsibility for the Care Homes.

Option 5 is not seen as viable given the current and anticipated financial constraints on the Council. The Council does not wish to take forward option 4 and sees option 3 as the most viable

Appendix B of this report sets out in more detail how option 3 would be realised:

1. The Intermediate Homes would be transferred as a going concern either with or without a services contract to a single provider. The most likely scenario is that the new provider could be offered a long lease of the properties with a restrictive covenant that would require them to continue to operate the properties as care homes for a minimum number of years. Assets, including staff, would transfer under a business transfer agreement for a price yet to be agreed;
2. The Residential Homes would be transferred to one or more providers following a competitive procurement exercise. It is likely that a competitive procurement exercise will be required due to the desire of the Council to enter into a contract with the new provider(s) for the provision of a set number of beds to be at the Council's disposal for a minimum number of years. As part of the transfer of the Residential Homes the Council would look to actively encourage proposals from organisations which were looking to secure Registered Nursing Care status for the facilities.

3. Implications for the Council

3.1 Consultation

In order to assess the preferred option for each of the Care Homes an initial consultation process was required and has taken place. This is described further in section 4 of this report.

The principles below will be used for further consultation market-shaping and commissioning activity following Cabinet approval to progress to the next stage:

- focusing on outcomes and wellbeing, in line with the Council's early Intervention and Prevention strategy (EIP);
- promoting quality services, including a focus on workforce development and
- ensuring appropriately resourced care and support;
- supporting sustainability;
- ensuring choice;
- co-production with partners;

3.2 Early Intervention and Prevention (EIP)

Kirklees Council are taking EIP forward in a way that works with people, that aims to improve the independence and wellbeing of adults across our localities. The council has been working towards this ethos and wants to continue to develop in order to provide the right service at the right time to people.

- We will promote a society where we "help people to help themselves".
- We will enable people, NOT take their independence away.
- We will work with partners to promote health and wellbeing.
- We will work alongside the community and voluntary services to provide local services for local people.

We want people living in Kirklees to live longer, have a good quality of life, participate in their communities, to have choice and control, and to remain safe and secure.

3.3 Economic Resilience (ER)

The feedback from the consultation process will drive the impact on Economic Resilience, but the potential impacts could be:

- Improving the sustainability and outcomes of the care system
- Financial efficiencies for the Council and CCG's
- Opportunities for existing not for profit and private operators to grow their businesses, to meet evidence based demand
- Potential expansion of two sites and increased business rates

3.4 Improving Outcomes for Children

Not applicable.

3.5 **Reducing demand for services**

Not applicable.

3.6 **Legal/Financial or Human Resources**

3.6.1 **Human Resources**

Potential changes to the operating model could affect staff. The number of affected staff is 211 (not all full time). Any Council staff transferring to another provider who carries on the same care home activity will benefit from the protection under the Transfer of Undertakings (protection of Employees) Regulations 2006.

Affected staff and Trade Unions will be consulted with as part of the decision making process at the appropriate time.

3.6.2 **Legal**

Local authorities had a duty to provide residential accommodation for adults who were in need of care and attention not otherwise available to them under section 21 of the National Assistance Act 1948. This was repealed and replaced by a duty to meet needs for care and support (section 18 Care Act 2014). Section 19 of the Care Act 2014 gives a local authority the power to meet needs for care and support, where it is not under a duty to do so. Unlike the National Assistance Act 1948, the Care Act 2014 does not specify separate duties for the provision of residential and non-residential care. Section 8 of the Care Act instead gives examples of the different ways that a local authority may meet needs under section 18, and the list includes “accommodation in a care home or premises of some other type” (s8(1)(a)), or “care and support at home or in the community” (s.8(1)(b)).

The council has a market shaping duty under section 5 of the Care Act 2014 and must exercise its duties in accordance with the Department of Health Care and Support Statutory guidance (2016)

The Council is required to carry out a consultation process regarding proposals to reconfigure services and to carefully consider responses before reaching any decision regarding reconfiguration of care services. The consultation process should be in line with criteria laid out in R v Brent LBC Ex parte Gunning [1985] and endorsed by the Supreme Court in R (Moseley) v Haringey LBC [2014].

The criteria are:

1. The duty to act fairly.
2. The requirement of fairness is linked to the purpose of the consultation.
3. The features of the consultees are relevant in deciding the degree of specificity required in the information provided.
4. Where the proposals involve the denial of a benefit, fairness demands will be higher.
5. Where there are no statutory restrictions on the content of the consultation, fairness may require that interested stakeholders be

consulted on preferred option and also rejected options. Consultation in this case will be non-statutory.

While some consultation has already been carried out the Council is currently considering whether further consultation is required in relation to the desired options set out in section 2 above.

Article 8 of the Human Rights Act 1998 - right to a private and family life, may be engaged. Following completion of the consultation, the council will need to ensure the needs of residents have been properly assessed and individual service user reviews in line with the Care Act 2014 will be carried out.

The council must comply with its Public Sector Equality Duty in section 149 Equality Act 2010. An Equality Impact Assessment (EIA) of the proposed options is advisable. The Council when exercising its functions must 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.

Section 149(7) sets out 7 protected characteristics namely: age, disability, gender reassignment; pregnancy and maternity, race, religion or belief, sex or sexual orientation. It follows that age and disability will be most relevant in taking decisions about the future of the Council's care homes and an EIA will show how the proposals impact on people. A further EIA will be required.

Depending on the method of transfer and any associated care contracts the transfer of some or all of the Care Homes may require the Council to undertake a procurement exercise that meets the relevant parts of the Public Contracts Regulations 2015 (the "PCR 2015"). The Council has been advised that if procurement is required it will be classed as "light touch" under regulation 74 of the PCR 2015. A further detailed EIA will be required upon assessment of the preferred bidders.

3.6.3 **Financial - Asset Management**

The Care Homes are all in satisfactory condition having only been constructed in 2006, having said that the cost of maintaining the homes as they get to 25 years plus will increase. The Council benefits from having the freehold title and therefore has various options in the method of disposal. The feedback from the consultation and preferred bidders will have an influence on the method of disposal.

The Council has a duty under section 123 of the Local Government Act 1972 to obtain the best consideration possible for property that it disposes of. There are certain exemptions from this duty where the disposal of property improves the economic, social or environmental wellbeing of the area in which the Council operates. This is known as the General Disposal Consent 2003. The Council must take account of

this when deciding upon the amount of consideration that it will accept for the Care Homes.

4. Initial Consultation

4.1 Consultees and their opinions

Service users, their families and carers were invited to hear about the proposed changes and discuss any concerns in face to face meetings in early 2017. This was followed by a consultation period running 8 May to 9 June 2017. Consultation invite letters were sent out to care home service users' next of kin, with the option of a paper or online questionnaire. In total, 64 responses were received.

The questionnaire asked six questions – three open questions for their concerns, ideas, and other comments, and three closed questions to help demonstrate which groups responded. A copy of the questionnaire is attached at Appendix A of this report.

4.2 Summary of results:

- 46% of respondents told us they used respite services, whilst 54% used long stay residential care. All responses related to current service users.

- Responses linked to the following homes:

Castle Grange - 32 responses

Claremont House - 22 responses

Ings Grove House - 9 responses

As expected, no responses received for Moorlands Grange as there are no permanent residents.

- All respondents stated that they had concerns with the proposal to transfer the homes to the independent sector. The Council is confident that it can address a large majority of the concerns through the proposed methods of disposal of the Care Homes.

4.3 Main areas of concern:

- **Future cost increases.** Comments recognised that the private sector needs to generate a profit and could raise prices, which some felt they would be unable to afford in the future. The future arrangements can address this in the agreement.
- **Potential for reduced quality of care.** Changes to staffing was a main concern – a belief that they would cut existing staff (felt to be a great asset providing high levels of care) and replace with staff that are inexperienced, unknown to residents and under more pressure. CQC and contracts team inspect all homes at least annually. The Council support care homes to maintain quality. The procurement process can set as one of the criteria 'a proven track history of staff retention'.
- **Loss of respite.** Some felt that respite services would be lost, causing difficulties for families, as this would not be profitable. The Council will take steps to ensure bookable respite is available.

- **Alternative providers** Concerns were raised that the proposed change could lead to greater instability; new owner could be more willing to close the home if unprofitable; profits will be prioritised over quality of care; a private owner may be more willing to move/rotate staff and residents. As above registered homes are inspected regularly and the contract arrangements can address these issues.

4.4 **Other comments:**

- **Lots of praise** was given regarding the Care Homes as they are now – particularly the staff once more. Long stay users emphasised the “peace of mind” the current situation allows them and their families.
- **Potential alternate funding options suggested** Ideas expressed by consultees included asking families for a monthly contribution; keeping respite services at the Care Homes and funding the private homes to become nursing care homes instead.

4.5 **Use of initial consultation in the decision making process**

The consultation exercise so far has highlighted areas that the Council may wish to consider when deciding how to change the operating model of the Care Homes. None of the responses to the consultation exercise have lead officers to believe that the Care Homes should not be disposed of in the manners set out in this report.

Below are some key ideas for how the Council can potentially mitigate the impact of any changes:

- **Retain stability for residents.** Most wanted key elements of the service to stay the same; mainly staff and living arrangements. Many stressed how important it was to keep the same staff and residents together and not create unfamiliar situations. Not all were opposed to new ownership, so long as standards and stability could be retained. The main driver for the Council is to ensure the homes remain in operation for continuity of residents care. Whilst it is never possible to guarantee staff are retained; all staff will have a right to transfer to the new provider.
- **Ongoing communication.** People told us they want to be involved in the process, and to be kept up to date with as much information as possible. One respondent suggested the new owner hosts regular meetings with residents and carers. The Council will endeavour to support this.

5. **Next steps**

Once the officers have received the necessary delegated authority they will aim to further consider and finalise the approved proposal to transfer the homes. To finalise their decision they will consider whether further consultation is required and seek the necessary legal advice as to the route for transfer.

6. **Officer recommendations and reasons**

Intermediate Homes

Officers are recommending that approval be given to the alternative provision as set out in Appendix B in relation to the Intermediate Homes, and delegate the terms and

timing of any further consultation to the Chief Executive or their nominee in consultation with the Portfolio Holders for Adults & Public Health and Corporate Resources.

Upon receiving and evaluating the terms of the proposals set out in Appendix B, delegate powers to agree the preferred options to the Chief Executive or their nominee in consultation with the Portfolio Holders for Adults & Public Health and Corporate Resources, to inform a final decision.

Following such a decision by the Chief Executive or their nominee delegate authority to the Service Director Legal and Governance and Commissioning to enter into and execute any agreements or instruments relating to the transfer of a business and/or disposal of assets.

Residential Homes

Officers are recommending that approval be given to market the residential homes for business transfer and delegate the terms and timing of any further consultation to the Strategic Director for Adults and Health in consultation with the Portfolio Holders for Adults & Public Health and Corporate Resources.

Upon receiving and evaluating the terms of the sale of business proposals, delegate powers to agree the preferred options to the Strategic Director for Adults and Health in consultation with the Portfolio Holders for Adults & Public Health and Corporate Resources.

Following such a decision by the Strategic Director for Adults and Health delegate authority to the Service Director Legal and Governance and Commissioning to enter into and execute any agreements or instruments relating to the transfer of a business and/or disposal of assets.

Reasons for Recommendations

The Council only provides a small amount of care provision in Kirklees, and has made a commitment to ensure the use of the homes and protection of tenure and cost increases of existing tenants while also generating significant revenue savings.

There has been a significant amount of interest from alternative providers who operate successfully in Kirklees.

Existing residents will not be affected, by either length of tenure and right of residency or cost of provision and funding for their placement.

The Council will fully consider the feedback from the consultation process, in the disposal process and will ensure that providers with a good reputation and provide high quality services are considered as part of the evaluation process.

7. Cabinet portfolio holder's recommendations

The Portfolio Holders support the officer recommendations and would ask that Cabinet do the same.

8. Contact officer

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Commissioning, Public Health and Adult Social Care
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9. Background Papers and History of Decisions

Cabinet Budget 15 February 2017.

10. Service Director responsible

Paul Kemp - Service Director –
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Appendices

Appendix A – Consultation Questionnaire

Appendix B – Private Appendix on the proposals for intermediate care homes and residential/respite homes.

Appendix B of this report is recommended to be taken in private because the information contained in it is considered to be exempt information under Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). It is considered that it would not be in the public interest to disclose the information contained in the report as disclosure could potentially adversely affect overall value for money and could compromise the commercial confidentiality of the bidding organisations and may disclose the contractual terms, which is considered to outweigh the public interest in disclosing information including, greater accountability, transparency in spending public money and openness in Council decision-making.

Older people's residential and respite care services – your views

Please let us know what's important for you and your family. We would like to hear from people that use residential and respite care services, and their families.

The population of Kirklees is changing, and we are better now at supporting people to stay in their own homes. There is also a good range of residential care locally. There is, however, a need to develop more support for people coming out of hospital and more nursing care – particularly for people with dementia.

A number of budget decisions have been taken which affect the amount of money available for Kirklees Council's directly delivered older people's residential and respite care services, in particular the services at:

**Ings Grove House
Moorlands Grange
Castle Grange
Claremont House**

Taking these changing needs into account as well as the council's financial position, **the proposal is to transfer the homes into the independent sector.** This could include the voluntary sector or the local community health provider.

This would mean the homes were no longer owned by Kirklees Council, but most day to day things would remain the same - including the quality of care you / your family receive at the homes, and the staff that work at each home.

Before we progress with this proposal we want to understand and respond to what people tell us is important for us to consider when making any changes.

Please take a few minutes to complete this questionnaire. Your responses will be treated confidentially.

You can complete the questionnaire online if you prefer (saving us time and postage costs) – visit www.kirklees.gov.uk/homessurvey

Do you or a member of your family use:

- Respite services
- Long stay residential care
- Don't use either at the moment

If you or your family uses residential care, please tell us which home:

- Ings Grove House
- Moorlands Grange
- Castle Grange
- Claremont House

Do you have any concerns about our proposal to transfer the homes into

the independent sector?

- Yes – please write your concerns below
- No

If you have concerns, please tell us what these are, so that we can take them into consideration in any changes we make:

Please tell us your ideas for how we can help make any changes as positive as possible for people using residential and respite care services:

Is there anything else you want us to know?

If you would like us to get in touch to discuss your response, please add your details:

Your name:

Your phone number
or email address:

Thank you for taking the time to complete this survey. Please send your completed survey to:

FREEPOST KIRKLEES COUNCIL
DMT admin

Don't forget to return it by 9 June 2017.

