

**REPORT TITLE:**

<b>Meeting:</b>	Future of Dementia Care Home Provision
<b>Date:</b>	8 <sup>th</sup> October 2024
<b>Cabinet Member</b> (if applicable)	Cllr Beverley Addy
<b>Key Decision Eligible for Call In</b>	Yes Yes
<b>Purpose of Report</b>  To advise on the progress of identifying potential new operators for two homes for older persons and to consider how to progress further.	
<b>Recommendations</b> That authority is sought from Cabinet to: <ul style="list-style-type: none"> <li>• note update on progress;</li> <li>• agree that we undertake an adequate consultation for 6 weeks with staff and families about this proposal to transfer one or both homes to a private sector operator;</li> <li>• agree that we can progress negotiations to the point of being able to enter into a contract with an alternative provider subject to final agreement by Cabinet;</li> <li>• approve the carrying out of consultation on the principles of the proposal and delegate authority to the Service Director for Mental Health, Learning Disabilities &amp; Provider Services to agree the nature and scope of such consultation.</li> </ul>	
<b>Reasons for Recommendations</b> <ul style="list-style-type: none"> <li>• The homes continue to lose more than £1¼ m per annum and require capital investment.</li> <li>• The Council's financial position remains severely challenged, more so than at the time when the decision was taken not to progress the closure option.</li> <li>• Cabinet asked us to explore the interest shown by other providers in a transfer.</li> <li>• We have explored it further and it appears that there is interest - three operators are showing interest in pursuing this option further.</li> <li>• Targeted consultation with staff, individuals and their families on a one to one basis on the proposed transfer of the care homes to a private operator will ensure their needs and concerns are addressed before any final decision is made.</li> <li>• To note and consider the Integrated Impact Assessment.</li> <li>• To agree a further report will be brought back to Cabinet to consider the outcome of the consultation and decide next steps.</li> </ul>	
<b>Resource Implications:</b> <ul style="list-style-type: none"> <li>• Pursuing the option will involve substantial officer time, both relating to adult social care, finance, legal, HR, Corporate Landlord and communications, with the possible use of outside providers (e.g. for legal work, property surveys)</li> <li>• Disposal of the care homes will allow the Council to focus resource on specialist activity where there are market gaps or where only the Council can play a facilitating role (e.g. Knowl Park House new dementia facility)</li> </ul>	

<p>Date signed off by <u>Executive Director</u> &amp; name</p>	<p><b>Give name and date for Cabinet / Scrutiny reports</b> Richard Parry – Executive Director Adults and Health – 23/09/24</p>
<p>Is it also signed off by the Service Director for Finance?</p>	<p><b>Give name and date for Cabinet reports</b> Kevin Mulvaney – Service Director, Finance – 23/09/24</p>
<p>Is it also signed off by the Service Director for Legal and Commissioning (Monitoring Officer)?</p>	<p><b>Give name and date for Cabinet reports</b> Samantha Lawton – Service Director, Legal and Commissioning – 23/09/24</p>

**Electoral wards affected:** All/ Newsome & Heckmondwike

**Ward councillors consulted:** None

**Public or private:** Public

**Has GDPR been considered?** Yes

**1. Executive Summary**

A 2024/25 budget proposal was to close two care homes for older people: Claremont House at Heckmondwike and Castle Grange at Newsome. Following a public consultation exercise a decision was taken not to pursue closure, but options for transfer of the homes on a going concern basis were retained. Since that decision, officers have explored with potential operators’ options for business transfer. This report updates the position with a view to identifying what actions to pursue further.

**2. Information required to take a decision**

- 2.1 A 2024/25 budget proposal was to close two care homes for older people: Claremont House at Heckmondwike and Castle Grange at Newsome. These homes were not fully occupied, for several reasons related to use as alternative provision, repairs, used for respite, and uncertainty about the future. Staffing levels in part reflected underutilisation, but there was also dependence on more agency staff than normal (adding to cost).
- 2.2 Since the decision not to close, there has been some additional recruitment of permanent residents, and substantive staff.
- 2.3 In the circumstances described above it is difficult to calculate a clear financial position. However, with each home operated at full capacity, with permanent residents, it is likely that if the homes were receiving the standard fee for those entitled to full local authority support each home and the actual fee charged for those who are self-funding the loss is somewhere between £1.25m and £2m per annum. These charges do not include depreciation/ capital charges, so a full economic loss is considerably higher.
- 2.4 Inspection of the properties suggest that if they remain in council control there will be a significant requirement for capital investment, as the buildings, now circa 25 years old need typical refurbishment elements at this stage in their life time such as roofing works, mechanical and electrical plant (e.g. lifts). These items are not captured in any analysis but could amount to a further £1.4 million over the next 5 years.
- 2.5 The Council’s financial position overall remains very difficult. Not all the savings required in 2024/25 have been identified, or achieved, and some of those previously identified may no longer be feasible or may not generate the anticipated level of saving.

- 2.6 Approximately 7 years ago, the Council initially explored the disposal of these two homes. Although there was some interest, and the disposal was progressed to a “best and final offers” stage, no viable bids were ultimately proceeded with.
- 2.7 Since that time the market might be considered to have moved on; the national minimum wage has substantially closed the pay-rate gap between council and private sector homes. However, the terms and conditions of council employment remain more expensive than those typical in the private sector, and whilst the obligation to provide a private pension has increased costs for private operators, the Local Government Pension Scheme pension still adds about 10% more to council payroll costs than a typical private operator would face. A number of operators have started to specialise in taking over unviable homes. These are, more typically from the private sector, rather than from local authorities, where the more usual solution is closure, sale and reopening under a new management regime.
- 2.8 Several operators expressed an interest during the closure consultation in taking forward alternative solutions. In some cases, this was business transfer; in other cases, it was through an intention following closure to reopen the facilities for the same purpose, or a different care sector (e.g. adults with learning difficulties).
- 2.9 In the last few months there has been more active engagement with those expressing an interest in taking the homes on “as a going concern” with the homes remaining open and staff and residents transferring. Additional employee, payroll and pension, financial and client/customer information has been provided to those organisations to allow them to better consider their position.
- 2.10 The Council provided an indicative basis on which it would look to transfer the homes as going concerns. These were.
- a) This is a business transfer
  - b) The homes would transfer with existing residents
  - c) The existing site staff, but no others, would transfer under TUPE
  - d) There would be no short-, medium- or long-term care contracts, other than the standard right of persons to select a care home of their choice, and the local authority to pay the standard weekly fee where applicable.
  - e) Operators have been made aware of the weekly fee currently charged to self-funding residents but have not been required to agree to maintain these charges.
  - f) Because there are no transferring local authority contracts, this is not a Best Value contract, so accordingly employment rights are protected as is normal under TUPE transfers, but there is only the minimum standard TUPE pension protection to existing employees (they do not retain the right to retain a LGPS or broadly comparable pension in perpetuity).
  - g) The Council would sell the freehold of the premises at the time of the business transfer, or the transferee could make proposals as to a point at which the freehold or a long-term lease would transfer to them. Under any of these options full repairing liabilities would transfer to the operator from the commencement of the contract.
  - h) The Council would expect to receive a payment for the business reflective of the potential opportunities and liabilities and risk that they were acquiring
- 2.11 In recognition of 2.10 (h), this may be less than the value of the freehold premises alone.
- 2.12 As a part of the process potential operators have been made aware of the likely challenges and issues that may face them if they pursue the options for sale including the possible need for some form of public consultation process and the need to manage the workforce implications of a transfer.
- 2.13 There were seven operators who initially got in touch.
- 2.14 The three operators who remain interested have not yet visited the premises, although they have been shown a video presentation. They have also not had the opportunity to undertake any further due diligence checking- for example as to the state of the premises, which would require professional surveying assessments, and undoubtedly, some degree of negotiation.

- 2.15 Before any further work is undertaken, by either the Council's officers, or the prospective purchasers, it is necessary to determine the position.
- 1). Is the Council willing to explore the sale of these Care Homes further?
  - 2). Is it willing to do so on the basis set out at 2.10 (or if not, how does it wish to adjust this?)
- 2.16 We intend to continue discussions with the 3 current proposers, and any other operator who officers believe will be likely to make a legitimate proposal.
- 2.17 Costs are likely to be incurred by all parties in progressing any negotiations further. At the present time we do appear to hold one strong bid and may be successful in gaining a second, notwithstanding that due diligence and site visits have yet to be carried out. The current bidder has carried out this type of process before, and is aware of the likely issues, and rewards.
- 2.18 There is no certainty, though, that following negotiations any bidder will get to a stage where they can progress to full completion and transfer. This may reflect difficulties not wholly related to the merits of the proposal (e.g. availability of bank finance) or be down to personal perceptions from the bidders and their team about the likely risks and rewards.
- 2.19 From the Council perspective, though, this facilitates an ability to save revenue costs more than £1m (and probably in reality >£1.5m) each year and avoid further capital costs.
- 2.20 The sale of the business will also potentially generate capital receipts (albeit the Council will have two fewer assets), and the proceeds may not exceed the book debt related to the properties.

### **3. Implications for the Council**

Disposal of care homes is a typical action by local authorities in financial difficulties, or those which wish to transfer resources for other priorities. The Council would retain a role in providing more specialist services for both older people living with dementia and for people with a learning disability as well as working jointly with the healthcare system to provide residential step down beds that support discharge.

#### **3.1 Council Plan**

This proposal relates to the priorities outlined in the 24/25 Council Plan as per the above (3) and supports the Council's aim to transform services to become more efficient, effective and modern working towards a new operating model for Adult Social Care Services.

#### **3.2 Financial Implications**

Will generate substantial ongoing savings for both revenue and capital requirements, if achieved.

3.2.1 From the Council perspective, though, this facilitates an ability to save revenue costs more than £1m (and probably in reality >£1.5m) each year and avoid further capital costs.

3.2.2 At year end (2023-24), the total direct cost for Castle Grange was £2.38m and for Claremont House was £1.95m. At full occupancy this equates to a unit cost per bed per week of £1,145 for Castle Grange, and £937 for Claremont House. Note that this is for direct costs and does not include other internal Council support costs that could be attributed to the sites also. Including an estimate of the latter (c£519k per site) takes the total gross costs to £2.9m for Castle Grange, and £2.47m for Claremont House, giving unit bed costs of £1,394 and £1,186 respectively. At the same full occupancy level but paying for the provision of beds externally (at an estimated market rate of £853 per bed per week) the cost of alternate provision would be £1.78m for Castle Grange, and the same (£1.78m) for Claremont House.

3.2.3 At a 95% occupancy level (38 beds per site), the unit costs are £1,467 per bed per week for Castle Grange (total cost as above, of £2.9m), and £1,248 per bed per week for Claremont House (£2.47m as per above). At this occupancy level, the alternative external provision would cost £1.69m for each site.

- 3.2.4 For further context the current net budgets in the MTFP for 2024-25 (*including income*) for the sites are £1.53m for Castle Grange, and £1.48m for Claremont House. This does not include coverage of internal Council support costs.
- 3.2.5 The sale of the business will also potentially generate capital receipts (albeit the Council will have two fewer assets), and the proceeds may not exceed the book debt related to the properties.

### 3.3 Legal Implications

- 3.3.1 The Council has a duty to meet needs for care and support (Section 18 of the Care Act 2014). The Care Act 2014 does not specify separate duties for the provision of residential and non-residential care. Section 8 of the Care Act 2014 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” (s.8(1) (a).
- 3.3.2 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 ‘s statutory Care and Support Guidance (updated June 2023).
- 3.3.3 The Council is required to carry out non-statutory consultation process regarding proposals to reconfigure services and to carefully consider responses before reaching any decision. A lawful consultation should be in line with the Gunning Principles. A fair consultation is one undertaken when the proposals are at a formative stage; sufficient reasons are given for the proposals to allow intelligent consideration by consultees together with criteria which will be applied when considering proposals and which factors will be considered decisive or of substantial importance; adequate time must be given for responses; and the product of consultation must be conscientiously considered before any final decision is taken. Members should carefully consider the outcomes of the consultation when considering the recommendations of officers including the Integrated Impact Assessment and all other relevant matters.
- 3.3.4 While some consultation has been previously carried out, this was in relation to a closure option and so further consultation is required in relation to the transfer of a going concern.
- 3.3.5 The Council has a duty of Best Value under section 3 of the Local Government Act 1999 to secure continuous improvement in the way functions are carried out having regard to a combination of economy, efficiency and effectiveness. The Council has a fiduciary duty to taxpayers when carrying out its functions.
- 3.3.6 Any Council staff transferring to another care home operator will benefit from protection under the Transfer of Undertakings (Protection of Employment) Regulations 2006 on the basis that it would constitute the transfer of a business as a going concern. This means their contractual terms and conditions of employment and continuity of service will transfer. In the absence of economic, technical or organisation reasons entailing changes in the workforce, there are restrictions on the ability of the transferee employer to change terms and conditions if they relate to the transfer itself. Minimum pension rights/benefits must be protected under the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005. It would be open to potential care home operators to explore with WYPF whether it was possible to join LGPS Affected staff and Trade Unions will be consulted as part of the decision-making process at the appropriate time. The transferee employer will need to inform the transferor Council of any “measures” that it proposes regarding transferring employees following the transfer.
- 3.3.7 Article 8 of the European Convention on Human Rights (ECHR) is a relevant consideration which requires the Council to respect the private and family life of persons resident in the Council’s care homes. Article 8 is only engaged if the proposals interfere with service user rights, and if so, may nonetheless be permissible if justified and proportionate. Provided the Council complies with its statutory duties its actions should be compliant with its obligations under the ECHR. Subject to the outcome of the consultation, the Council will

need to ensure the needs of residents have been properly assessed in line with the Care Act 2014.

3.3.8 The Council has a duty under Section 123 Local Government Act 1972 when selling land to obtain the best consideration reasonably obtainable. Land can be sold at an undervalue of up to £2M under the General Disposal Consent 2003 if the purpose of the disposal is to promote or improve economic, social or environmental wellbeing of the area. If the consent did not apply the matter would need to be referred to the Secretary of State. To avoid Subsidy Control Act 2023 complications, the Council should commission independent valuations of each care home site once the details of the Heads of Terms for the disposal are known.

3.3.9 The Council must comply with the Public Sector Equality Duty under Section 149 Equality Act 2010. An Integrated Impact Assessment will be required on the proposed sale of Council care homes and members must consider its findings before taking any decision. The Council when exercising its functions must have “due regard to the need to” - Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.

a) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

b) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

3.3.10 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, amongst others, will be relevant in taking decisions about the future of the Council’s care homes. The Integrated Impact Assessment will need to be updated during and following any consultation.

3.3.11 The Council has the power to enter any necessary contractual or other arrangements relying on Section 1 of the Localism Act 2011 and all other enabling powers. Section 1 introduced a general power of competence, subject to certain restrictions and prohibitions in other legislation, under which local authorities may do anything that an individual could do. All legal powers must be exercised reasonably in public law terms

#### 3.4 **Other (eg Risk, Integrated Impact Assessment or Human Resources)**

There are likely to be both communications and reputational challenges, and from the affected workforce. Other risks are potential Judicial Review in relation to the consultation process; failure to comply with TUPE regs with financial implications; the risk that the care homes do not transfer with continuing financial implications.

#### 4. **Consultation**

There has previously been a consultation on a proposed closure of these homes which resulted in a Cabinet decision to explore alternatives including transfer to the independent sector.

#### 5. **Engagement**

As 6.

#### 6. **Options**

These are.

a) Do nothing, and continue as is, recognising that the homes cost significantly more to operate than they generate in income through fees charged.

b) Pursue the transfer of the 2 long stay homes as a going concern business. The preferred option here, and one which brings savings with minimal disruption to residents and their families and a transfer of employment arrangements for staff.

- c) Close the homes (a previously rejected option, though financial position of Council has since worsened)

**6.1 Options considered**

As identified in previous Future arrangements for the council-run long stay dementia care homes Cabinet Report – March 2024.

**6.2 Reasons for recommended option**

As identified in previous Future arrangements for the council-run long stay dementia care homes Cabinet Report – March 2024.

**7. Next steps and timelines**

If approved, pursue further consultation with interested parties including residents and their families.

**8. Contact officer**

Michelle Cross, Service Director for Mental Health, Learning Disabilities & Provider Services  
Martin Dearnley, Head of Audit & Risk.

**9. Background Papers and History of Decisions**

*Cabinet Mtg 26 Sept 23:*

**Proposed Closure of Castle Grange and Claremont House residential care homes PDF 404 KB**

- [View the background to item 11:](#)
- [View the decision for item 11:](#)

*Scrutiny Panel 22 Nov 2023:*

**Castle Grange and Claremont House Care Homes Consultation PDF 375 KB**

*Cabinet Mtg 12 March 2024:*

**Future Arrangements for the Council-Run Long Stay Dementia Care Homes PDF 902 KB**

- [View the background to item 8:](#)
- [View the decision for item 8:](#)

**10. Appendices**

None

**11. Service Director responsible**

Michelle Cross Service Director for Mental Health, Learning Disabilities & Provider Services  
Samantha Lawton, Service Director for Legal Governance & Commissioning  
Kevin Mulvaney, Service Director for Finance