

REPORT TITLE: CALL-IN OF DECISION IN RESPECT OF THE FUTURE OF COUNCIL OPERATED DEMENTIA CARE HOME PROVISION (CASTLE GRANGE AND CLAREMONT HOUSE)

Meeting:	Health and Adult Social Care Scrutiny Panel
Date:	10th January 2025
Cabinet Member (if applicable)	Councillor Beverley Addy – Health and Social Care
Key Decision Eligible for Call In	No Not applicable
<p>Purpose of Report To provide the Committee with the information considered by the Cabinet when making the decision and the validated areas of focus for the call-in.</p>	
<p>Recommendations Members of the Panel are asked to consider all the evidence and make a recommendation, in accordance with the provisions of the Overview and Scrutiny Procedure Rules (Part 4.5 of the Constitution).</p> <p>Reasons for Recommendations The decision of the Cabinet has been called-in for review by the Panel.</p>	
<p>Resource Implications: Not applicable</p>	
<p>Date signed off by <u>Executive Director</u> & name</p> <p>Is it also signed off by the Service Director for Finance</p> <p>Is it also signed off by the Service Director for Legal, Governance and Commissioning (Monitoring Officer)</p>	<p>Not applicable</p> <p>Not applicable</p> <p>Samantha Lawton 2-1-25</p>

Electoral wards affected: Not applicable

Ward councillors consulted: Not applicable

Public or private: Public

Has GDPR been considered? Yes

1. Executive Summary

- 1.1 On 17th December 2024, the Service Director for Legal, Governance & Commissioning received written notification from eight councillors of their wish to call-in a decision of the Cabinet made on 10th December 2024 in relation to the future of Council operated Dementia Care Home Provision (Castle Grange and Claremont House).
- 1.2 Following a validation exercise of the call-in request form by the Service Director for Legal, Governance and Commissioning, in consultation with the Chair of Scrutiny, a document has been produced, which sets out the validated areas of focus for the call-in (Appendix 1).
- 1.3 The Panel will have access to the papers considered by the Cabinet when making the decision and will be able to question the relevant officers and the Cabinet Member. The Panel is also able to hear from other interested parties, including other councillors and members of the public. A timetable for the Panel meeting is attached at Appendix 2.
- 1.4 The Panel and interested parties must focus attention and questions on those issues that are set out in the validated areas of focus for the call-in.
- 1.5 Once the Panel has considered the points raised and all supporting information and evidence, it must resolve either to:
 - (1) Free the decision for implementation
 - (2) Refer the decision back to the Cabinet with a recommendation for amendment.
 - (3) In exceptional circumstances, refer the issue to the next Council meeting if the decision is not consistent with the budget or any policy previously agreed by the Council. This can only be done with advice from the relevant senior officers and the Service Director for Legal, Governance and Commissioning.
- 1.6 If the decision is referred back to the Cabinet, the options available will include:
 - Accept the recommendation of the Scrutiny Panel, in full or in part, and amend the decision;
 - Decide that further work needs to be done and defer the item until this is completed. The Scrutiny Panel/non-executive members should be kept informed of the work as it progresses and be formally notified when it is to be reconsidered;
 - Not accept the view of the Scrutiny Panel and confirm the original decision;
 - Refer the issue for discussion at the next appropriate Council meeting.
- 1.7 If the Cabinet confirms the original decision, it can be implemented immediately as there is no scope for further review and challenge. A decision may only be reviewed once.

2. Information required to take a decision

The Panel will have access to the information considered by the Cabinet when making the original decision.

3. Implications for the Council

There are no specific implications for the Council within this report as the Panel does not have decision making powers. However, as a result of hearing the call-in evidence, recommendations may be made to the Cabinet to amend the decision which, if accepted, could result in implications for the Council.

3.1 Council Plan

Not applicable

3.2 Financial Implications

Not applicable

3.3 Legal Implications

Not applicable

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

Not applicable

4. Consultation

Not applicable

5. Engagement

Not applicable

6. Options

6.1 The options for the Panel are set out in paragraph 1.5 of this report.

7. Next steps and timelines

Following consideration of all the information and evidence, the Scrutiny Panel will make a recommendation, in accordance with the Council Procedure Rules. This recommendation will then be actioned as appropriate.

8. Contact officer

Nicola Sylvester, Principal Governance Officer

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email: nicola.sylvester@kirklees.gov.uk

9. Background Papers and History of Decisions

Overview and Scrutiny Rules – Council Constitution

Cabinet 10-12-24

10. Appendices

Appendix 1 - Areas of Focus

Appendix 2 - Hearing Timetable

Appendix 3 – Decision Summary - 10-12-24

Appendix 4 – Cabinet Report 10-12-24

11. Service Director responsible

Samantha Lawton, Service Director, Legal, Governance and Commissioning

Appendix 1

Scrutiny Areas of Focus following Call-in request relating to the Future of Council Dementia Care Homes – Cabinet Decision 10 December 2024

Following consideration of the call-in request form, the following areas have been validated as the focus of the call in review meeting.

Decision-making Principle	Area of Focus
1. Openness	<p>A lack of transparency over the financial rationalisation for privatisation.</p> <p>The Cabinet report of 08 October 2024 provided estimated savings of £1.2m-£2m, however, in the report to Cabinet on 10 December 2024 this was reduced to £0.8m. No explanation was given for this reduction and neither of the reports provided a breakdown of how the estimated savings were calculated. During the cabinet meeting of 10 December 2024, the Cabinet Member for Health and Social Care referred to Youtube recordings that stated a multi-year analysis had been done, which was shared with families during the family finance meeting held in November 2023 – this meeting referred to was regarding the finances for a previous proposal (closure), and would therefore not be appropriate to determine the fitness of a privatisation proposal, due to details being a year out of date and based on budgets, not actuals. The recording did not include the detail as stated by the Cabinet Member. During the cabinet meeting of 10 December 2024, the Cabinet Member for Health and Social Care referred to a Youtube recording that referred to ‘what the council were hoping to do through the settlement that they received from government, and if it was high enough to be able to support other care providers in that realm by an uprise in fees’.- in other words, they would give the money that is due to the council to offset employers’ NI increases to private sector providers.</p> <p>There are unanswered questions over budget and actual operating costs:</p> <ol style="list-style-type: none"> 1. Both of the cabinet reports from 2024’s privatisation proposal stated figures only from the full financial year of 2023- 24 2. Last year’s finance presentation and cabinet reports stated figures based on the same year’s budget, but no actuals 3. None of the reports across both attempts to dispose of the homes have referenced data from any other year 4. Castle Grange actual costs were around £418k over budget, but Claremont House was only very slightly over by circa £5k - no explanation has been provided for this overspend, or why one home is significantly over while the other almost met budget.

	<p>Information based on a Freedom of Information request submitted on 5 November 2024 stated that income the council was owed for care homes amounted to £730k, for an average occupancy rate of 57%. Scaled up to full occupancy the owed income could amount to almost £1.3m per year. The care homes have been operating at 57% occupancy, meaning more income should have been generated by filling the homes. The homes were left unfilled due to the cabinet decision in September 2023, to halt all new entrants during the closure proposals. While there were extenuating circumstances (the homes were used as temporary cover while other services are in the process of being commissioned), this showed how using just that year's data is flawed. If the council did not own those properties and run these care homes, that stop-gap would not have been available. The costs of providing that internal support should not have been factored into the calculations of the homes' viability.</p> <p>Openness over staff budget and external expenditure, why was almost half of the staff budget spent on Reed Specialist Recruitment (visible through public expenditure records), was this because of an inefficient use of agency staff due to the council running these homes down during their attempt to close? (This activity was authorised in the cabinet meeting of 26 Sept 2023 when the closure proposal was first put to cabinet during the scrutiny panel of 22 November 2023, A scrutiny panel member asked the Executive Director for Adult Social Care about the number of suitable homes. The Executive Director responded to say that "Kirklees Council pay a premium to providers that specialise in supporting people living with dementia - there are 23 care homes across Kirklees to whom we pay that premium because they are specialist dementia providers". Have these premiums been factored into the £853 average per person per week cost that was used in the cabinet reports for privatisation this year?</p>
<p>2. Relevant Considerations</p>	<p>Financial Discrepancies and Opaqueness Saving estimates within Cabinet reports have fluctuated without clear explanation, with financial reports lacking robust modelling or historic data. Public records highlight overspending on agency staff which suggests poor management rather than systemic inefficiency.</p>

Appendix 2

Call-In Hearing Timetable THE FUTURE OF COUNCIL OPERATED DEMENTIA CARE HOME PROVISION (CASTLE GRANGE AND CLAREMONT HOUSE)

Meeting		Timetable ¹
1.	<p>Introduction by Chair of Panel</p> <p>Explanation of the conduct of the meeting</p>	2:00 p.m.
2.	<p>Lead Signatories Statement</p> <p>Explanation of validated reasons set out in call-in request and any supporting evidence.</p> <p>Clarification: Panel Members may seek clarification on anything that has been said.</p>	Up to 20 minutes
3.	<p>Public Participation (Councillors)</p> <p>Councillors who are not signatories may attend to give evidence relevant to the validated areas of focus (up to 5 minutes each)</p> <p>Clarification: Panel Members may seek clarification on points raised by Councillors</p>	Up to 20 minutes
4.	<p>Public Participation (Public)</p> <p>Members of the public may attend to give evidence in respect of the validated areas of focus (up to 5 minutes each. It is recommended that pressure groups are represented by 1 speaker)</p> <p>Clarification: Panel Members may seek clarification on points raised by members of the public</p>	Up to 30 minutes
5.	<p>Decision-Makers Statement</p> <p>The relevant decision-makers, with support from appropriate officers, will:</p> <ul style="list-style-type: none"> - respond to the validated areas of focus - Have the opportunity to respond to any information that has been raised during the discussion at the meeting. <p>Clarification: Panel Members can raise issues of clarification with the decision-makers</p>	Up to 40 minutes

6.	<p>Final Panel Clarification</p> <p>If required, Panel Members can ask any outstanding questions of anyone who has presented information at the meeting in relation to the validated areas of focus</p>	Up to 10 minutes
BREAK – COMMITTEE WITHDRAW TO FORMULATE DECISION		
7.	<p>The Panel will reconvene to read out their decision and the reasons for this which will be in accordance with the options set out in the Council Procedure Rules:</p> <p>(1) take no further action and free the decision for implementation *</p> <p>(2) refer it back to the Cabinet with recommendation/s for amendment</p> <p>(3) in exceptional circumstances, refer to the next meeting of Council - only if the decision is not in line with the budget or any policy previously agreed by the Council**.</p> <p><i>* The Panel may identify areas of learning for the decision-maker to consider which do not require the original decision to continue to be suspended from implementation.</i></p> <p><i>** This can only be done with advice from the relevant senior officers and the Service Director for Legal, Governance and Commissioning</i></p>	

1. Please note that the timings are for guideline purposes only and are subject to change on the day, at the discretion of the Chair of the meeting.



**Service Director – Legal, Governance and
Commissioning**
Samantha Lawton

Governance and Commissioning
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Decision Summary

Committee:
Date:
Committee Clerk:
TEL:

CABINET
TUESDAY 10 DECEMBER 2024
Andrea Woodside
01484 221000

Chair

Councillor Carole Pattison

Councillors Attended

Councillor Moses Crook
Councillor Beverley Addy
Councillor Munir Ahmed
Councillor Tyler Hawkins
Councillor Viv Kendrick
Councillor Amanda Pinnock
Councillor Graham Turner

Observers

Councillor Itrat Ali
Councillor Tanisha Bramwell
Councillor Andrew Cooper
Councillor Yusra Hussain
Councillor John Lawson
Councillor Paul Moore
Councillor Alison Munro
Councillor Andrew Pinnock
Councillor Kath Pinnock
Councillor Imran Safdar
Councillor Cathy Scott
Councillor Elizabeth Smaje
Councillor Mohan Sokhal

8: Future of Council Operated Dementia Care Home Provision (Castle Grange and Claremont House)

To consider the future of Council operated dementia care home provision.

Contact: Saf Bhuta, Head of In-House Care Provision

(Exempt information is detailed in an appendix to the attached report.

Consideration must be given to whether the public and press should be excluded from the meeting prior to the determination of the matter to enable the exempt information to be discussed by passing the following resolution: -

To resolve that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business, on the grounds that they involve the likely disclosure of exempt information, as defined in Part 1 of Schedule 12A of the Act.)

RESOLVED –

- 1) That the outcome of the consultation as at Appendix 1 and 2 of the considered report be noted.
 - 2) That the content of the Integrated Impact Assessment, including mitigating factors, be noted.
 - 3) That approval be given to pursue the transfer of the homes as a going concern.
 - 4) That authority be delegated to the Executive Director for Adults and Health, in consultation with (i) the Cabinet Member for Adult Social Care (ii) the Cabinet Member for Finance and Regeneration (iii) the Service Director – Legal, Governance and Commissioning and (iv) the Service Director – Finance to:
 - (i) progress negotiations with potential bidders through a Best and Final Offer stage and select a preferred bidder
 - (ii) complete the legal transfer of two residential care homes as a going concern, subject to the satisfactory outcome to negotiations with the preferred bidder.
 - 5) That authority be delegated to the Service Director - Legal Governance and Commissioning to enter into formal legal agreements and other documentation required to implement the decision of Cabinet.
 - 6) That, in the absence of a successful outcome of the Best and Final Offer stage of the transfer process a further report be considered by Cabinet.
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REPORT TITLE: Future of Council Operated Dementia Care Home Provision (Castle Grange and Claremont House)

Meeting	Cabinet
Date	10 December 2024
Cabinet Member (if applicable)	Cllr Beverley Addy
Key Decision Eligible for Call In	Yes Yes

Purpose of Report

To advise Cabinet on the progress of identifying potential new operators for the Council's two dementia residential care homes (Castle Grange and Claremont House)

Given the financial challenges in relation to revenue and capital budgets, this report considers several options which include:

- Option 1: Do nothing and retain operation of the care homes
- Option 2: Transfer the 2 care homes to a third party bidder as going concern(s) following a robust expression of interest exercise subject to evaluation of price and quality
- Option 3: The closure of the Council's 2 care homes in accordance with best practice guidance.

The recommended option is option 2 for reasons set out below.

Recommendations

Cabinet are asked to:

- a. Note the outcome from the further consultation (at Appendix 1 and 2 to this report) with families and determine that as a result, the Council wishes to progress with the negotiations to dispose of the care homes as going concern
- b. Note the contents of the Integrated Impact Assessment including mitigating actions
- c. Agree to pursue the opportunity to transfer the homes as a going concern given the expressions of interest received
- d. Delegate authority to the Executive Director for Adults and Health, in consultation with the Portfolio Holder for Adults Social Care; Portfolio Holder for Finance and Regeneration, Service Director – Legal, Governance and Commissioning and the Service Director – Finance, to:
 - (i) progress negotiations with potential bidders through a Best and Final Offer stage and select a preferred bidder;
 - (ii) complete the legal transfer of two residential care homes as a going concern, subject to the satisfactory outcome to negotiations with the preferred bidder
 - (iii) authorise the Service Director Legal, Governance and Commissioning to enter into formal legal agreements and other documentation on behalf of the Council to implement the decision of Cabinet.
- e. In the absence of a successful outcome of the Best and Final Offer stage of the transfer process then a further report will be brought back to Cabinet.

Reasons for Recommendations

- Whilst there were concerns raised through the consultation, which are set out more fully in Section 4, they do not represent substantial or significant reasons why the homes should be retained as directly operated facilities
- The homes represent a comparative loss of more than £0.8 m per annum of direct costs and may well require further capital investment in the near future.
- The Council has received 5 bids.

Resource Implications:

- Whilst pursuing the option of sale will involve substantial officer time, both relating to adult social care, finance, legal HR, Corporate Landlord and communications, internally and externally, the potential revenue cost savings of more than £0.8m each year along with potential capital receipt and mitigated capital borrowing continues to make this an attractive option financially. Cabinet are asked to note the risk of reputational issues that will require resources to address.
- 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 market facilitating role (e.g. Knowl Park House new dementia facility).

Date signed off by Executive Director & name

Richard Parry –
Executive Director Adults and Health
29/11/24

Is it also signed off by the Service Director for Finance?

Kevin Mulvaney –
Service Director, Finance 29/11/24

Is it also signed off by the Service Director for Legal and Commissioning (Monitoring Officer)?

Samantha Lawton – Service Director, Legal and Commissioning – 29/11/24

Electoral wards affected: All/ Newsome & Heckmondwike

Ward councillors consulted: None

Public or private: Both (Private Appendix 3)

Private Appendix 3 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 and openness in Council decision-making.

Has GDPR been considered? Yes

1. Executive Summary

- 1.1 On 26 September 2023 Cabinet approved a consultation process regarding the future of the Dementia Care home provision at Castle Grange and Claremont House

- 1.2 At the time, the report sought approval from the Council to withdraw from the long stay residential care market and focus its direct care delivery in other parts of the care market. A consultation process ran on this from 11th October 2023 to 3rd January 2024.
- 1.3 The report presented at Cabinet on 12 March 2024 determined not to close the homes, as was considered by the consultation, but recommended that following approaches made to the Council by independent sector operators, officers should explore potential opportunities to transfer the homes into the independent sector. These recommendations were approved by Cabinet.
- 1.4 Following an indication during informal consultations with potential providers that there may be an appetite from the private sector to acquire the two dementia care homes, as going concerns, Cabinet authorised progression of the process at their meeting on 08 October 2024.
- 1.5 Since that decision, officers have:
 - Undertaken a six week consultation with service users and their relatives regarding the transfer option, and meetings have also taken place with staff to update them on the process.
 - The sites have been marketed to those parties who had expressed an interest, and a number of others who have approached the Council when Cabinet determined that offers should be sought, plus information lodged with the Kirklees Care Association.
 - Detailed information about the homes has been prepared and shared, including staffing, financial and property information.
 - Interested Providers have visited both premises, and responses have been made to enquires, with information shared to clarify information prior to submission of initial bids.
 - Formal offers have now been received for both homes and will be considered and examined.

2. Information required to take a decision

Consultation with Families

- 2.1 Recognising the Cabinet decision to pursue further the issue of transfer of the homes as going concerns, further consultations have been undertaken this time directed at existing service users and their relatives, and staff and their trade unions.
- 2.2 To this end, a series of one-to-one, in-person conversations were held with service user families, alongside conversations with staff and trade unions where people could highlight any concerns about a transfer to a private care provider.
- 2.3 Anyone unable to attend a face-to-face meeting was offered a telephone conversation where concerns could be discussed, and some families took this option.
- 2.4 The themes captured through the families consultation include: concerns about the new provider(s), assurances that the care homes will remain as dementia residential homes, concerns about the quality of the service offer should another provider take over, impact on staff and therefore continuity of service for residents, concerns about potential increases in fee rates to residents. A more detailed summary of this consultation is included in Appendix 1 of this report.

- 2.5 This consultation has also included ongoing communications with families through a generic inbox (carehome.consultation@kirklees.gov.uk). Officers have managed this inbox and have responded to a range of emails, questions and letters of concerns. Further information on this can be viewed in Appendix 2 of this report.
- 2.6 Officers have also responded to a variety of questions and petitions raised by families and councillors at recent Cabinet and full Council meetings.
- 2.7 Based on the consultations, officers have noted the concerns that families, as well as wider members of the public, have shared. Families are seeking assurances on a range of issues (see 2.4 above) which have been noted to be factored into the due diligence process and through the evaluation of the bids from private providers.
- 2.8 Families will be kept informed of progress (subject to confidentiality) should Cabinet approve to continue discussions to the next stage with interested providers.

Engagement with Private Providers

- 2.9 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).
 - (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 transfer. Initial expressions of interest and bids are in favour of freehold transfer which is the Council's preference.
 - (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.
- 2.10 Six private providers/potential operators expressed an interest in potentially acquiring the homes. Of these, one provider has since withdrawn leaving five who are interested in acquiring both homes – officers have received initial bids from all five providers. The next stage is now to evaluate the proposals. This will be by an initial meeting with each supplier whose proposals are considered to be credible. After this, an assessment of various criteria will be undertaken with a view to identifying those suppliers who are likely to be most suitable as purchasers of the businesses. Best and final offers will then be sought from these suppliers and will be evaluated in accordance with pre-determined quality and financial criteria. Evaluation will weight quality greater than price and be subject to minimum quality criteria as part of the design of the best and final offer stage.

- 2.11 The quality criteria will take account of bidders' experience of managing care homes and assess their ability to continue to deliver high quality care services for people with dementia in the future.

Existing and future financial position

- 2.12 Under current arrangements, each home loses a substantial sum annually, recognising that they have had some underutilisation, and part substitute uses. However, with each home operating 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 (£770 per week), and the actual fee charged for those who are self-funding (£820) the loss is more than £0.8m of direct costs; if overheads and depreciation are attributed the loss rises to somewhere between £1.3m and £1.8m per annum.
- 2.13 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 may need refurbishment elements at some stage such as roofing works, mechanical and electrical plant (e.g. lifts).
- 2.14 As a part of the process potential operators are being made aware of the likely challenges and issues that may face them if they pursue the options for sale including the likely need for a new operator to engage with residents and families, as well as the need to manage the workforce implications of a transfer.
- 2.15 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.
- 2.16 From the Council perspective, though, this facilitates an ability to save revenue costs of more than £0.8m and avoid further capital costs. This is set against an overall financial backdrop for the Council which remains extremely difficult.
- 2.17 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.
- 2.18 Should it not be possible to progress to a sale, alternatives are:
1. Closure of the homes, incurring costs of closure and redundancy, although then with a potential to recoup some funds through asset sales.
 2. Continue operating the homes; there is the potential to make some savings, by staffing changes and by increasing fees for self-funding residents, although the cost disadvantage the Council faces versus the private sector on staffing is likely to make operating such facilities on a cost neutral basis almost impossible.
- 2.19 Failure to agree a business transfer will result in a further report to Cabinet to consider what actions to take.

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. [Council priorities - Council Plan 2024/25 | Kirklees Council](#)

3.2 Financial Implications

3.2.1 The proposal will generate substantial ongoing savings if approved. It presents an ability to save revenue costs more than £0.8m each year and, also avoid future potential capital costs.

3.2.2 At year end (2023-24), the total direct cost for Castle Grange was £2.388m and for Claremont House was £1.954m. At full occupancy (40 beds per site) this equates to a unit cost per bed per week of £1,148 for Castle Grange, and £939 for Claremont House (based on 52 weeks). Note that this is for direct costs. 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 £1.774m for Castle Grange, and the same (£1.774m) for Claremont House.

	Castle Grange £m	Claremont House £m
Direct cost (£m)	2.388	1.954
Alternate provision cost (£m)	1.774	1.774

3.2.3 At a 90% occupancy level (36 beds per site), the unit costs are £1,276 per bed per week for Castle Grange (total cost as above, of £2.388m), and £1,044 per bed per week for Claremont House (£1.954m as per above). At this occupancy level, the alternative external provision would cost £1.597m for each site.

	Castle Grange £m	Claremont House £m
Direct cost (£m)	2.388	1.954
Alternate provision cost (£m)	1.597	1.597

3.2.4 Net direct costs (direct costs less direct income, excluding overheads) are £1.880m for Castle Grange, and £1.665m for Claremont House. If they were transferred, the Council would continue to receive client contributions (income) to partially offset fees that it pays to the new providers.

3.2.5 The sale of the business will 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.

3.2.6 The two sites also have potential future capital costs related to building/site upkeep. Any transfer would remove/reduce this for the Council and will mitigate future capital borrowing costs.

3.2.7 Note that the information used to inform this analysis is based on 2024/25 values. Actual values for 2025/26 may vary though it is unlikely that the values will materially change.

3.3 Legal Implications

3.3.1 Local authorities had a duty to provide residential accommodation for adults 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 of the Care Act 2014). Section 19 of the Care Act 2014 gives the local authority 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 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)), or “care and support at home or in the community” (s.8(1)(b)).

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 IIA 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 making funding decisions and commissioning services to ensure it has regard to all its legal duties and that it is prudent, affordable and sustainable in the context of the Council’s unprecedented budget challenges and the statutory requirement for a balanced budget.

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 (Reg 3(1)). 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. At this stage we are aware that none of the potential operators wish to join the 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.

3.3.8 Employees who are not directly employed at the care homes and who do not have TUPE rights but who are nonetheless affected by the transfer may need to go on redeployment and or be entitled to a redundancy payment. The Council will follow its usual consultation procedures with any such affected employees.

3.3.9 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.

3.3.10 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 and would require Cabinet approval. If the consent did not apply the matter would need to be referred to the Secretary of State and the Council would need to comply with the Subsidy Control Act 2023. Officers have commissioned independent valuation advice in respect of each of the properties, these valuations have been received and are currently being reviewed.

3.3.11 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.

3.3.12 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 IIA will need to be updated during and following any consultation.

3.3.13 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 (e.g. Risk, Integrated Impact Assessment or Human Resources)

An Integrated Impact Assessment has been undertaken to assess the impact of the transfer to private operators. This includes an assessment of the impact on staff, service users and their families. View the [Integrated Impact Assessment](#).

Please see below table of risk:

	Risk Description	Risk Mitigation
1.	Risk of legal challenge	The Council has undertaken a transparent process including reasonable consultation to take into account the views of service users/families/friends; the findings of which will be considered by decision makers and has had regard to the IIA.
2.	Failure to transfer 2 residential care homes on a going concern basis due to no final bids or unsatisfactory bids or failure to achieve a satisfactory outcome to negotiations with a preferred bidder	The Council has received 5 expressions of interest and providers will be invited to a Best and Final Offers stage. The proposed Heads of Terms are considered to be commercially reasonable and attractive to the market.
3.	Employees may leave the care homes because they do not wish to work in the private sector and/or adverse impact on their pensions	Managers have business continuity plans in place to ensure safety of service users and staff. TUPE will apply. Minimal pension protection will apply.
4.	The concerns of service users/families /friends	There has been reasonable consultation and regular updates provided . A comms strategy is in place.
5.	Failure to transfer within expected timescales	The financial impact of a failure to transfer at all or slippage will be monitored with finance services and appropriate actions taken to respond to any adverse financial impacts.

4. Consultation

- 4.1 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. Officers have undertaken an additional six week consultation with service users and their relatives regarding the transfer of the care homes.
- 4.2 There are 45 residents current residing across both Castle Grange and Claremont House. All resident families were contacted and offered one to one consultation meetings with officers, of which 31 service user families took up the offer of an optional one to one meeting. Further details of the current consultation process and outcomes are set out in appendix 1 and 2 and summarised through 4.5 and 4.11 below.
- 4.3 The process being followed to select the potential new operator and to manage any subsequent transfer process will take consideration of the points raised below and officers will exercise good professional judgement in making decisions.

- 4.4 The commercially confidential nature of the process means that it is not possible for families to be involved in the selection process but their concerns about quality and experience will be reflected in the decision-making process.

Overview of generic themes and proposed response to issues raised

- 4.5 Families were concerned about when the appointment of a new provider would be communicated with them. They want the opportunity to review the new provider's portfolio, their CQC rating(s) and meet and ask questions of the new provider. They asked what would happen if there were issues following the transfer of the homes. There was concern that the homes may not remain as dementia residential homes. Families are interested in knowing what, if any, restrictions will be in place to mitigate any immediate changes to the service.
- 4.6 Families have been advised that the council is only progressing talks with providers who are interested in dementia care therefore we do not anticipate any change to the service focus. They have also been advised of the confidential nature of the procurement process and that a limited amount of information can be shared with them at this time.
- 4.7 Families are very complimentary about the excellent and high-quality care currently received by residents at both homes. Concerns were raised about whether the quality of care would be maintained post transfer to a private provider.
- 4.8 Kirklees has a well-developed independent sector care home market. Should the homes transfer to new operators (subject to cabinet approval), the Council will ensure it has oversight on quality and provision through its Contracts team. The Contracts team deliver proactive, targeted support in partnership with the NHS and other key partners around improving the quality of care to regulated care providers in the borough.
- 4.9 Families raised concerns about staffing. They are aware of the TUPE process but are concerned staff may leave before the transfer occurs and have queried what support is available for staff during this time. They are also concerned about changes to staffing when a new provider is in place.
- 4.10 Staffing levels will be at the discretion of any new provider.
- 4.11 Families are extremely concerned about the potential increase in the cost of care and the possibility that top up fees will be introduced. Most have added that they would not have any financial means to be able to contribute towards any increased cost of their loved one's care. Families would like to know who will pay for any shortfall if an individual's money depreciates below the threshold. Concerns were raised about delays with the payment process (delay in receiving invoices, timely responses when contacted, paying invoices, understanding how much they owe, if there is debt will it be transferred) and what would be done to address these.
- 4.12 Any increase in fees will be at the discretion of the new provider. The council will continue to contribute to care costs for low-income residents based on the outcome of a financial assessment. Concerns about invoicing and payment issues have been raised with colleagues in Client Financial Affairs for resolution.
- 4.13 Families would like to be informed of the procurement process for a new provider including timescales and what the selection criteria is.

- 4.14 Subject to Cabinet approval, the Council is aiming to complete the full transfer by April 2025.
- 4.15 Families would like to learn more about what happens after the transfer of the homes and what if any responsibilities the council would continue to have towards the service users residing in the homes.
- 4.16 The Council will continue to have a responsibility for safeguarding residents and the quality and sustainability of the services in line with its statutory duties as it does with any other provider.
- 4.17 The families have clearly stated their opposition to this proposal and are keen to know what will happen should a suitable provider not be found.
- 4.18 As set out above, there has been interest from suitable providers which reduces the likelihood that a suitable provider will not be found. If it is not possible to secure a transfer, the council will need to consider how best to proceed.

4.19 See section 6 (Options)

5. Engagement

See section 2.

6. Options

These are:

Option	Description	Key Points
1. Do Nothing	Continue operating the homes as is, recognising that they cost significantly more to operate than the income generated through fees charged.	<ul style="list-style-type: none"> + Maintains current care arrangements + No disruption to residents and staff - Financially unsustainable - Ongoing operational losses - More cost effective placements can be sourced in the independent sector - Significant capital expenditure would be required to maintain/enhance the standards of the care homes
2. Transfer	Pursue the transfer of the 2 long stay homes as a going concern business. This is the preferred option, bringing savings with minimal disruption to residents and their families and a transfer of employment arrangements for staff.	<ul style="list-style-type: none"> + Achieves financial savings for the Council + Minimal disruption to residents and families + Staff employment arrangements maintained - Requires finding a suitably experienced buyer - Possible initial regulatory and compliance challenges
3. Closure	Close both of the care homes - a previously rejected option, though the financial position of Council remains challenging	<ul style="list-style-type: none"> + Achieves immediate cost savings for the Council + Enables the Council to focus on strategic priorities as a provider such as supporting people at home (Home First) or in schemes like Housing with Care.

		<p>+ Enables the Council to maximise the use of available bed capacity in the independent sector</p> <p>- Disruption to residents and families</p> <p>- Loss of jobs for staff</p>
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6.1 Options Considered

The options considered are set out above and have been the subject of previous Cabinet reports and decisions.

6.2 Reasons for recommended Option

At present, option 2 (Transfer) is the option that enables the Council to better manage the financial position it faces and focus on activity where there is a limited alternative range of providers in line with previous decision to not close the homes but to seek an alternative solution.

7. Next steps and timelines

If the recommendations are approved, officers will pursue further engagement with interested parties through a best and final offers process and seek to secure a transfer agreement in January 2025.

8. Contact officer

Saf Bhuta, Head of In-House Provision

9. Background Papers and History of Decisions

Previous reports relating to care home consultation.

Cabinet Mtg 26 Sept 23:

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

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

Cabinet Mtg 8 October 2024:

Care Homes Cabinet Report Final PDF 385 KB

10. Appendices

1. Thematic Feedback from Resident Families Consultation
2. Overview of ongoing communications and engagement with Families
3. Future of Council operated Dementia Care Home provision report (private)

11. Service Director responsible

Michelle Cross - Service Director for Mental Health, Learning Disabilities & Provider Services

Appendix 1: Thematic Feedback from Resident Families Consultation

Family consultation

Consultation period: 10/10/24 to 21/11/24

Number of service user currently residing across the two homes: 45

Number of service user families engaged with to date: 31.

Forum for consultation: 1½ hour face to face 1-1 slots arranged across a number of days/times. Options also made available for meeting to be held over phone/MS Teams.

Purpose of meetings: To capture family members / next of kin views on the proposals and feedback from the consultation to inform a further Cabinet report for a decision to be made.

Overview of generic themes

The new provider

Families were concerned about when the appointment of a new provider would be communicated with them. They want the opportunity to review the new provider's portfolio, their CQC rating(s) and meet and ask questions of the new provider. Families were also concerned about what would happen if there were issues following the transfer of the homes.

Service change

Families are concerned that the homes may not remain as dementia residential homes. They are interested in knowing what, if any, restrictions will be in place to mitigate any immediate changes to the service.

Service Quality

Families are very complimentary about the excellent and high-quality care currently received by residents at both homes. Concerns were raised about whether the quality of care would be maintained post transfer to a private provider.

Staff

Families raised concerns about staffing. They are aware of the TUPE process but are concerned staff may leave before the transfer occurs and have queried what support is available for staff during this time. They are also concerned about changes to staffing when a new provider is in place.

Cost/Fees

Families are extremely concerned about the potential increase in the cost of care and the possibility that top up fees will be introduced. Most have added that they would not have any financial means to be able to contribute towards any increased cost of their loved one's care.

Families would like to know who will pay for any shortfall if an individual's money depreciates below the threshold.

Concerns were raised about delays with the payment process (delay in receiving invoices, timely responses when contacted, paying invoices, understanding how much they owe, if there is debt will it be transferred) and what would be done to address these.

Timescales and oversight

Families would like to be informed of the procurement process for a new provider including timescales and what the selection criteria is.

Post transfer

Families would like to learn more about what happens after the transfer of the homes and what if any responsibilities the council would continue to have towards the service users residing in the homes.

Future of the care homes

The families have clearly stated their opposition to this proposal and are keen to know what will happen should a suitable provider not be found.

Appendix 2: Overview of ongoing communications and engagement with Families

Family consultation

Activity	Audience	Lead	Date
Post-cabinet (08 Oct 2024) - cabinet meeting			
Invites for one-to-one consultation meetings	CH/CG families	Service	26/09/2024
Letters informing of the KND and report to October Cabinet	CH/CG families	Service	05/09/24
Consultation period (6 weeks duration)			
1-1 consultation questions shared with families	CH/CG families		
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	17/10/2024
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	21/10/2024
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	22/10/2024
Letter to families additional 1-1 dates added	CH/CG families	Service	24/10/2024
1-1 meetings with service users families	CH/CG families	Sarah	28/10/2024
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	29/10/2024
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	30/10/2024
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	31/10/2024
1-1 meetings with service users families	CH/CG families	Sarah	05/11/2024
1-1 meetings with service users families	CH/CG families	Sarah	06/11/2024
1-1 meetings with service users families	CH/CG families	Sarah	11/11/2024
1-1 meetings with service users families	CH/CG families	Sarah	12/11/2024
1-1 meetings with service users families	CH/CG families	Sarah	13/11/2024
1-1 meetings with service users families	CH/CG families	Sarah	18/11/2024
Letter to families informing of December Cabinet and reminder of consultation ending	CH/CG families	Sarah	18/11/2024
1-1 meetings with service users families	CH/CG families	Sarah	19/11/2024
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	20/11/2024
1-1 meetings with service users families	CH/CG families	Audrey and Sarah	21/11/2024

Across the two homes there are now 45 service users. To date – Over the consultation period,

- 31 consultation meetings have taken place

- 36 response forms have been completed as a result.
- 8 consultation meetings have been booked by families and then cancelled for various reasons

Staff Information / Consultation

Activity	Audience	Lead	Deadline
Post-cabinet (08 Oct 2024) - cabinet meeting			
Letters inviting staff to update meeting	CH/CG teams	Service	01/10/2024
Consultation period (6 weeks duration)			
Meeting with staff following cabinet meeting	CH/CG teams	Saf	10/10/2024
Notice up inviting staff to update meeting	CH/CG teams	Bev	19/11/2024
Meeting with staff to provide KND and December cabinet update	CG team	Audrey	27/10/2024
Meeting with staff to provide KND and December cabinet update	CH team	Audrey	28/10/2024

Email correspondence

Up to 26/11/24

31 emails have been received and logged onto the care home communications log. All these queries/questions have been responded to in full.

Since this date a further 18 emails have been received. All have been logged and a holding email has been while a response for their query is compiled.

Questions

Over 160 questions have been collated through the received emails and the 1-1 consultation meetings. We are currently collating all these questions into one frequently ask questions list to be shared as a whole with family members. However, some questions will continue to be unanswered until further information is released as the process to select a new provider continues.