

## Appendix A

### Central Bedfordshire Council

#### EXECUTIVE

1<sup>st</sup> August 2017

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## The Future of The Birches Older Persons Home: Outcome of Consultation and Recommendations

Report of: Cllr Carole Hegley, Executive Member for Social Care and Housing ([carole.hegley@centralbedfordshire.gov.uk](mailto:carole.hegley@centralbedfordshire.gov.uk))

Responsible Director(s): Julie Ogley Director of Social Care, Health and Housing ([julie.ogley@centralbedfordshire.gov.uk](mailto:julie.ogley@centralbedfordshire.gov.uk))

**This report relates to a decision that is Key**

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### Purpose of this report

1. To consider the outcome of the recent consultation on the future of The Birches Older Persons Home, Shefford.
2. To decide on the future operation of the home

RECOMMENDATIONS The Executive is asked to:

1. Note the outcome of the consultation on the future of the Birches Older Persons Home.
2. Approve the closure of The Birches Older Persons Home based on the matters set out in this report, its appendices and background papers.
3. Authorise the Director of Social Care Health and Housing to determine the date of closure of The Birches Older Persons Home taking into consideration the assessed eligible care and support needs of residents of the home along with relevant operational matters.
4. Approve the commencement of the processes set out in paragraphs 70 to 72 in relation to the staff employed at The Birches Older Persons Home.
5. Note that Oak Manor, operated by MHA satisfies the Council's 'Due Diligence' requirements as set out in paragraphs 41 to 44 and Appendix 7.

## **Overview and Scrutiny Comments/Recommendations**

1. This report is scheduled to be considered by the Social Care Health and Housing Overview and Scrutiny Committee on 24th July 2017. Any recommendations of the committee will be made available to the Executive through an updated version of this report.
2. At its meeting on 25th January 2016 Social Care Health and Housing Overview and Scrutiny Committee considered the future of Greenacre Older Peoples Home and recommended that the investigation of the financial stability of a new provider is carried out and deemed satisfactory before consultation commences on the future of a home. In response to this recommendation the 'Due Diligence' section of this report considers an assessment of a series of factors including financial stability to ensure that a new provider can offer a competent and high quality service (See Appendix 7).

## **Background**

3. At its meeting on 7<sup>th</sup> February 2017 the Executive received a report on Improving Care Home Provision in Ivel Valley and approved the start of a consultation into the future of The Birches Older Persons Home (OPH). The context and rationale for doing this was set out in detail in this report this should be referred to in coming to a decision about the future of the home.

## **Consultation Process on the Future of The Birches Older Persons Home**

4. The consultation process lasted for 13 weeks, from 17<sup>th</sup> February 2016 to 18<sup>th</sup> May 2017.
5. Consultees were asked for their views on six options. These were:
  - a. Doing nothing – continue to run the Birches in its present form.
  - b. Relocating existing residents to better homes and closing The Birches – the Council's preferred option.
  - c. Transferring The Birches to another organisation to run as a going concern.
  - d. Building a new home on The Birches site – moving residents to alternative homes, demolishing the old home and building a new one.
  - e. Running the home down – stopping new admissions to the home but keeping it open for an agreed period of time or until it had no residents.
  - f. Refurbishing the home so that it meets modern standards.
6. Consultees were also given the opportunity to identify other options and put forward proposals.

7. The Council set out in the consultation the offer to residents of alternative accommodation should the home close. This is:
  - a. Residents would be accommodated in a home that offers a good quality of care.
  - b. Residents would be offered alternative accommodation in a home that meets modern physical and environmental standards and customer expectations.
  - c. Residents would be accommodated in a home that can meet their assessed eligible care and support needs.
  - d. Where residents choose to leave Central Bedfordshire to be closer to relatives or friends the Council would facilitate this by paying the fee rates of the local Council.
  - e. Residents would be accommodated in a home that is a reasonable distance from their current home.
  - f. Residents who expressed the wish to move as a group would be accommodated where possible.
  - g. Residents would not be required to move more than once.
8. In conjunction with the core offer set out above, resident's individual wishes and circumstances would be further taken into account where at all possible. Examples of this would include:
  - a. Where a resident wished to moved to a different location to be close to a relative.
  - b. Where a resident wished to move to another type of accommodation
9. In order to be able to honour the offer set out in the consultation, the Council needs to be able to secure sufficient places in alternative homes. The Council was offered 32 places at Oak Manor, a home being built in Shefford to be operated by MHA<sup>1</sup>, and due to open in September/ October 2017. Given the occupancy of The Birches Older Persons Home, this offer provided sufficient places to offer all residents a place at Oak Manor (subject to the home being able to meet their care needs).
10. The consultation documents in relation to the future of The Birches care home are set out in Appendices 1, 2 and 3 and should be considered by Members.
11. At the start of the consultation process there were 26 permanent residents in the home and no short term residents. At the time of writing there are 23 permanent residents.

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<sup>1</sup> MHA are a national charity caring for over 16,000 older people across the UK in a variety of settings including residential & nursing care, retirement villages, sheltered and supported housing.

12. In order to ensure that the people most affected by any changes were involved in the consultation process, the following activities were undertaken during the consultation period:
  - a. Before it commenced, meetings were held for residents, relatives and staff advising them of the proposals and explaining about the consultation period.
  - b. Relatives and residents were offered 'one-to-one' meetings with members of the consultation team to discuss the options.
  - c. Residents, relatives and other stakeholders were provided with regular updates about the progress of the consultation and what was planned to take place.
  - d. Staff were offered 'one-to-one' meetings with members of the consultation team to discuss the options.
13. Particular attention was given to supporting residents to be involved in the consultation process even though some lacked mental capacity to fully understand the Council's proposals. The ability of all residents to participate in the consultation was assessed by a Social Worker, undertaking an assessment in accordance with the principles of the Mental Capacity Act 2005.
14. The assessments undertaken during the course of the consultation period showed that 20 residents had capacity to take part in the consultation and were assisted to do so. Five residents were assessed not to have capacity to participate meaningfully in the consultation, however of those, three could give their view to a limited extent. These views are summarised in paragraphs 50-54 below. One resident was not consulted following instruction from a family member with Lasting Power of Attorney (for Health & Welfare) that consultation was not in the best interests of their relative, due to the potential for upset and confusion that could arise from the process.
15. The majority of residents had friends or relatives who were able to support them in participating in the consultation or contribute on their behalf. For one resident it was judged that independent advocacy was required to enable a resident to participate. Sadly, the resident died before formal consultation commenced.
16. During the consultation period, a mid-point document was published that set out the most common questions asked during the process so far with answers. This document appears as Appendix 4.
17. A total of 28 responses were received to the consultation. These are set out in full in Appendix 5 and the key issues raised are discussed in the next section.

## **Key Issues**

18. The key issues can be categorised into two areas - those that are significant in determining the future of the Birches and those that are important to be considered should the decision be to close the home.

### **Issues important in determining the future of the home**

19. Those which are significant when coming to a decision about determining the future of the home are:
  - a. The supply of and demand for residential care for older people in the area.
  - b. The degree to which the home currently meets the care needs of current and future customers.
  - c. The availability of alternative homes for existing residents.
  - d. The views of existing residents.
  - e. The potential impact of a move on existing residents.

### **Supply and Demand for Care Home Places**

20. Under Section 5 of the Care Act 2014 ('the Act'), the Council has a duty to commission services and shape the market for social care services.
21. In performing that duty, a local authority must have regard to the following matters in particular:
  - a. The need to ensure that the authority has, and makes available, information about the providers of services for meeting care and support needs and the types of services they provide;
  - b. The need to ensure that it is aware of current and likely future demand for such services and to consider how providers might meet that demand;
  - c. The importance of enabling adults with needs for care and support, and carers with needs for support, who wish to do so to participate in work, education or training;
  - d. The importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not);
  - e. The importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and of encouraging innovation in their provision;
  - f. The importance of fostering a workforce whose members are able to ensure the delivery of high quality services (because, for example, they have relevant skills and appropriate working conditions).
22. The principles set out in the Act which should underpin this activity are:
  - a. A focus on outcomes and wellbeing;
  - b. Promotion of quality services, including through workforce development and remuneration and ensuring appropriately resourced care and support;
  - c. Supporting sustainability;
  - d. Ensuring choice;

- e. Co-production with partners;
  - f. The promotion of diversity and quality of provision in care services.
23. The approach set out in the February 2015 report to the Executive is to maintain the total number of care home places in the period to 2020 across the Central Bedfordshire area whilst re-providing the capacity in the seven Council-owned homes with places in homes that meet modern standards (the Council currently has five homes following the closure of Caddington Hall and Greenacre). The expectation is that the market will deliver these replacement places on a commercial basis. This 'market-led' approach delivers the outcomes for customers that the Council is seeking without capital investment by the Council but has the consequence that the Council cannot dictate when a new home will be built and must react to developments in the market.
24. People entering care homes tend to look for ones that are in their local area and as a result most care home residents enter homes within five miles of their previous home. This is the case with The Birches where a significant proportion of residents previously lived in Shefford and surrounding areas.
25. The Council maintains data of care home capacity and usage in Central Bedfordshire based on publicly available registration information and its own contractual information. It calculates demand based on population data and population forecasts.
26. There are ten older person's homes in Ivel Valley providing 357 places in total. Three of these homes are owned and operated by Central Bedfordshire Council with the remainder being operated by independent organisations.
27. There are currently four new care homes, all with planning permission, being developed in Ivel Valley. Typically, care homes of this scale take approximately 12 months from start on site to handover from builder to operator of the home
- a. Oak Manor, Shefford offering 64 places due to open September/October 2017
  - b. Kings Reach, Biggleswade offering 60 places due to start on site summer 2017
  - c. Hitchin Road, Stotfold offering 70 places due to start on-site October 2017
  - d. London Road, Biggleswade offering 70 places with an earliest start on site date of Spring 2018
28. Estimates of demand for care home places are based on a 'capitation' model using the number of people in the area over 75 years of age. This had proven to be a reasonably good indicator of demand.
29. This estimate assumes that all existing capacity is retained and new care homes with planning permission in Ivel Rd, Shefford and Kings

Reach, Biggleswade come on stream in 2017 and 2018 respectively. The Hitchin Rd, Stotfold and London Road, Biggleswade developments are estimated to open in 2019.

30. Based on the above assumptions forecast care home demand and supply in the area over the period 2016-2030 is illustrated in the chart below.

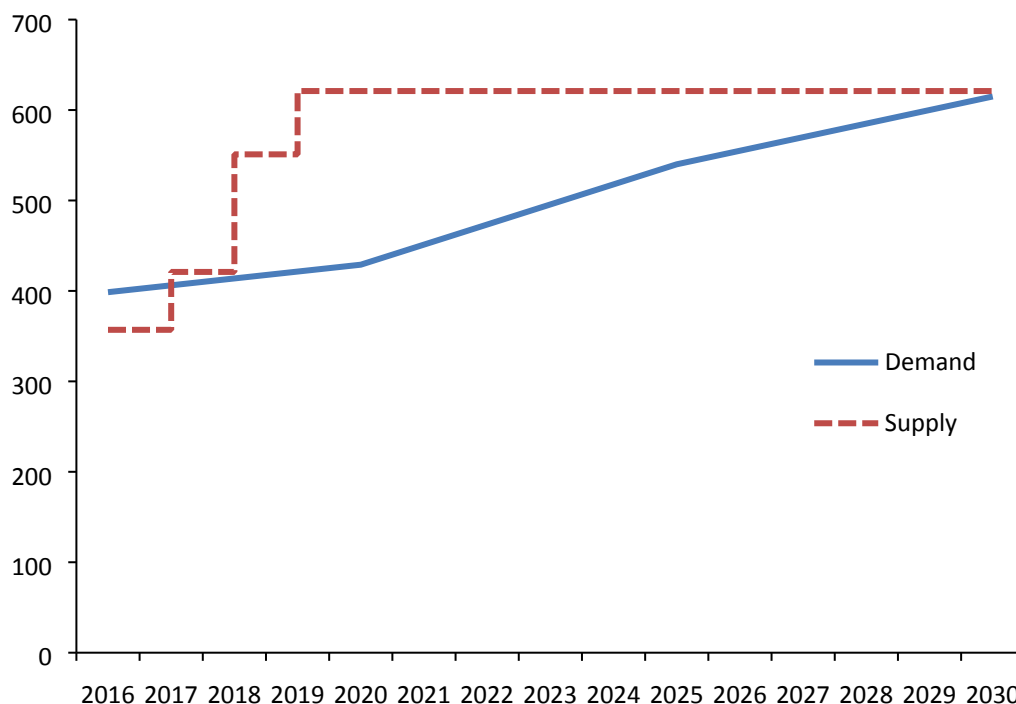


Figure 1 Care Home Supply and Demand Forecast for Ivel Valley

31. In its role of managing the overall market for care home provision, the aim of the Council is to influence supply so that it is reasonably balanced against demand. An excess of supply can lead to care homes becoming unviable and potentially failing. Undersupply can lead to customers being placed a long way from their original home.
32. Given the current and forecast supply/demand the delivery of Oak Manor, Shefford during 2017 is a good opportunity to further pursue the Council's stated objectives to replace the capacity of The Birches.

### **The availability of alternative care home places for existing residents**

33. The offer of up to half of the places at Oak Manor (32 from a total of 64) for residents of The Birches means that all residents can move to the Birches including within friendship groups where preferred.
34. The Council contracts with care home providers in Central Bedfordshire using a standard contract, specifying the service provided and the rates paid.
35. MHA will be the operator of Oak Manor. It has a long history and variety of provision, including 89 care homes for older people across the UK; with established care homes close by in Bedford and Hitchin

providing for a sub-regional infrastructure supportive of continuous improvement.

36. Officers have undertaken the 'due diligence' activities set out in paragraphs 41 to 44 and Appendix 7 of this report. On that basis, if the Executive approves the recommendations in relation to The Birches then they will put in place appropriate contractual arrangements with MHA.
37. In addition to agreeing to the Council's contractual requirements, Oak Manor will need to be registered with the Care Quality Commission to provide residential care before it can start to admit residents. This is not a matter that involves the Council but registration would also be a necessary pre-requisite to the placement of any people in the home. MHA is already registered with CQC and has advised the Council that it will be seeking to achieve registration for Oak Manor at the earliest opportunity.
38. In the event that the places at Oak Manor cease to be available to the residents of The Birches Older Persons Home for any reason then the Council would need to reconsider its approach to the future of the home. The places at Oak Manor would only be available once the home has successfully registered with CQC and contractual arrangements with the Council finalised.
39. In addition to the places at Oak Manor there are seven other independently provided care homes in the Ivel Valley locality and two other Council run homes which provide care to people placed by the Council. At the time of drafting this report three of these homes had at least one vacancy and across these homes there were a total of nine vacancies. This indicates that even without the places at The Birches Older Persons Home there is capacity in local homes to provide a choice, albeit somewhat limited, for people seeking residential care.
40. In terms of nursing care, the Ivel Valley is relatively well served with six homes that provide nursing care places. At the time of drafting this report there were a total of three nursing place vacancies available within the Ivel Valley. If the decision to close The Birches is made, detailed assessment activity will help determine if residential or nursing care is best able to meet the needs of each resident.

### **Due Diligence**

41. Drawing on lessons learned from earlier care home re-provision and good procurement practice the Council has established an enhanced approach to 'due diligence' in assessing the suitability and sustainability of new care home providers entering the local market, as set out in summary below.
42. In competitive procurement activities, bidders typically complete a 'Standard Selection Questionnaire' capturing a variety of information to make an informed assessment of the prospective bidder's credentials before commissioners considering tenders.

43. A number of other factors have also been incorporated to strengthen the Council's approach, providing information to evidence compliance with the Council's requirements
  - a. Standard Selection Questionnaire
  - b. Financial evaluation
  - c. Relevant expertise & experience
  - d. Policies & procedures including internal quality assurance
  - e. Contract management information
  - f. Evidence experience of or a plan for opening a new home
  - g. Summary project plan including key milestones
  - h. Plan for recruitment, training and support of staff in the home
  - i. Explain how new residents are settled into the care home environment
  - j. Explain occupancy plan including the planned rate of occupancy and how staffing levels match
  - k. Business Continuity plan setting out a response to critical scenarios and issues if they occur prior to or after the home opens
44. The Council is satisfied that MHA as the operator of Oak Manor has demonstrated compliance with the Council's due diligence requirements. Appendix 7 records in summary, MHA's compliance with requirements as set out above.

**The degree to which the Birches Older Persons Home meets the care needs of older people.**

45. A CQC inspection of The Birches Older Persons Home took place in March 2015 and was published in May 2015. At that inspection the care provided in the home was rated as 'Overall Good, reflecting a consistent approach to the delivery of good quality care and support. A CQC inspection commenced on 27<sup>th</sup> June 2017 but the results of this may not be published for several weeks.
46. The building has no immediate major maintenance issues. However, the mechanical and electrical systems are over thirty years old and would require significant investment over the next five years to extend the useful life of the building beyond that.
47. The building was designed and constructed before the modern requirements were introduced and as a result it does not have the room sizes and en-suite facilities that homes constructed more recently enjoy.
48. The issue of room sizes is significant not just in terms of the resident having enough space but it can also be an issue which affects delivery of care. The care needs of older people in care homes have increased in complexity since The Birches was designed and constructed. Many

residents now need help with transfers, often needing two carers and suitable hoisting equipment, and this can be difficult to deliver in a small space.

49. The provision of en-suite bathrooms greatly enhances the dignity of the residents who are able to use the facilities, either independently or with assistance. There will always be a proportion of residents who are not able to make full use of this type of facility but even in those situations the en-suite can make the delivery of care to residents more dignified for the residents and staff and removes the need for rooms to have commodes.

### **The views of existing residents, relatives and other stakeholders**

50. The views of existing residents and their relatives (along with those with others that responded to the consultation) are set out in full in Appendix 5 Response to Consultation - The Future of the Birches Older Person's Home.
51. A majority of the 28 respondents to the consultation supported the preferred option to close the home and re-locate current residents, with more than half of those recognising the need for improved facilities in more modern homes. Few respondents actively disagreed with the preferred option, indicating that they preferred the Birches to continue as is.
52. Respondents repeatedly emphasised the importance and value of The Birches staff team as central to the continued well-being of residents, highlighting the risks of losing continuity of care and familiarity established with the existing care team. A frequent suggestion was for the Birches staff to have employment opportunities at Oak Manor to help address this concern. This matter is referred to in more detail in paragraphs 700 to 72.
  - a. In terms of scenario planning, that the preferred option to close the Birches is approved, it has been agreed that residents of The Birches that choose to re-locate to Oak Manor will be the first admissions to the new home
  - b. It has also been agreed that, if the option to close the Birches is approved, staff at the Birches will be offered a guaranteed interview by MHA for roles at Oak Manor to help address concerns associated with continuity of care and familiarity.
53. Many respondents mentioned the potentially disruptive effect on a move on existing residents and the need for such moves to be adequately planned and supported. This matter is covered in detail in the next section.
54. Of the five residents who lacked mental capacity to participate in the consultation, three people could give a meaningful view. Two were positive about moving, one said he didn't mind moving and said that staff were marvellous at the Birches. Another said she liked the idea of

moving and would welcome having an en-suite bathroom. The other person did not feel the Birches needed modernising.

55. Whilst it is understandable that some residents and their relatives would prefer the facilities in the home to be brought up to date a number of issues would also be relevant:
  - a. Major building work would require the home to close and the residents move elsewhere whilst it was being carried out.
  - b. Given the site constraints upgrading the home would be likely to reduce the number of places in the home and this would significantly impact on its long term viability.
  - c. Capital investment in the region of £500,000 to £2,000,000 would be needed.
56. Other matters raised during the consultation are dealt with elsewhere in this report or its appendices.

### **The potential impact of a move on existing residents**

57. Research on the effect of previous home closures in the UK and elsewhere has provided some evidence that the closure of a home can impact negatively on the health and wellbeing of residents. This is an area not without controversy but there is a general consensus that the risk of harm to individual residents can be reduced to an acceptable level by following a number of principles. These are:
  - a. The importance of clear, open and honest communication with residents, relatives and staff
  - b. Communication should be regular and be both proactive and reactive as the situation demands.
  - c. Residents should be sensitively encouraged and facilitated to take part in the consultation process about the future of the home in ways that are compatible with their needs and abilities. Professional assessment of their ability to participate and the potential harmful effects of participation would be made.
  - d. Residents should have access to advocacy.
  - e. All residents should have comprehensive assessments undertaken by appropriate professional(s) and the recommendation of these assessments will be taken into account in the choice of accommodation offered and in planning their move.
  - f. Residents and their relatives should be offered the opportunity to visit other homes and given time to make an informed decision.
  - g. In planning moves particular attention should be paid to those residents identified as most vulnerable or at risk.
  - h. Residents should be given practical help and support to move.
  - i. Residents should not be moved if there is medical advice that to do so would put them at imminent risk. Moves would be postponed until this risk had been mitigated.

- j. Appropriate methods should be put into place to monitor the people who have transferred.
58. These principles have been defined more fully and published in good practice guidance including:
- a. 'Making Choices Good Practice Guide' – Reconfiguration of Statutory Residential Homes – Health and Social Care Board for Northern Ireland. This document was published in 2013 as guidance for practitioners and managers in Northern Ireland in relation to the closure of homes there. Although there are some historical, governance and legislative differences between the UK and NI the majority of the recommendations in the guide are useful and relevant.
  - b. 'Achieving Closure – Good Practice in supporting older people during residential care closures' – University of Birmingham / ADASS. This document was published in 2011 and draws on previously published studies and guidance as well as drawing on the experience of authorities that had undertaken care home closures.
59. The key points from these documents are incorporated into the Council's own guidance 'Closure of Care Homes and Relocation of Residents' which explains to practitioners how to put these principles into practice. This document is available as a background paper. To date all of these good practice principles have been followed and this will continue should the decision be to close the home.
60. Included in the guidance are:
- a. Pre-move evaluations are completed with the resident and relative to identify their aims and any concerns.
  - b. A personalised move plan checklist is used for each resident to detail and track all actions both before and after the move.
  - c. These documents are used to identify and mitigate any risks and are shared with the receiving home.
  - d. 24-48 hours after a move has taken place the post-move evaluation is completed to ensure aims were met and highlight any issues to address.
  - e. The creation of 'Life Story Books' is encouraged and materials and support are supplied to help residents, relatives and carers to complete this. As well as helping people reminisce about their life it is also a way of bringing the person to life for staff who have not known them previously.
  - f. Photo books are provided with pictures of the new home(s) for those unable to visit, enabling the resident to familiarise themselves with their new home.
61. Full assessment of the needs and options for residents will be undertaken should a decision be made to close the home but an initial professional assessment has been made of the needs of residents to ascertain those who may be most at risk should the home close and to

identify what actions can be taken to mitigate those risks. A summary of these assessments is set out in an anonymised form in Appendix 6.

62. Although, quite rightly, this approach focusses on managing the risks associated with a closure of the home, a number of residents and relatives see this proposal as one which has its positive aspects and which will lead to an improved quality of life for current and future residents. There is evidence from the previous closures that this is the case.

**Next steps - issues which need to be considered should the decision be to close The Birches.**

63. There are a number of issues that will need to be considered should the decision be to close The Birches. These are:
  - a. The degree to which risks to residents associated with a move can be managed and mitigated.
  - b. Managing moves and making practical arrangements.
  - c. Managing the employment options for staff and ensuring the Council meets its obligations to them.
64. Whilst there are a number of actions that cannot be undertaken ahead of a decision on the future of the home, it is important to explain what arrangements would be put in place to deal with these matters.
65. Plans are in place to have a professional team available to work with existing staff in the home, residents and their relatives to review care needs (alongside the resident's GP and any specialist medical advice), agree on the preferred options, plan moves and make the practical arrangements such as transportation.
66. All residents will have the risks to them assessed in more detail as part of the activities set out in paragraphs 57 to 62 and actions put into place to reduce those risks to a minimum.
67. The assessments and actions required will be recorded for each resident in an individual 'move plan'. This will include follow-up and monitoring for a period after they have moved.
68. Some of the residents of the home are very frail. It is important to be responsive to any changes of needs or deterioration of a resident's condition. Even if arrangements have been made to close the home, residents who are reaching the end of their life or for whom medical advice is that a move could cause a significant deterioration in their health would not be moved and the home would remain open for as long as is required. For this reason, the recommendation in this report is set out to allow the decision on the actual date of closure to be made operationally by the Director of Social Care, Health and Housing, taking any issues of this nature into account.
69. Similar processes to those set out above were followed when decisions were made to close Caddington Hall and Greenacre. Following these closures, relatives who had been involved were contacted and asked

for their feedback. Everyone made positive comments about the process. Few had suggestions for improvements but where these were offered, they were incorporated into subsequent plans.

70. Although staff in the home have been kept informed of the proposals and invited to participate in the consultation process about the future of the home, no formal employment-related activity has commenced. Should the decision be to close the home then staff from the Social Care, Health and Housing Directorate, supported by Human Resources would follow the agreed process in the circumstances where a change of this nature is being proposed.
71. This process will involve the following activities:
  - a. Formally advising staff of the plan and, where appropriate, that their posts are 'at risk'.
  - b. Advising staff of their options and rights.
  - c. Consulting staff on an individual and group basis on the options for their futures.
72. The Council's processes seek to avoid compulsory redundancy for staff where posts are at risk and would explore other options with them such as transfer to another unit in a similar role or redeployment to another area of the Council. Some staff may wish to seek employment to another care home outside of Central Bedfordshire Council. Whilst the Council cannot arrange this directly it would aim to support staff to do this and would work with interested providers to facilitate this where possible.

### **Council Priorities**

73. The proposed action, to close The Birches and re-provide places for residents in homes with modern standards supports the Council's priority of **'Protecting the vulnerable; improving wellbeing'** by improving the physical standards of the care home environment, such that the delivery of high quality care for people with increasingly complex needs is better enabled. A modern, purpose built care home, as offered by MHA at Oak Manor will significantly improve on the limitations of a converted and non-purpose built environment as offered by The Birches.

### **Corporate Implications**

74. The management of The Birches building and the site is a corporate responsibility. Should the decision be made to close the home then there will be a number of consequent actions that will need to be undertaken once the residents have moved out and the home closed. These include
  - a. Decommissioning the building and making it secure.
  - b. Arranging for ongoing management of the site.
  - c. Examining options for the future use of the site.

## Legal Implications

75. When a Council is contemplating the changes to service provision in the way that is proposed there are a number of legal aspects that need to be fully considered. There are three areas of law which are most significant in relation to these decisions:
  - a. The duty to consult: there is a requirement that the Council conducts a consultation before making a decision.
  - b. Obligations under the Human Rights Act 1998 (HRA): the Council has obligations to ensure that any actions it takes do not infringe the human rights of residents in the home.
  - c. The Public Sector Equality Duty (PSED): in coming to a decision about the future of the home the Council must be aware of its duty to promote equality.
76. The obligations placed on the Council have been considered in the actions of officers and in the preparation of this report.
77. Case law sets out a number of principles for the conduct of consultation. These are:
  - a. consultation must take place when the proposal is still at a formative stage
  - b. sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response
  - c. adequate time must be given for consideration and response
  - d. the product of consultation must be conscientiously taken into account.
78. The consultation and decision-making process has been designed to ensure that these principles are adhered to.
79. The HRA set out a number of rights that we all have. Most relevant in relation to the matter in question are Articles 2, 3 and 8.
80. A decision which potentially interferes with a human right does not necessarily mean that it will be incompatible with the HRA. Public bodies also need to take into account other general interests of the community. Some interference with rights can, therefore, be implemented where it is necessary and proportionate to do so in order to achieve a legitimate aim. Provided the interference of such a right has a legitimate aim and the restriction itself does not go any further than necessary to protect this aim, then it is likely that it will be compatible with the HRA. In this way the HRA recognises that there are certain situations where a public body is allowed to limit individual rights in the best interests of the wider community.
81. In this situation, the Council is proposing changes to service configuration that will result in an overall improvement of care home facilities for older people (which will ultimately benefit many hundreds of people) whilst acknowledging that in doing so there will be some

unavoidable disruption to the lives of current residents. Providing that the Council does all that can reasonably be done to minimise the affect on existing residents then closing a home is not incompatible with the requirements of the HRA. The actions to date and proposed are set out in paragraphs 57 to 62 and 63 to 69 above.

82. Discussion of the Council's duties in relation to equalities is set out in paragraphs 90 to 92 along with the actions taken to ensure that it meets its obligations.

### **Financial and Risk Implications**

83. Financial considerations have not been a fundamental driver for this proposal but the changes being considered do have financial implications compared to the current position.
84. Under the current contractual arrangements with care homes the Council does not block purchase places at care homes – it pays fees for any places it takes up. The fee structure is set out in the contract.
85. Residents pay an assessed contribution towards the cost of their care depending on their means. Once over a capital or income threshold residents reimburse the Council for the full cost of their care fees. These arrangements are not fundamentally affected by the proposals but the fees paid by full cost payers may increase to the level payable under the contract. Other residents' contributions will be unaffected. For example, the full cost fee for a place at a care home rated as 'Good' under the Framework Agreement for 2017/18 is £524.75 per week. For a home rated as 'Excellent' the fee rate is £537.65. Additionally, homes with 'Dementia Quality Mark' accreditation are able to charge an additional £15 per week for each person with a diagnosis of dementia. The full cost fee for a residential place at The Birches Older Persons Home is £504.57 per week in 2017/18.
86. The Birches is operated as a directly-managed service and the majority of the operational costs relate to the employment of staff. In addition, there are supplies and services costs and maintenance costs for the building.
87. If the decision is to close the home, then the costs will shift from the directly-managed services to purchased services. In the long term this shift is likely to be cost-neutral but in the case of this home the fact that it has been operating below its capacity means that there are likely to be in-year cost savings.
88. During the transitional period (when residents are in the process of moving out of the home) there are dual running costs because the home needs to remain operational as residents move out. When this programme was originally envisaged the cost of dual running was estimated and incorporated into an earmarked reserve. This will be utilised as required and at this stage is deemed to be adequate to cover all anticipated costs.

89. Monitoring and management of costs in relation to these proposals will be undertaken using the Council's normal procedures and reported to members as part of the Council's normal budget monitoring activities. The risks and issues associated with the potential future of The Birches Older People Home have been set out in detail within the body of this report, along with the mitigating action already taken or proposed. Risks will be managed throughout the process through a project risk register.

### **Equalities Implications**

90. Central Bedfordshire Council has a statutory duty to promote equality of opportunity and have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
91. An Equality Impact Assessment (EIA) has been completed as part of the development process, and it is available as a background document. Members should read and consider the EIA before coming to a decision on the recommendations in this report.
92. An important aspect referred to in the EIA is the potential for there to be adverse impacts on residents if a care home is closed and they need to move. In light of this the key recommendations of the EIA are:
- a. There is a need to balance the potentially conflicting duties in relation to consultation with residents who may be distressed (or be at risk of harm for other reasons) by the consultation process itself.
  - b. There is a need to ensure that decision-makers are given accurate information about the risks to individual residents and the degree to which these can be mitigated when coming to a decision about the future of the home. This information is contained in Appendix 6.
  - c. There is a need to ensure that the requirements of the PSED are taken into account and reflected in the information presented to decision-makers.
  - d. A good understanding of the needs and preferences of each resident, along with detailed transition plans that reflect these needs are important in reducing the risk to residents.
  - e. A high level of communication and engagement with residents, relatives and staff is important in helping to deal with issues as they arise and manage people's anxieties.

### **Conclusion and Next Steps**

93. The availability of alternative places in Oak Manor, Shefford (a home that meets modern standard), MHAs compliance with the Council's requirements relating to due diligence and the plans to ensure the welfare of residents mean that this is an appropriate time to proceed with the closure of the home.

94. If the recommendations are accepted, then the next steps will be to commence the processes set out in paragraphs 63 to 72 of this report.

## **Appendices**

The following appendices are attached/ provided through an electronic link:

1. Have Your Say on the Future of The Birches Older Persons Home
2. Options Considered for the Future of The Birches Older Persons Home
3. The Birches Older Persons Home Questionnaire
4. Update on the Future of The Birches Older Persons Home
5. Response to Consultation - Future of The Birches Older Persons Home
6. Anonymised needs and risk assessments of current residents of The Birches Older Persons Home
7. Summary of Due Diligence evidence of compliance for Oak Manor, MHA

## **Background Papers**

The following background papers, not previously available to the public, were taken into account and are available on the Council's website:

- a. Equality Impact Assessment – The Future of the Birches Older Person's Home
- b. Closure of Care Home and Relocation of Residents – Good Practice Guidance

## **Report author:**

Ian Hanton, Development & Commissioning Manager, Social Care, Health & Housing ([ian.hanton@centralbedfordshire.gov.uk](mailto:ian.hanton@centralbedfordshire.gov.uk))