
Improving Care Home Provision for Older People in Central Bedfordshire

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This report relates to a decision that is Key

Purpose of this report

1. For the Executive to consider the opportunity in Leighton Buzzard to improve care home provision, to authorise the commencement of consultation on the proposals contained within this report and to authorise the commencement of a procurement process to identify a suitable provider.

RECOMMENDATIONS

The Executive is asked to:

1. recognise and respond to the opportunity to improve care home provision for older people in the Leighton Buzzard area by authorising the commencement of formal consultation on proposals for the future of Westlands Older Persons' Home (OPH) as set out in paragraphs 24 to 34 of this report;
2. authorise the commencement of a procurement process to identify a preferred provider for a care home on the identified site as set out in paragraphs 43 to 52 of this report; and
3. request that a report is submitted to a future meeting of the Executive advising of the outcome of the consultation and procurement processes and making recommendations about the future of the home and a preferred provider.

Overview and Scrutiny Comments/Recommendations

2. It is proposed that the outcome of the consultation process set out in this report will be reported to a future meeting of the Social Care Health and Housing Overview and Scrutiny Committee prior to a decision being made by the Executive on the future of Westlands OPH.

Background

3. In common with other council areas and the nation as a whole, Central Bedfordshire's population of older people is set to grow much more rapidly than the overall population. This is particularly true of the group of people aged 85 and over.
4. When asked older people consistently say that their preference is to remain living independently in their own home for as long as possible and the Council aims to support this as much as it can.
5. The vast majority of people will continue to live in ordinary housing throughout their lives, supported by informal carers (such as relatives and friends) and 'paid for' carers sourced privately or commissioned by the Council. Additionally, in recent years the Council has developed extra care housing schemes that are able to deliver a high level of flexible care options to support residents as and when they need it.
6. However, even with the provision of extra care housing, for a small proportion of older people the best place in which their needs can be met is in a care home¹ setting. In recent years increased expectations of the facilities in care homes have led to changes in the physical and environmental standards which new care homes need to meet.
7. The Council's response to these twin challenges of an increase in population of older people and rising expectations is necessarily set within the financial constraints within which the public sector operates.
8. In response to the challenges set out above the Council has undertaken the following:
 - a. Increased the availability of home care services in response to increasing demand and the desire by older people to remain in their own homes for as long as possible.
 - b. Developed both domiciliary and residential reablement services that assist older people to regain independent living skills which allow them to remain living at home even after a spell in hospital.
 - c. Commenced the development of extra care housing schemes for independent living in Dunstable (Priory View) and Leighton Buzzard (Greenfields) and is planning deliver a further four schemes of this type over the next four years.

¹ In this report the term 'care home' is used to describe all types of regulated care home for older people. These homes can be divided into those which provide nursing care – which are referred to as 'nursing homes' and those which do not which are referred to as 'residential homes'.

9. The final challenge in this programme is the reconfiguration of care home provision for older people to deliver higher standards. This is the most challenging as such changes inevitably mean a degree of disruption to the lives of residents of the homes affected.
10. The Council owned seven care homes for older people that were constructed by the former Bedfordshire County Council between 1968 and 1982. These homes do not meet physical and environmental standards that modern homes do.
11. In November 2012 the Executive considered a report and approved an overall approach in relation to these homes as part of a wider strategy for managing and contracting with the care home market. This set out the principles of a phased transition away from the homes whilst maintaining existing capacity in the market as a whole. It also set out the approach to stimulate the independent sector market to provide this capacity rather than the Council delivering it directly.
12. Following this the Director of Social Care, Health and Housing held meetings with residents, relatives and staff at the homes setting out the overall approach and indicating the possibility that the homes could be reprovided. This intention was reiterated to residents, relatives and staff when a further round of meetings was held prior to the ending of the contract with BUPA in 2014.
13. Further information underlying the approach is set out in Appendix A.
14. Since 2014 the Executive has authorised the closure of two of the seven homes and will shortly consider the outcome of consultation into the future of a third home. In all three cases the providers of the new homes have sourced sites and constructed the new homes without the intervention of the Council.
15. In two areas of Central Bedfordshire there are no new care homes being planned. The reason for this is primarily a lack of suitable available sites. One of these areas is Leighton Buzzard.
16. In respect of Leighton Buzzard, in 2016 the Council purchased the site of the Police Station. Since then an application has been made for planning consent for a 68-place care home on the site. This has yet to be determined but this is expected to take place in the next 12 weeks.
17. The intention is that, after planning consent has been secured, the Council will contract with suitable party or parties to construct and operate a care home on the site with the intention that this could replace the capacity at Westlands OPH.

18. In order to take this initiative forward the Council will need to both consult on the future of the home and undertake a procurement to identify a suitable operator. The approach being proposed is to undertake both processes at the same time so that a future meeting of the Executive can make an informed decision about both of these matters.

Westlands Older Persons Home

19. Westlands has capacity for 30 residents and at the time of writing has 19 permanent residents and 11 vacancies. The home lacks the modern facilities that more modern homes have such as en-suite bathrooms and the space to provide for people with very complex care needs.
20. Whilst the intention is that many residents will wish to move to the new home, they will have a choice in this and some may decide to move to other homes for personal reasons (for example to be nearer to relatives) or to have their needs better met (for example if a person requires nursing care).
21. Therefore the summary of the proposed offer to residents of Westland is:
 - a. The Council is proposing to close the home and find suitable alternative accommodation for the existing residents.
 - b. Residents will be given a choice of homes to move to within a reasonable distance. These choices would be of homes which offer a good quality of care, modern physical and environmental standards and fee rates that are in line with the Council's fee structure or the host Local Authority rates.
 - c. There will be places available at the new home to be constructed on the Hockliffe St site to facilitate residents wishing to stay living as a group and/or in the locality to do so.
 - d. Any resident who wished to move further away (for example to be closer to a relative) would be assisted to do so.
22. It should be noted that the timescales for construction and the opening of the new care home will mean that there will be a period of time in the region of 18 months between the decision being made on the future of Westlands and the replacement capacity being available. During this period it is proposed that Westlands continues to operate as normal but with the awareness of the Executive's decision about its future. If this decision is closure then the consequences will be that:
 - a. Any new resident's admitted to Westlands after such a decision will be doing so on the basis that the home will be closing and that they will need to move to a new home as set out in paragraph 21.

- b. When the normal reviews of the needs of residents takes place, the future of the home should be taken into account in considering the options.
23. This is set out in more detail in Appendix B.

Consulting with residents, relatives, staff and other stakeholders

24. The proposals set out require a detailed programme of communication, engagement and consultation. The planned phases of this process and timescales are set out below.
25. An initial series of communications and meetings will be organised with residents, relatives and staff to explain the background to the consultation, the timescales and how they can be involved. It is planned to hold these meetings to coincide with the publication of this report.
26. Following this there will be a consultation period which is planned to commence on 14th August 2017 and end on 6th November 2017. The consultation period can be extended if required.
27. During the consultation all those affected will be provided with written details of the proposals along with other options and asked their views. A series of events to do this will take place during the consultation period and will facilitate residents, day care customers and their relatives to input into the process in a way that best suits them. This could be through an individual consultation, as part of a small group, or as part of a larger group. Independent advocacy support will be available for all who need it. Consultation will take place in an atmosphere that aims to provide service-users, their representatives and/or their relatives with support and reassurance.
28. The proposals will also be publicised, published on the Council's website and made available to stakeholders and relevant organisations for their feedback. These would include Leighton Buzzard Town Council, Healthwatch Central Bedfordshire, local health services, the Older Person's Network and Age UK. Individual members of the public and other interested parties would also be able to participate.
29. As well as setting out the detail of the Council's preferred option the proposal document will identify other options considered in the development of the proposals and the reasons why they are not preferred. Consultees will also be able propose alternatives and these will be considered.
30. Although not directly affected, residents, relatives and staff at the other homes would be advised about the overarching approach and the progress of the consultation through the existing communications channels, such as regular residents meetings and staff meetings.

They will also be able to respond to the proposals.

31. Where possible, questions and options that arise during the consultation period will be responded to before the end of the consultation and made public. Where responses lead to additional options being considered then further feedback will be sought from consultees.
32. During the consultation period the Council will seek to obtain the views of residents (and their representatives and/or relatives) about the proposals and also their own preferences as this will help to focus in on preferred options. However it will be emphasised to service-users (and their representatives) that they are not being asked to make any personal decision about their future during the consultation.
33. All consultation feedback will be collated. Where questions are raised during the consultation period these will be responded to if possible in the time frame. The aim is to be as transparent and responsive as possible so feedback will be made public whilst preserving individual confidentiality.
34. The response to the consultation will be used to compile a report for the Executive with recommendations about the future of Westlands. This report will be considered by the Social Care Health and Housing Overview and Scrutiny Committee prior to consideration by the Executive. It is envisaged that these meetings would take place in January and February 2018.

Following a decision about the future of Westlands

35. If the Executive determines that Westlands should close then this will be communicated to the existing residents, their relatives and advocates. This communication would also set out the timescales envisaged and how residents, their relatives and advocates could be involved in the next stages.
36. Whilst it is envisaged that most existing residents would remain in the home until shortly before its closure, support and assistance would be available for any resident that wished to consider an earlier move.
37. Should a number of residents decide to move early to other homes and/or if new residents were reluctant to move to the home resulting in a significant number of vacancies then the Council may decide to reduce the registered capacity of the home.
38. Those residents who have indicated that they would like to consider moving to the new home could have the opportunity to contribute to the design of the new home, for example having input into the colour schemes and décor.

39. Once a firm date has been agreed for the new home to open then the Council will commence the activity required to ensure transfers are appropriately planned and executed. This would include the following:
- a. Social work, Mental Capacity Act 2005² and medical assessments of each resident.
 - b. Discussion with each resident, any representative they have, their relatives and any advocate about their preferences.
 - c. Identification of suitable alternative homes, along with information about the homes and number of vacancies.
 - d. Matching of resident's needs and preferences with the choices available.
 - e. Visits to potential alternative homes and/or 'virtual visits'.
 - f. Individual decisions about preferred home.
 - g. Arranging and implementing transfers.
40. Research has shown the importance of conducting the activities above sensitively and at a pace that the residents are comfortable with but without any undue delay.
41. It is envisaged that staff in the home concerned would be available to go with residents to their new home and help them settle in over the course of their first few days there. It may be also possible to make reciprocal arrangements (where staff members from the new home(s) spend time getting to know the residents prior to them moving). This would be explored further depending on the outcome of the consultation and decisions made.
42. If the best practice approach set out above is followed in relation to the consultation, assessment and transfer of residents then it is possible to undertake such changes without detriment or undue distress for those concerned.

Procurement of a suitable operator for the new care home

43. A number of options have been considered for the procurement and contracting process to be undertaken to secure the construction of a new home and a suitable operator to run it.

² Assessments under the Mental Capacity Act 2005 would include assessment of mental capacity in relation to the closure of the home and a 'Best Interests' decision where appropriate.

44. In considering the approach to be taken the Council has a number of objectives and will seek an approach that will maximise the achievement of these. They are:
 - a. The delivery of a new care home on the site that has modern facilities and offers a good quality of care.
 - b. Sufficient places in that home at Council contracted rates to enable the closure of Westlands.
 - c. Sufficient places on an ongoing basis to ensure that the Council is able to offer a choice of suitable affordable placements in the locality.
 - d. An appropriate return on the Council's investment in the site.
45. On this basis the preferred approach is to contract with a suitable care home operator which will, in turn, contract for the construction of the care home.
46. It is envisaged that the Council will sell the freehold interest in the site to the operator for a suitable sum, achieved through a competitive procurement process, the delivery of the care home being controlled through a development agreement.
47. It is planned that the operator will be contracted with on the same basis as the Council contracts with other care home providers in Central Bedfordshire³ and will provide a proportion of its places to the Council, the remainder being made available to other organisations and/or the private market.
48. Whilst having a contractual agreement to provide an initial number of places is relatively straightforward, securing sufficient places on an ongoing basis is less so. A way to do this is to offer the operator a 'block' contract (where the Council pays a fee for each place purchased for a number of years regardless of whether the places are used or not). This differs from the Council's contracting method for the rest of the market where payment is only made for places that are used. For this reason a block contract is not the preferred option but remains one to be considered.
49. In order to secure an operator the Council will need to conduct a procurement process. Any procurement undertaken by the Council is required to adhere to relevant Public Contract Regulations and follow one of the processes set out in those regulations.

³ These contractual arrangements are being reviewed ahead of a re-procurement which is planned to be completed in January 2018.

The process which is considered to be most appropriate for these circumstances is a Competitive Process with Negotiation (CPN). CBC will provide a clear specification and award criteria but will also be open to consider innovative suggestions from providers.

50. The details of the award criteria will be developed but in order to maximise the achievement of the objectives set out in paragraph 44 the criteria are likely to include the following:
 - a. The provider's ability to deliver a new care home to a suitable standard and in a reasonable period.
 - b. The provider's track record in delivering good quality care
 - c. The provider's track record in working co-operatively with local authorities and providing a good proportion of its places to local authorities at reasonable rates.
 - d. The sum to be paid to the Council to acquire the freehold interest in the site.
 - e. Innovation which adds value to the Council and can be assessed as part of the process.
51. In preparation the Council has issued a Prior Information Notice (PIN) and carried out pre-procurement market engagement.
52. The options remain for the Council to contract directly for the construction of a home and to secure an independent operator or to operate it as an 'in-house' service. This approach would not be consistent with the strategy followed thus far in respect of care home provision but could be explored further if the process set out above did not yield the desired outcome.

Reason/s for decision

53. To ensure that prior to making a decision about the future of the home, the Executive will have as much information as possible about the options available and the views of interested parties.
54. To ensure that a suitable care home operator is identified that can provide good quality care at a reasonable cost.

Council Priorities

55. The actions proposed in this report support the Council's priority to promote health and well being and protect the vulnerable.

Corporate Implications

56. Whilst the welfare of the residents of the home and users of the day service is the Council's highest priority, it will also be important to have regard to the needs of the staff who will be affected by these proposals.
57. At the point where formal consultation commences with staff and their representatives the Council will state its understanding of the position with regard to TUPE and the consequences for the staff affected.

Legal Implications

58. Where a Council is contemplating changes to care and support services it has a public law duty to consult with those who would be affected and there is clear guidance and precedent about how consultation should be conducted and the part they would play in future decision-making. If the recommendations in this report are approved, it is important that the consultation complies with government guidance and case law otherwise the Council is at risk of successful challenge through the complaints procedure, by way of judicial review or other challenge.
59. The Council must ensure that the Care Act 2014 is considered (where appropriate) and adhered to when making decisions relating to the provision of care.
60. The Council has a duty under the Human Rights Act 1998 to ensure that its actions are not incompatible with the Rights under the European Convention on Human Rights, 'The Convention'. The Council will therefore need to consider whether the proposed move to a new home is likely to breach any of the service user's rights under Articles 8, 3, and 2. If the decision is likely to breach the Convention, the Council will need to explore any particular facts and determine if such a breach is proportionate and justified.
61. The Council will need to consider employment law issues, including TUPE, in respect of staff at the homes.
62. If residents are to move, then the Council will need to ensure that it complies with the relevant law relating to the making of decisions in respect of individual residents and that the appropriate deprivation of liberty safeguards are in place.
63. In contracting with an operator for the delivery of a replacement the Council will need to follow the law in relation to Procurement as set out in the Public Contract Regulations 2015.

Financial Implications

64. There are no financial implications arising from the decision to commence consultation. The costs associated with this process will be met from existing budgets. The financial issues arising from the outcome of the consultation and recommendation(s) will be addressed in a future report.

Equalities Implications

65. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, 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. The Equality Act 2010 requires public bodies to:
- a. Remove or minimise disadvantages suffered by people.
 - b. Take steps to meet the needs of people from protected groups.
 - c. Encourage people to participate in public life or other activities where participation is low.
66. Public bodies must be able to demonstrate that consideration of this legal duty has been engaged during all stages of the decision making process from beginning to end and that decision makers are aware of their legal obligations. Decision making must be exercised “in substance, with rigour and with an open mind.”
67. In coming to a decision the Council will undertake an equality impact assessment and will demonstrate consideration of:
- a. a well researched business case relating to the proposal, including appropriate financial and statistical analysis.
 - b. the range of possible options that have been investigated.
 - c. the findings of consultation (group and individual) with residents (including advocates where necessary), their relatives and other stakeholders. The consultation process will highlight the Council’s preferred option and will outline alternative options that have been considered.
 - d. the findings of previous individual care assessments considering impairments, support needs and cultural / social requirements.
 - e. adverse impacts and ways in which these can be mitigated or minimized.

68. The above findings will all be reported accurately to decision makers.
69. Case law relating to requirements of the Human Rights Act 1998 ('the 1998 Act') indicates that before taking a decision to close a care home, the effect on the residents must be investigated. A public body must ensure that any consultation investigates the potential effect of the closure on the residents' emotional, psychological and physical health and must comply with its obligations under the 1998 Act.
70. It should also be borne in mind that that a decision which potentially restricts a human right does not necessarily mean that it will be incompatible with the 1998 Act. Public bodies also need to take into account other general interests of the community. Some rights can therefore be restricted where it is necessary and proportionate to do so in order to achieve a legitimate aim. Provided a restriction 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 1998 Act. In this way the 1998 Act recognises that there are certain situations where a public body is allowed to restrict individual rights in the best interests of the wider community.

Appendices

Appendix A: Background Information on Care Homes for Older People in Central Bedfordshire

Appendix B: The offer to existing care home residents when closure is proposed.

Background Papers

None

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