

DECISION-MAKER:	CABINET		
SUBJECT:	POTENTIAL DEREGISTRATION OF THREE LEARNING DISABILITY RESIDENTIAL CARE HOMES		
DATE OF DECISION:	17 MARCH 2020		
REPORT OF:	CABINET MEMBER FOR ADULT CARE		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY			
NOT APPLICABLE			
BRIEF SUMMARY			
<p>This paper is seeking a decision as to whether three Learning Disability registered residential care homes remain as residential care homes or those homes deregister and become supported living homes with the Council assuming the housing responsibility function, and becoming the landlord. The latter is the preferred option, for reasons summarised within this report.</p>			
RECOMMENDATIONS:			
	(i)	To delegate authority to the Executive Director of Communities, Culture and Homes that following consultation with the Executive Director, Finance & Commercialisation and pending successful agreement with NHS England (NHSE) and Clarion Housing Group the three homes transfer to the Housing Revenue Account (HRA).	
	(ii)	To delegate authority to the Director of Quality and Integration following consultation with the Executive Director Wellbeing – Health and Adults to work with relevant partners and stakeholders to deregister the three homes to Supported Living pending the outcome of recommendation (i).	
	(iii)	To note the consultation summary and Equality Safety Impact Assessment (ESIA) both of which are appendices to this report.	
REASONS FOR REPORT RECOMMENDATIONS			
1.	National and local policy in relation to support and accommodation for adults with learning disabilities encourages a move away from ‘unsettled’ forms of accommodation such as residential care and towards the development of more ‘ordinary housing’ within people’s local communities. This includes a wide range of ‘settled’ options for people with the primary option being supported living in which people have their own tenancy, flexibility to choose their own support provider and access to a wider range of benefits (dependent on individual circumstances).		
2.	There are 59 supported living properties in and around Southampton already with around 170 people living in them. They range from one person bungalows, to shared houses for seven people, to complexes of flats for 8-10 people. The Integrated Commissioning Unit (ICU) in partnership with Adult		

	<p>Social Care have been working for several years to increase the number of supported living properties in the City. This is achieved partially through new property developments but also through deregistration of existing residential homes for adults with learning disabilities to become supported living. Deregistration means that the homes themselves are no longer directly registered with the Care Quality Commission (CQC) however the support provider which delivers the support is registered with the CQC. Deregistration doesn't mean that less support is provided to those living there but it does mean that there is more flexibility to personalise the support for each individual.</p> <p>Over the past five years, there have been five local deregistrations of residential homes; two homes in Shirley ward, one each in Bassett and Coxford wards and the final home was in Hedge End. Based on contract monitoring by commissioners as well as feedback from social care assessments of those living there, these homes have all made a successful transition to supported living.</p>
3.	<p>The three residential homes in question have a total of 17 individual bedrooms for residents of which 15 are currently occupied by adults with learning disabilities. There are currently two bedrooms vacant. The age range of the residents is from 47 to 74 years, their disabilities include Learning Disabilities, physical disabilities, and autism. Support within the homes is delivered throughout the day and night, this will not change as a result of the deregistration. The CQC registered provider for the three homes is Dimensions UK Ltd. They are also the largest provider of support to individuals in supported living in the city so have extensive experience and have been directly involved in two previous deregistrations in Southampton in 2016. Dimensions will continue as the care provider following deregistration with the support delivered under the home care framework and regular contract monitoring by commissioners in the ICU. The homes are owned by Clarion Housing Group however NHS England hold a legal charge over the properties as the funding for the properties originally came from the NHS in the late 1990s. NHS England have indicated that they will require ongoing protections from the Council in respect of the grant funding which they initially provided for the properties and a satisfactory resolution of that will need to be negotiated once this proposal to deregister has been agreed in principle.</p>
4.	<p>A formal consultation was held between November 2019 and February 2020 to obtain the views of those living at the three homes as well as their family members and/or advocates about the proposal to deregister.</p> <p>In total 23 people submitted a response to the consultation. When asked what option they preferred 9 people chose supported living compared to 3 people who chose residential care. A further 11 people did not express a preference but nonetheless gave feedback about their views. Full details of the consultation responses are given later in this report as well as the accompanying appendices</p>
5.	<p>The current CQC registered provider for the three homes, Dimensions, have been consulted and are supportive of the proposal to deregister. The current owner of the properties, Clarion Housing Group, are not supportive of the proposal to deregister, as this does not fit with their strategic objectives. Clarion are however, willing to relinquish their ownership to the Council.</p>
<p>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</p>	

6.	The three homes could continue to operate as registered care homes. This will necessitate commencement of a tender process in order to award a new contract. This option is not recommended, as it is not in line with local and national policy objectives and does not increase the options for further independence and flexibility for residents. In addition, the homes remaining as residential care leaves the risk that in the future Clarion could decide to sell the homes or Dimensions decide to close them with the Council having limited influence to affect this.
7.	The three homes could be closed and the individuals supported to move to alternative accommodation/housing. This was rejected as most people have been living in the homes for many years and would not wish to move. The properties are deemed suitable for longer term use and this would not support a person centred approach to meet individual needs.
DETAIL (Including consultation carried out)	
8.	Within a residential care home a provider is registered with the Care Quality Commission to provide both the care and the accommodation whilst in Supported Living the care and accommodation functions are separate. This means that the care provider is registered with CQC to provide personal care and a housing provider is the landlord with each resident having rights and responsibilities for their housing with a legal agreement such as a tenancy or license that describes the responsibilities of both parties. Within supported living the funding for housing costs is primarily borne from housing benefit. Paragraph 12 expands the benefits of the Council's housing department delivering the landlord function and associated services.
9.	For residents living in the homes, there are three key areas within their lives that would benefit from the proposed model of supported living. These are in relation to (1) housing rights and responsibilities, (2) support for care and (3) welfare. In addition, the Reach Standards which are nationally recognised as best practice within Supported Living, including by the Care Quality Commission, are part of the Council's contractual relationship with providers under the supported living element of the home care framework.
10.	The Integrated Commissioning Unit (ICU) has reviewed commissioning options for the three Learning Disability registered residential care homes. The three homes are located in the following areas: <ul style="list-style-type: none"> • Bevois ward (6 bedrooms) • Botley (6 bedrooms) • Totton (5 bedrooms)
11.	The properties were developed between 1996 and 1998 with the funding from what was then Southampton & South West Hampshire Health Authority, and charged to the Secretary of State for Health. Clarion Housing Group owns the freehold of each of the three properties with NHS England now holding a legal charge over the properties. The purpose of the development at the time was to support a large discharge programme of individuals with learning disabilities from inappropriate institutional settings. Discussions have taken place with Clarion regarding the potential option of deregistration however Clarion have stated they would not be willing to continue to hold the housing responsibilities if the properties were to deregister, as this is not in line with their strategic objectives. Therefore if a decision is made to deregister, ownership of the properties would need to transfer to another housing provider. The transfer of ownership would not

	involve making payment to Clarion but might involve the assumption by the Council of Clarion's obligations to NHS England, the details of which would remain to be resolved, as noted in paragraph 3 above.
12.	The option of the Council becoming the owner and taking on housing management responsibilities has been carefully considered with involvement from the ICU, adult social care, housing and legal services. This option is recommended because it would deliver a range of benefits to all key stakeholders. For the individuals living in the homes, the Council would be able to offer a high quality, localised housing management and maintenance service, which is responsive to individual's housing needs. Each individual would be provided with an agreement (either a licence or tenancy) so as to enable a human rights based approach to meet their housing needs. The Council housing services have an excellent track record in delivering similar models to this (for example within extra care) and ensuring reasonable adjustments are made for those with health and social care needs.
13.	Strategically, the homes transferring to Council ownership contributes to the delivery of the Council's Housing Strategy 2016 – 2025, by increasing housing options and support available to those with health and social care needs. This would be at no financial loss to the Housing Revenue Account. In addition it would ensure the long term future for the properties to continue to support individuals with learning disabilities of which the Council has a responsibility to meet their housing and care needs under the Care Act.
14.	There are a number of national and local drivers which support the recommended option. These are described below but in summary they encourage: <ul style="list-style-type: none"> • Reductions in the number of residential placements. Government policy requires that local authorities work towards maintaining more people in their own homes for longer, including independent or supported living schemes, i.e. shifting the balance from residential provision to the community • Promoting and supporting independence • Ensuring the most appropriate housing solutions for residents • Increasing person-centred approaches • Increasing resident choice and control • Reductions in the cost to the Adult Social Care budget
15.	The Care Act (2014) brought legislation up to date to reflect a focus on the outcomes that people need and want, rather than their disabilities, and put the individual in control of their life. Key areas of change within the Act include the legal right to personalised support, which is delivered via a personal budget/direct payment. This isn't yet an option for individuals living in residential care but those living in supported living do have the option to take all or part of their personal budget as a direct payment.
16.	The Southampton City Council and Southampton City Clinical Commissioning Group Learning Disability Services Market Position Statement 2018 – 2023 outlines the wider approach to be taken in respect of housing in the city for adults with learning disabilities and states that <i>"..there is a significant drive behind increasing the number of supported living schemes in the city and supporting people to live in their local community through tenancy based housing."</i>

17.	<p>The NHS England National Plan - Building the Right Support gives commissioners a clear framework to develop more community services for people with learning disabilities and/ or autism. In particular it states <i>“People should have a choice about where and with whom they live – with a choice of housing including small-scale supported living, and the offer of settled accommodation.”</i></p>
18.	<p>Consultation with residents and families</p> <p>The consultation on the proposal was developed in discussion with Council legal services. A full public consultation was not deemed proportionate, but a full and meaningful consultation was necessary with those potentially affected by the proposal.</p> <p>The consultation period ran from 1st November 2019 to 14th February 2020 with the fifteen residents and their families/advocates, where relevant. The consultation pack consisted of:</p> <ul style="list-style-type: none"> • A consultation timetable • An information document entitled ‘My Home, My Support, My Money’ • An information document including Frequently Asked Questions • A consultation feedback sheet for residents • A consultation feedback sheet for and families / informal carers • Individual discussion with client/family/advocate <p>Accessible easy read versions of the consultation pack documents ‘My Home, My Support, My Money’ and the feedback sheet were made available for residents/families/advocates to support their understanding and involvement in the consultation.</p> <p>The feedback sheet asked residents and families a series of questions about what support they had received during the consultation, whether they understood the information, what their preferred option was, and any additional feedback to SCC regarding the process.</p>
19.	<p>Advocacy support was available from Choices Advocacy for residents or family members to talk independently about the proposals. Dedicated social worker capacity has been available throughout the consultation period, coordinating the assessment process and offering additional support in meetings with each resident and their families to discuss the impacts on individuals. All residents received a full social care assessment during the consultation period.</p>
20.	<p>The consultation period was extended twice to allow more time for individuals and families to read the information and ask further questions.</p>
21.	<p>In total 23 stakeholders responded to the consultation, including all 15 residents of the three homes and 8 family members of those living there. Overall, 9 stakeholders were supportive of the homes deregistering and becoming supported living, 3 people preferred for them to remain as residential care and 11 people did not express a preference as they were unsure.</p> <p>Some of those who were supportive of deregistration said that this was their preference because it would remove the risk of the support provider changing through a tender which could occur if the homes remain as residential care. Others who were supportive felt that supported living would increase choice and options for their family members.</p>

	<p>Those who preferred the homes to remain as residential care expressed concerns about how their family member would cope with any change and that they were happy with the current arrangements.</p> <p>Those who were unsure included 8 residents who were unable to indicate a preference due to the nature of their learning disability even with advocacy support. Family members who were unsure said that they didn't have enough information about what level of support would be provided in supported living as assessments were still being undertaken but they did think that supported living may be a better environment for their loved one.</p> <p>If the decision is made to proceed with deregistration, there will continue to be information and advice provided by the social worker to address individual circumstances and to assure people that support will be individually tailored.</p>
22.	The social care assessments completed during the consultation process have confirmed that all except one of the residents living in the three homes could have their needs met with a supported living environment. The one exception is a person whose needs are increasing and are likely to require nursing support in the near future, therefore, potentially supported living nor residential care may be appropriate for them.
23.	If the decision is made to deregister the three homes, this would not happen straight away. The next steps would be to refresh the previous property surveys, then work with NHS England and Clarion to transfer and agree the terms of effecting the transfer of the ownership to the Council in addition to agreeing a timescale with Dimensions to allow enough time for the new arrangements to be put in place, including new care & support plans, support for people to receive the right benefits and for license or tenancy agreements to be signed. This could take 3-4 months.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
24.	Refreshed property surveys will be completed and officers will ensure that should it be required, any upfront costs for works on the properties are budgeted within the Housing Revenue Account. The previous surveys in 2018 indicated this would be unlikely, however, given the lapse in timescale, officers will ensure this is undertaken.
25.	Within supported living, housing and living costs are met by the resident themselves in most cases funded by the increased range of benefits they are entitled to. Therefore only the care costs are funded by adult social care. This means that supported living is on average less expensive than a broadly comparable residential home but that the amount and quality of support is at least as good if not better because it can be more personalised for each resident. In the case of these three homes therefore there are potential efficiencies and this could be up to £150,000 per year.
26.	SCC will be obliged to approve the underwriting of NHS England legal fees incurred during the deregistration and transfer process. There is already a budget in place for this.
27.	The proposals are subject to compliance with Financial and Contract Procedure Rules on spend and procurement of services.
<u>Property/Other</u>	

28.	The Council has obtained legal advice that the two properties which are outside of the city boundary, could be included in the Housing Revenue Account (HRA) so long as they were serving the housing needs of people of Southampton. In practice that means that tenants will have to be assessed as being ordinary residents of Southampton. During the social care assessments for each resident this was considered and it has been confirmed that all individuals bar one, met the Ordinary Residence (OR) tests and would remain the responsibility of the Council to meet their health and social care needs. The one individual who did not meet the Ordinary Residence test will continue to be the responsibility of their existing funding organisation.
29.	It has been determined that 'Right to Buy' is not applicable as Schedule 5 of the Housing Act 1985 will exempt these properties even if secure tenancies are granted
30.	The commissioning resource to coordinate the deregistration process or procurement process (depending on decision) will come from the ICU. The dedicated social work capacity, which will remain in place throughout the process, and advocacy resource is funded. When the deregistration or re-procurement is completed, responsibility for reviews and day to day care management will return to the Learning Disabilities adult social care team. On-going contract monitoring will be undertaken by the ICU.
31.	<p>If the homes remain as residential care, a re-procurement of the residential care service will need to commence. As far as possible this will be undertaken within the current financial envelope but will inevitably be subject to market forces within adult social care provision that are likely to result in an increased cost to the Council</p> <p>Dimensions have already successfully applied to be on the Home Care framework so a direct award under that Framework can be made to them for the Supported Living contract, should the homes deregister, this will mean minimal disruption for the individuals living in the homes.</p>
32.	If the decision is made to bring the three homes within the HRA, this would contribute towards the Council's '1000 Homes' commitment.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

33.	<p>Section 9 of the Housing Act 1985 (HA85) permits a local housing authority to provide housing accommodation by acquiring it. Section 17 of the HA85 provides that land, including houses and buildings may be acquired by a local housing authority by agreement or compulsorily. It may acquire houses or buildings which may be made suitable as houses.</p> <p>Section 14 HA85 provides that a local housing authority may for supplying the needs of their district exercise outside of their district the powers conferred by Section 9-13 HA 85.</p> <p>The residents are ordinary resident in Southampton for the purposes of the Care Act 2014 and as they have needs for care and support the housing accommodation acquired out of area will be for the purpose for supplying needs for residents of Southampton.</p> <p>Section 74 of the Housing Act 1989 provides that the local housing authority shall keep [a HRA] of sums falling to be debited in respect of houses which</p>
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	are provided under part 11 of the HA85. These 3 properties are to be provided under part 11 of the HA85.
34.	S.1 Localism Act 2011 permits a council to do anything required to deliver its statutory functions provided any other statutory restrictions on the use of its powers are complied with (including financial and procurement controls etc.) or not otherwise prohibited.
Other Legal Implications:	
35.	The Equality Act 2010 imposes various duties on Local Authorities and in particular all Local Authorities must have due regard to its public sector equality duty when carrying out any function. In particular the duty to eliminate discrimination, harassment and victimisation and advance equality of opportunity and fostering good relations. Local Authorities also have a duty under the Human Rights Act 1998, when carrying out any function, not to act incompatibly with rights under the European Convention for the Protection of Fundamental Rights and Freedoms. In particular Article 8, right to respect for private and family life and Article 25 the rights of elderly to lead a life of dignity and independence and to participate in social and cultural life.
36.	The detailed equality safety impact assessment demonstrates how the council has had due regard to its public sector equality duty. Local Authorities when carrying out any function must adhere to the United Nations Convention of the Rights of Person With Disabilities and in particular respect for dignity, autonomy, freedom to make own choices, equality and elimination of discrimination.
37.	The Care Act 2014 imposes various statutory duties on Local Authorities when exercising Adult Social Care functions. This includes the duty to promote the individual's well-being and protect them from abuse and neglect, including self-neglect; the duty to prevent or delay needs for care and support; the duty to provide advice and information on care and support available. The Act also places various duties and responsibilities on Local Authorities to commission appropriate, efficient and effective services and encourage a wide range of service provision to ensure that people have a choice of appropriate services and an emphasis on enabling people to stay independent for as long as possible.
RISK MANAGEMENT IMPLICATIONS	
38.	Maintenance and upkeep costs of the properties are based upon a set of assumptions. Refreshed property surveys will be completed ahead of any commitment and a business case made for additional spend should this be required, from the Housing Revenue Account.
39.	Whichever decision is made about the three homes, this will be communicated clearly to those living in the home as well as their family members. This will include information about the next steps and timescales. Social work capacity will continue to be involved throughout the next steps to provide support and coordination.
POLICY FRAMEWORK IMPLICATIONS	
40.	The recommendations in this paper support the delivery of priority outcomes in the Council Strategy: <ul style="list-style-type: none"> • People in Southampton live safe, healthy and independent lives

	Southampton is a modern, attractive city where people are proud to live and work	
KEY DECISION?	Yes	
WARDS/COMMUNITIES AFFECTED:	Bevois	
<u>SUPPORTING DOCUMENTATION</u>		
Appendices		
1.	Summary of consultation responses from families and informal carers	
2.	Summary of consultation responses from residents	
3.	Equality and Safety Impact Assessment	
Documents In Members' Rooms		
1.	None	
Equality Impact Assessment		
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.		Yes
Data Protection Impact Assessment		
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.		Yes
Other Background Documents		
Other Background documents available for inspection at:		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None	