

ADULT SOCIAL CARE AND COMMUNITIES SCRUTINY COMMITTEE

Minutes of the meeting of the Adult Social Care and Communities Scrutiny Committee held on Wednesday 20 July 2022 at Shire Hall, Gloucester

PRESENT

Cllr Stephan Fifield (Chair)	Cllr Pam Tracey MBE
Cllr John Bloxsom	Cllr Susan Williams
Cllr Terry Hale	Cllr Suzanne Williams
Cllr Stephen Hirst	Cllr Roger Whyborn
Cllr Beki Hoyland	

1. APOLOGIES

Apologies were received from Cllrs Cate Cody, Steve Robinson and Lisa Spivey (Vice Chair).

Notification of the following substitutions were made prior to the meeting: -

Cllr Beki Hoyland substituted for Cllr Cate Cody
Cllr Roger Whyborn substituted for Cllr Lisa Spivey
Cllr John Bloxsom substituted for Cllr Steve Robinson

2. DECLARATIONS OF INTEREST

No declarations of interest were made at the meeting.

3. CALL IN OF CABINET DECISION

On 22 June 2022, Cabinet considered a report relating to a consultation on the proposed decommissioning and closure of four care homes within the Gloucestershire Care Partnership. The report included an analysis of the consultation exercise and an outline of suggested actions to influence and aid the sustainability of the Independent Health and Social Care Market in light of the initial and ongoing impact of the Covid-19 pandemic and a series of recommendations associated with the analysis.

Having considered the information, Cabinet:-

Noted the analysis of feedback received during the consultation on the proposed decommissioning and closure of four homes managed by the Gloucestershire Care Partnership (GCP), and agreed to the closure of the four care homes currently operating under the GCP contract.

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The care homes included;

- *Bohanam House, Gloucester*
- *Orchard House, Bishops Cleeve, Tewkesbury*
- *The Elms, Stonehouse Stroud*
- *Westbury Court, Westbury, Forest of Dean*

In coming to this decision, Cabinet: -

Delegated authority to the Executive Director of Adult Social Care and Public Health in consultation with the Cabinet Member for Adults Social Care Commissioning to: -

- a) Initiate the necessary steps to decommission the care homes.*
- b) Support the residents of the care homes by moving the residents to alternative placements, as necessary.*
- c) Develop a business case for redeveloping the Elms site in Stonehouse, Gloucestershire, as a new care facility*
- d) Develop a business case for redeveloping a site at Cinderford for a new care facility post 2025*
- e) Work with the Assistant Director of Asset Management & Property Services to identify alternative sites within the Gloucestershire County Council portfolio that might be suitable for development/redevelopment as a sustainable care facility*

On 29 June 2022, the following members called in the Cabinet decision:

- 1) Cllr Jeremy Hilton
- 2) Cllr Lisa Spivey
- 3) Cllr John Bloxsom
- 4) Cllr David Drew
- 5) Cllr Chris McFarling
- 6) Cllr Beki Hoyland

The decision was called in in accordance with Council's Constitution

Outline of the Process

Committee Chair, Cllr Stephan Fifield, referred to the sensitivity of the issue and asked that the committee consider the information in a positive and kindly manner.

Cllr Fifield invited Director of Policy, Performance & Governance, Rob Ayliffe, to outline the process of considering the call-in, as set out in the Council's Constitution. The committee was advised that the purpose of the call-in was not to consider whether or not the committee agreed with the cabinet decision but to consider whether the process for making the decision had been conducted in a

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proper way and whether or not that process was consistent with the Council's Constitution and in line with lawful decision making.

The committee was asked to consider the grounds for calling in the cabinet decision made on 22 June 2022, (Consultation update on the proposed decommissioning and closure of four care homes within the Gloucestershire Care Partnership), and to determine whether the following condition was satisfied, for the reasons specified in the call-in notice (below).

Call in Notice (reasons for call in)

In making its decision, the Cabinet took into account an irrelevant matter or failed to take account a relevant matter, which in the opinion of the Chief Executive, had (or would have had) a significant bearing on that decision.

The relevant matter considered not to have been taken into account was:

That the decision failed to comply with the principles of decision making (7.02), specifically on three criteria:

i. Para 7.02.3 They should take proper account of consultation with others;

In resolving to close Bohanam House, Orchard House, The Elms and Westbury Court, Cabinet failed to follow the Gunning Principles – the laws of consultation which define whether consultation is legitimate or not.

Under the [Gunning Principles](#), proposals must be “at a formative stage” and a final decision must “not yet been made, or predetermined, by the decision makers.

In a press release shared by Gloucestershire County Council on 11 April, the day GCC began the consultation into the future of the four care homes, Council Leader Mark Hawthorne is quoted as saying,

“Whilst there is never a good time to make these types of proposals, having heard from the care market and in the face of ever-increasing vacancy levels in our care homes, we simply can't simply stand by and do nothing.”

This was reiterated in a press release shared by Gloucestershire County Council on 14 June 2022, 8 days prior to the Cabinet meeting, Council Leader Mark Hawthorne was quoted as saying, “When Cabinet meets, it will have to weigh up the understandable and valid concerns raised by those in the four homes with the wider trends and issues impacting on the local care market.” Which is immediately proceeded with, “We cannot afford to do nothing.”

These press releases, specifically the statement at the beginning of the consultation that “we simply can't stand by and do nothing” and the statement in advance of the Cabinet meeting that “We cannot afford to do nothing” demonstrate that the Council Leader had predetermined the decision to close the care homes – failing the Gunning Principles test.

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This leaves the County Council open to judicial review and to complaints to the Local Government Ombudsman.

ii. Para 7.02.3 They should take proper account of consultation with others;

In resolving to close Bohanam House, Orchard House, The Elms and Westbury Court, Cabinet failed to sufficiently take into consideration the consultation responses.

Under the [Gunning Principles](#), “conscientious consideration’ must be given to the consultation responses before a decision is made” and “decision-makers should be able to provide evidence that they took consultation responses into account.”

The response to the consultation was overwhelmingly against the decision to close the care homes. Combined, 2,286 members of the public signed petitions opposing the proposed closure of the care homes, and responses from care home residents, family members and staff were also overwhelmingly opposed to the proposals. In addition to requesting that the County Council not close the care homes, consultees requested that the County Council refurbish the existing sites.

In the Cabinet reports and under questioning at the Cabinet meeting on 22 June 2022, it was not shown that consultation feedback was conscientiously considered, and there was insufficient evidence that the consultation responses had been taken into account.

This leaves the County Council open to judicial review and to complaints to the local government ombudsman.

iii. Para 7.02.8 They should be properly reasoned and alternatives that are discounted should be identified and the reasons for their rejection explained adequately.

In resolving to close Bohanam House, Orchard House, The Elms and Westbury Court, Cabinet failed sufficiently demonstrate the reason for discounting alternatives to closing the four care homes.

Prior to the pandemic, all four care homes had high occupancy levels, at over 80 per cent. Covid-19 led to a significant decrease in the number of occupants, however insufficient information was provided on why occupancy levels would not be expected to return to pre-pandemic levels.

Similarly, the company tasked with running the consultation recommended that Cabinet considered the possibility of refurbishing the care homes instead of closing them. This received only a cursory response which was insufficient given the amount of disruption and distress that closing the care homes will have on residents, family members and staff.

Cllr Jeremy Hilton, (as lead signatory), outlined the reasons for the call in.

Speaking specifically about the closure of Bohanam House, the second of two nursing homes identified for closure within his division in recent years, Cllr Hilton stated that, having asking several questions on the proposals, he remained unconvinced that the decision-making process relating to the decommissioning of the care homes had been carried out appropriately.

Cllr Hilton referred to the recommendations made to Cabinet in June 2022, including the recommendation to review the outcomes of the independent consultation on the proposed closures, and questioned whether this had been done. Referring to the strength of opposition and the number of signatures submitted on a petition opposing the closure of Bohanam House, Cllr Hilton asked why the negative comments had not been taken into account when making the cabinet decision.

Noting current care home bed requirements in Gloucester, Cllr Hilton questioned the closure of an existing care home without fully considering the option of refurbishment, particularly when plans to undertake a refurbishment programme had been in place prior to the pandemic.

Cllr Hilton also referred to the wording of press releases on the proposals and questioned whether the decision to close the four care homes had been predetermined.

Based on these and other concerns, (relating to staffing issues and the welfare of the residents at the care homes), Cllr Hilton highlighted the potential risk of a judicial review on the decision.

Cllr Carole Allaway Martin, Cabinet Member for Adult Social Care: Commissioning, responded to the call-in by presenting the report circulated with the agenda pack for the meeting. Cllr Allaway Martin also responded to a number of questions asked at the meeting and clarified the following points.

- The report presented at the March Cabinet meeting had been well considered, providing significant evidence of the implications of changes in policy impacting on each of the individual homes. At the time of the initial agreement with the Gloucestershire Care Partnership, (in 2005), the health and social care environment had been a very different environment to that presented today, with significantly more options on how people can support their individual care needs at home or via other options. A key focus of the report presented at the March Cabinet meeting was to consider whether the care homes were fit for purpose;
- The proposal to consider closure of the care homes had not been taken in isolation, but in partnership with key stakeholders from the Gloucestershire Care Partnership and in response to the Care Act 2014. Although the decision to close the care homes may have appeared harsh, a dilemma presented to the Council, (from meeting the requirements of the Act), was

that it not only had to meet the needs of people eligible for care, but that it now also had to shape and manage the local care market;

- In response to the first of the reasons put forward for calling in the Cabinet decision, Cllr Allaway Martin stated that the proposal to close the four care homes had not been an easy decision. The decision making process had been complex, and had needed to take into account legal, ethical, social and professional considerations. The decision had been made with good conscience and had met with all legal guidelines;
- No communication on the decision to close the four homes had been made until after the consultation had concluded and after the Cabinet decision had been made in June. Until this time, all communications referred to 'proposals';
- In response to the second reason put forward for the call in, Cllr Allaway Martin explained that this was not the first time the County Council had been required to balance its legal duty against negative comments and emotive responses. This situation was not unique to Gloucestershire and it had been necessary to draw from past learning and experience in order to manage the situation in the best way possible. It was confirmed that the Care Quality Commission (CQC) had been the regulator throughout the decision making process;
- Initial feedback from the consultation had been very emotional. However, as the consultation progressed, feedback from the individuals affected by the decision and from consultation meetings indicated a shift in the views of residents, relatives and staff, with increased recognition of the rationale, (and benefits), of managing the market through planned closures rather than waiting for the care homes, (businesses), to fail;
- Responding to the third reason put forward for the call in, Cllr Allaway Martin outlined three separate but interrelating factors that had steered the decision making process and culminated in the necessity to consider the decommissioning of the 4 homes.

The factors on which the Cabinet decision was considered included:

- Over-supply of care beds that threatened the stability and sustainability of the market as a whole. Cabinet's view was that it would be necessary to reduce the overall number of beds. It was noted that this factor had been an issue pre the Covid-19 Pandemic;
- The need to ensure that provision was suitable to meet the predicted future needs and expectations of the local population. This factor created the need to ensure that the provision within the Council's estate was fit for purpose;

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- The current condition of homes within the council estate, including the condition of the homes with the potential to be renovated to meet current needs whilst remaining financially viable. Having concluded that it would be necessary to reduce the number of homes overall, this factor had informed the Cabinet decision on which homes should be decommissioned.

It was clarified that Cabinet had been advised of the risks associated with each of the 3 factors and had subsequently accepted that 'to do nothing' could potentially place greater risk on the sustainability of the care market in Gloucestershire.

Cllr Fifield invited members to comment on the grounds for call-in and to ask questions. The following points were made during the discussion: -

- Whether there was any evidence that the decision to close the care homes had been pre-determined;
- Whether Cabinet had given sufficient regard to the negative feedback from the consultation prior to making its decision;
- The extent to which alternative options, including modernisation /refurbishment of the care homes had been considered;
- The timing of communication with staff, families and residents, including the announcement of the intention to consult/potential to close the homes;
- The anticipated impact of the proposals on the wider care market, including issues relating to the discharge of patients from hospital, (potential bed blocking);
- The consequences of a diminished number of care homes within the council estate on its ability to continue to influence the market in the future;
- Questions about whether it was appropriate to close council owned homes when such homes were more highly rated than local private sector homes.

Several members of the committee questioned the process by which the decision had been made. Other members acknowledged the complexity of the decision and agreed with the rationale to consider the decommissioning of the homes.

Following an in-depth discussion, the committee was asked to vote on whether they agreed wholly or partially with the grounds for call-in, based on the comments made at the meeting.

On being put to a vote, the call-in failed, (based on a majority vote of 5 members rejecting the grounds for the call in and 4 members voting in support).

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As a majority decision, the committee

RESOLVED to support the Cabinet decision.

The committee was advised that the decision could be implemented immediately, (without further consideration by Cabinet), and that the outcome of the decision would be reported to Cabinet at its next meeting.

CHAIRPERSON

Meeting concluded at 15.40pm