

ADULT SOCIAL CARE & COMMUNITIES SCRUTINY COMMITTEE

20 July 2022

Call-in of Cabinet decision taken on 22 June 2022

Consultation update on the proposed decommissioning and closure of four homes within the Gloucestershire Care Partnership

Provide an analysis of the consultation exercise 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 seek approval for the recommendations associated with that analysis

1 Background

- 1.1 This decision has been called in, in accordance with the Council's constitution. The following information is attached to the report:
Appendix 1 – Call-in notice
Appendix 2 – Cabinet Decision Statement 22 June 2022
Appendix 3 – The report considered by the Cabinet on 22 June 2022
- 1.2 The Constitution sets out the call-in procedure rules. Any decision which is the responsibility of the Cabinet, but not yet implemented, can be called-in within a prescribed timescale. Call-in should only be used in exceptional circumstances and be invoked only when there is evidence to suggest one or more of the prescribed grounds have been satisfied.
- 1.3 On 29 June 2022 the following six 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

2 Decision by the Adult Social Care and Communities Scrutiny Committee

- 2.1 Whether the committee agrees, wholly or partially with any of the grounds set out in the call-in notice.

- 2.2 Which of the options set out in paragraph 3.3 of this report is to be adopted and, if any, what qualifications, comments, modifications and/or alternatives are to accompany that decision.

3 Call-in procedure

- 3.1 The first stage in the process is for the committee to decide whether it agrees, wholly or partially with the grounds for call-in: These are outlined below:

In making the decision, the Cabinet, the Leader of the Council or a Cabinet Member or Officer under delegated powers took account of an irrelevant matter or failed to take account of 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 not taken into account is *:

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

The matter contravened is:

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

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.

- 3.2 If the committee does agree with the grounds for call-in then members will need to consider the report presented at the Cabinet meeting on 22 June 2022(Appendix 3), the Cabinet Decision Statement for that meeting (Appendix 2) and the response from the Cabinet Member for Adult Social Care Commissioning.

- 3.3 The following options are available to the committee:

- 3.3.1 Support the decision without qualification or comment (in which case it can be implemented immediately without being considered again by the Cabinet, Leader of the Council or Cabinet Member).

- 3.3.2 Make adverse comments regarding the process when set against the guiding principles for decision-making, but no adverse view on the decision itself (in

which case it can be implemented immediately, with the committee's comments being set out in a report and considered by the Cabinet, Leader of the Council or Cabinet Member).

- 3.3.3 Propose modifications to the decision or an alternative to the decision to achieve the same effect (in which case the implementation is delayed until the Cabinet, Leader of the Council or Cabinet Member has received and considered a report of the relevant Scrutiny Committee and decided how to proceed).
- 3.3.4 In exceptional circumstances (which shall be determined by the relevant Scrutiny Committee and recorded in the minutes) arrange for the full Council to review or scrutinise a decision and decide whether or not to recommend the Cabinet, Leader of the Council or Cabinet Member to reconsider the decision and/or consider an alternative decision recommended by full Council. If full Council does not recommend the Cabinet, Leader of the Council or Cabinet Member to reconsider the decision and/or consider an alternative decision, the called in decision may be implemented immediately. If full Council does recommend the Cabinet, Leader of the Council or Cabinet Member to reconsider the decision and/or consider an alternative decision the called in decision shall not be implemented until the Cabinet, Leader of the Council or Cabinet Member has considered the recommendation of full Council and decided how to proceed.
- 3.4.5 In the event the decision is further considered by the Cabinet or Cabinet Member, the Cabinet or Cabinet Member may do any of the following and the reasons for its or their choice will be published and reported to the next meeting of the committee.
 - 1 Confirm the called-in decision without modification.
 - 2 Confirm the called-in decision with modification.
 - 3 Rescind the called-in decision, take the alternative decision recommended by full Council or (if considered appropriate) propose a new one.
- 3.4.6 If the Committee does not agree with the grounds for call-in, then the Cabinet decision stands.

Response from the Cabinet Member for Adult Social Care Commissioning

4. Reason 1

- 4.1. *This decision has failed to comply with the principles of decision making (7.02), specifically on three criteria:*
- 4.1. *Para 7.02.3 They should take proper account of consultation with others;*
- 4.2. *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.*
- 4.3. *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.”¹*
- 4.4. *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.”*
- 4.5. *This was reiterated in a press release shared by Gloucestershire County Council on 14 June, 8 days prior to the Cabinet meeting, Council Leader Mark Hawthorne is 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.”*
- 4.6. *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.*
- 4.7. *This leaves the County Council open to judicial review and to complaints to the Local Government Ombudsman*

¹ <https://www.local.gov.uk/sites/default/files/documents/The%20Gunning%20Principles.pdf>

5. Response Reason 1

Context

- 5.1. As well as highlighting the proposals that were being put forward, the releases also refer to the challenges that the local care sector is facing. It is in this context that the statements like 'we cannot afford to do nothing' are made.
- 5.2. No communication from the council, until June 2022, states or implies that any decision had been taken in relation to the four homes or indeed the other proposals put forward to help stabilise the local care market. All communications until June, rightly, only referred to proposals and highlight that no decisions would be taken until the June Cabinet meeting once the consultation had concluded.
- 5.3. At each stage, Cabinet have been open and transparent in its deliberations. Far from pre-determining the decision, Cabinet has entered each stage in good conscience and has exposed its interim conclusions to scrutiny and challenge from fellow councillors, experts within the sector and the wider public.

6. Reason 2

Para 7.02.3 They should take proper account of consultation with others:

- 6.1. *In resolving to close Bohanam House, Orchard House, The Elms and Westbury Court, Cabinet failed to sufficiently take into consideration the consultation responses.*
- 6.2. *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.”*
- 6.3. *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.*

- 6.4. *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.

7. Response – Point 2

- 7.1. There were four online petitions submitted as part of the consultation feedback:
- Bohanam House: Save Bohanam House – Change.org petition - 796 signatures
 - Orchard House, ‘Keep Orchard House in Bishops Cleeve open’ - 447 signatures.
 - Westbury Court, Opposition to the closure of Westbury Court Care Home, - 501 signatures.
 - The Elms, Save The Elms Stonehouse - Change.org which with - 542 signatures
- 7.2. The Cabinet report provides a full explanation of the outcome of the consultation and summarising the key issues which were raised.² Details of the petitions for each home were also included in both the body of the report, in the consultation summary and in the paragraphs summarising key issues.
- 7.3. The feedback from the consultation was initially largely, though not exclusively, negative which is explained within the report. However, the response was in relation to the rationale to close these homes over and above any other care home in the county. Gloucestershire County Council have no authority to close a privately run home. We can withdraw or withhold specialist contracts or embargo placements but would still need to work with a home and pay for placements should a home resident fall below the ASC financial threshold, £23,250 through capital depletion. CQC remains the regulator of residential care.
- 7.4. Initially the feedback from consultation meeting was a shock response and was very emotional, where residents, relatives and staff felt the homes should remain open. However, as the consultation progressed and discussions held through several consultation meetings, there were aspects of feedback where residents, relatives and staff recognised the rationale behind managing the market through planned closure rather than waiting for businesses to fail. We also received feedback from residents, and their families regarding staffing,

² Cabinet Report paragraphs 70-122

and some of the rationale and benefits in consolidating a skilled workforce into other homes to aid in recruitment challenges across the sector.

- 7.5. The report and the overview of the consultation was available to the Cabinet and in their discussion of the recommendations, Cabinet members clearly demonstrated their understanding of the strength of the views expressed through the consultation process. Several references were made to the actions that were being taken to mitigate the impact for families, staff and relatives, and these were set out in writing in the accompanying Equality Impact Assessment.
- 7.6. Cabinet accepts that the decision to support the closure was a difficult one that went against the wishes of the vast majority of respondents. However, we had to balance this against our legal duties with regards to the sustainability of the market, and our responsibility to ensure that suitable and sufficient care provision is available for those who will need it in future.

8. Reason 3

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.

- 8.1. *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.*
- 8.2. *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.*
- 8.3. *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.*

9. Response - Reason 3

- 9.1. Three separate but interrelated factors led to Cabinet's determination that the closure of these 4 homes was necessary:
 - 9.1.1. An over-supply of care beds threatening the stability and sustainability of the market as a whole. Cabinet's view is that this necessitates action to reduce the overall number of beds.
 - 9.1.2. The need to ensure that provision is suitable to meet the predicted future needs and expectations of the local population. This creates the need to ensure that the provision within the Council's estate is fit for purpose.
 - 9.1.3. The current condition of those homes within its own estate and those homes' potential to be renovated to meet those needs whilst remaining financially viable. Having concluded that it was necessary to reduce the number of homes overall, this factor informed the Cabinet's decision as to which homes should be decommissioned.
- 9.2. Cabinet were presented with three options and were advised of the risks of each of these.³
- 9.3. No alternatives, (permissible in law), were submitted as part of the consultation response/feedback that would enable Cabinet to address all three of these factors. If we were to do nothing, there is a greater risk to the sustainability of the care market in Gloucestershire.
- 9.4. Gloucestershire has an oversupply of care beds overall, focussed in particular in certain parts of the county, and a lack of affordable, appropriate provision in others. Gloucestershire risks the surplus care home provision being used for inappropriate inter-county placements as providers seek alternative means to maintain their business viability.
- 9.5. Occupancy levels in the GCP homes has been achieved through active contract management. Commissioners and practitioners, where possible, prioritise the use of the block contract for publicly funded placements for both short and long-term placements. We also outlined in the Cabinet report that when previously managing the closure of a home within the GCP contract we have aimed to move the majority of residents into other homes within this contract. This is outlined as a mitigating factor in the Equality Impact Assessment as a way of limiting individual resident(s) distress. This is in the knowledge that residents

³ Cabinet Report paragraphs 129-141 and 142 -148

and staff can, where possible, move together. This was agreed and achieved in previous closure and where possible this principle would be adhered to here. All of these homes are below the optimum number for sustainable residential provision, as outlined in the answer to Cabinet questions calculation show that care homes of 60-66 beds are the optimum size in relation to financial sustainability. The smaller the home the higher the level of occupancy needed to maintain the homes financial viability. In the Cabinet paper 24th July 2019 'Older People Care Home Strategy "Procedure for Managing the Closure of a Care Home Providing Services for Adults", occupancy levels of between 86-97% in Wyatt House were predicted to forecast a loss of £195,000.

- 9.6. The occupancy levels were also raised in Cabinet questions and was answered as below:

As evidenced in our Cabinet Report, the continued decline in individuals entering residential or nursing care and more residents wishing to remain living at home for longer has reduced the number of care home beds we require therefore we currently have a surplus of care beds across Gloucestershire, particularly in our urban areas.

While we understand and predict there will be an increase in demand for care and specialist dementia care in 2025-2030, we will continue to work to explore and increase other options of care for individuals such as extra care, housing with care, and enhanced community care to meet individuals needs and wishes and therefore predict that we will still have an oversupply of care home beds in areas of Gloucestershire.

- 9.7. The feedback from Evolving Communities did state that they "feel that the disruption of a closure would be greatest for two of the homes, Bohanam House and Westbury Court." However, this statement was made in relation to the impact on individuals of the loss of the family nature of the homes. Where possible the residents would be moved with friendship groups and with care staff. As with previous moves the aim is keep as many residents within GCP homes as possible. Evolving Communities did not comment on how this assisted with the aim of market management and did not provide alternatives which balanced the wider market needs should these two homes remain open.
- 9.8. In recommending that Cabinet consider refurbishment rather than closure Evolving Communities were again relating this to the impact on the individuals concerned and, (as stated in paragraph 162 of the Cabinet report), did not indicate how this contributed to the longer-term options for the home and the ability to meet the increasingly challenging needs of their residents. Therefore, how this would contribute to market sustainability.

9.9. The Cabinet report acknowledges the response to the consultation from Evolving Communities regarding the possibility of refurbishing rather than closing the homes as follows. Members questions also raised this issue and, therefore, the Cabinet considered the potential for refurbishment before making their decision. However, we had to balance this against our legal duties with regards to the sustainability of the market, and our responsibility to ensure that suitable and sufficient care provision is available for those who will need it in future.

9.10. The officer recommendation in the report outlined the following:

Refurbishing the homes would give a short-term boost to occupancy..... However, the level of redevelopment required is more than a cosmetic overhaul of the rooms. In adding the facilities that people now expect when entering care. All of the homes would need a major refurbishment or rebuild. Where the site makes this possible GCC are proposing to close and rebuild a care facility that should be fit for purpose moving forward.

9.11. The response to a similar question on refurbishment or redevelopment, submitted as part of Cabinet question received the following response:

9.12. Our market engagement, and analysis has evidenced that we have an oversupply of care home beds across Gloucestershire predominantly in our urban areas, therefore the proposals to decommission these homes support in the suitability of the wider care home market and the increase in occupancy as well as a consolidation of the skilled workforce, across all homes and mainly those in the GCP estate.

9.13. Discussions with our asset management colleagues, and during Estate Strategy meetings the potential to redevelop these facilities has been discussed at length. If we were to redevelop these facilities to include the flexible spacious accommodation and en-suite facilities, we would lose several bedrooms which would make the homes unviable as the optimum number of beds would be reduced. On average a loss of one bedroom for every two en-suites required.

9.14. In relation to the home with the smallest number of beds, Bohanam House, which currently has 39 beds this would leave the home with a maximum of 30 beds.