

# Adults Scrutiny Panel

## 24 November 2015

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| <b>Report title</b>                            | Outcome of Options Appraisal – Duke Street   |  |
| <b>Cabinet member with lead responsibility</b> | Councillor Elias Mattu<br>Adults             |  |
| <b>Wards affected</b>                          | All  |  |
| <b>Accountable director</b>                    | Linda Sanders, People                        |  |
| <b>Originating service</b>                     | Commissioning (Disabilities & Mental Health) |  |
| <b>Accountable employee(s)</b>                 | Kathy Roper<br>Tel<br>Email                  | Commissioning Team Manager<br>01902 550975<br>Kathy.roper@wolverhampton.gov.uk |
| <b>Report to be/has been considered by</b>     | Strategic Executive Board<br>Cabinet         | 13 October 2015<br>11 November 2015  |

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### Recommendation(s) for action or decision:

Scrutiny Panel is recommended to:

1. Agree the implementation of option 2, to de-register Duke Street bungalows as residential care and to change the registration to supported living with the potential of Wolverhampton Homes becoming the landlord subject to further work and discussions taking place and the council commissioning an alternative provider to deliver the care element. A period of TUPE would apply to this option.

### Recommendation(s) for noting

2. Scrutiny Panel is recommended to note the indicative timescales to complete the work to move to a supported living service and maximise potential savings.

## **1.0 Purpose**

- 1.1 This report provides Scrutiny Panel with an update on the work carried out with residents and their families of Duke Street residential care home. This followed the initial consultation on the future of the service, carried out between December 2014 and February 2015. Duke Street bungalows is a residential care home for adults with a learning disability.
- 1.2 The report sets out the costed options appraisal for Duke Street if we were to de-register it as a residential care home and re-register it as a supported living service.
- 1.3 The report sets out an indicative action plan to progress the project.

## **2.0 Background**

- 2.1 The Duke Street Bungalows are a council run residential home for up to 20 adults with profound and multiple learning disabilities (pmlD). It is made up of three detached bungalows and is situated in Wednesfield in the North of the City. At present there are 18 residents at Duke Street.
- 2.2 In December 2014, a 12 week consultation began on the future options for service delivery. Cabinet were presented with the outcome of the consultation in March 2015 and agreed that further work should be carried out with the residents and their family members. Cabinet approved a fully costed option appraisal be prepared and presented back to Cabinet with a view to moving to a supported living model as soon as possible.
- 2.3 The Cabinet report of March 2015 agreed that work should begin to support families to understand why a supported living model was being considered for Duke Street and to gain the views of the residents.
- 2.4 In general the residential care model can be described as providing a 'one size fits all' approach to the provision of care. In any one residential care home, every person living there is likely to have different individual support needs. Regardless of these varying support needs, the cost of care will usually be dependent on the cost of a place in a home rather than the actual cost of care and support needed.
- 2.5 Supported living is a concept that was developed as an alternative to institutional residential care for people with learning disabilities. Supported living is not a prescriptive model of service design and can look very different for different people. For one person it may be a few hours support a week to live alone in a rented flat, for another it may be round the clock support to live in a home they own, and for others it may be a shared house with friends and support to meet individual needs. For the current residents at Duke Street the Council recognise the need for 24 hour care and support.
- 2.6 Improving a person's choice and control is the most important outcome that supported living must achieve. This includes having security of tenure in their chosen accommodation and some choice over how their care is provided.

### **3.0 Current Situation/discussions**

- 3.1 A social worker was appointed to carry out the assessments of all the residents at Duke Street to ensure a consistent approach was applied. The social work assessments were supported where possible by family members and additional information gathered by an independent empowerment organisation (see 3.5). The aim of these assessments was to ensure that a fuller picture of each resident, their wants and views was captured to help assess the level of support that they would need if a decision is taken to move to supported living. The assessments have formed part of the Equality Analysis work and will be used to develop individual support plans for each resident moving forward under this model.
- 3.2 The social work assessments identified that the residents had a level of need that means they require care and support throughout a 24 hour day because:
- The complex health needs of the residents means they all require 1:1 support when accessing the community
  - ten of the residents require 1:1 support for personal care
  - eight people require 2:1 support for personal care
  - For building based activities a staff ratio of 1: 2 is needed for 17 of the residents whilst one resident requires 1:1 support.
- 3.3 It is recognised that the residents of Duke Street have profound learning disabilities and several have complex health needs which will require the same level of care and support in either a residential or supported living model moving forward. The use of assistive technology has the potential to improve outcomes and provide more dignity and privacy however the residents will still need their staff teams to carry out the majority of daily living tasks.
- 3.4 A number of themes were identified by the social worker during the reviews. People wanted to partake in more activities and there appeared to be a lack of a person centred approach to the care plans. People were worried about potential changes in accommodation. Existing relationships with staff are viewed as being very important and families felt that staff are doing their best for the residents. The period of uncertainty that has existed since the initial consultation has created anxiety for the residents and their families.
- 3.5 Changing Our Lives, an independent empowerment organisation who specialise in working with people with learning disabilities, were commissioned to support the residents to have their voice heard and to provide the Council with a report of their findings. Changing our Lives developed an individual profile of each resident with their likes and dislikes and the key 'must haves' in any future service. These profiles assisted the social worker in their review of each resident's needs. As a result of this work some key themes have emerged which reveal that the quality of people's life at Duke Street is in some ways institutionalised, and people are limited in the extent to which they are supported to achieving ordinary life outcomes. Some of the reasons for this appear to include shortcomings in the way people are supported and the model of support in place.

- 3.6 Work has been completed to look at the known costs for delivering a supported living service at Duke Street, it identified the Housing Benefit and additional benefits residents could be eligible for and would need if the service moved to a supported living model. The Housing Benefit levels are indicative at this time and cannot be confirmed until an application is made.
- 3.7 The social work assessments enabled the commissioner to calculate the one off costs for additional support that the residents would need to move to a supported living model of care including the need to go to the Court of Protection for most residents.
- 3.8 Commissioners have held a number of meetings with a group of the residents family members to understand the concerns they may have about the proposals. The family members have the best interest of the residents at heart and have wanted to be part of the process to ensure the best outcomes. Whilst they would prefer that the residential model at Duke Street remain unchanged, families have worked with commissioners to develop a service specification, and are committed to working with the Council at all stages in the process, for example supporting the Council to identify a housing provider experienced in delivering high quality supported living services, to ensure that Duke Street bungalows can be used to deliver a supported living model. They are also willing to be part of the evaluation process to find a care provider who has a good record for providing person centred care and support.
- 3.9 The Care Quality Commission (CQC) has been approached to understand the timelines and requirements for de-registering and re-registering of Duke Street. CQC estimate that from the time of receiving the application to approval being given a provider should allow a minimum of twelve weeks.
- 3.10 CQC did not express a view about what changes, if any, they would require to the building if the service was registered as supported living. The new application for supported living would require a new statement of purpose for supported living that demonstrated how residents would have a clear choice of how care was provided and ensuring that appropriate tenancies were in place.

#### **4.0 Options Appraisal**

- 4.1 Two supported living options have been evaluated. With the largest cost in delivering services being staff costs, at the time of The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) transfer no significant savings are accrued. It is possible following the period of the initial contract (timeframe described in the contract) to achieve further savings by renegotiating the contract value.
- 4.2 The model of supported living that would be pursued for the residents of Duke Street would be a shared home with around the clock care, ensuring that the level of support does not diminish.

#### **Option 1:**

To de-register the service, change the registration to supported living with a Registered Social Landlord (RSL) becoming the landlord and the council continuing to deliver the care and support.

The 2015/16 controllable budget (before savings) for the Duke Street as a residential home is £1.5 million. The costs of option 1 are summarised below. This would give a full year savings of £303,000.

| <b>Option 1</b>         | <b>Forecast Costs (£000)</b> | <b>Comments</b>                                   |
|-------------------------|------------------------------|---|
| Staffing (restructured) | 1,220                        | Savings from restructure for S/living             |
| Service Costs           | 30                           |   |
| Rent                    | 77                           | Forecast cost of Rent                             |
| Housing Benefits (HB)   | (107)                        | HB contributions based on indicative calculations |
| <b>Total</b>            | <b>1,220</b>                 |   |

**Benefits;**

- It Improves independence choice and control
- It is in line with best practice
- It will maintain current domestic arrangements / friendships
- Housing Benefits and additional residents benefits will provide alternative funding routes reducing the budget commitment
- It responds to families concerns that the quality of the service will deteriorate if it is externalised.

**Risks;**

- Deprivation of Liberty (Dols) and Best Interest Assessments will lead to Court of Protection applications being made. Delays in the Court hearing applications may impact on timeline and introduces further costs
- CQC inspection following receipt of application could lead to delays in making service fit for purpose
- The revised cost model taking into account assumed levels of Housing Benefit contribution and additional resident's benefits does not deliver the level of savings identified.

**Option 2**

To de-register, change the registration to supported living with the potential of Wolverhampton Homes becoming the landlord subject to further work and discussions taking place and the council commissioning an alternative provider to deliver the care element. A period of TUPE would apply to this option.

The 2015/16 controllable budget (before savings) for the Duke Street as a residential home is £1.5 million. The costs of option 2 are summarised below. It is estimated that the full year effect of the savings after a period of TUPE protection would be in the region of £378,000.

| Option 2                 | Forecast<br>Costs<br>(£000) | Comments   |
|--------------------------|-----------------------------|--|
| Staffing                 | 1,145                       | Estimated costs after period of TUPE             |
| Service Costs            | 30                          |  |
| Rent                     | 77                          |  |
| Housing Benefits<br>(HB) | (107)                       | HB contribution based on indicative calculations |
| <b>Total</b>             | <b>1,145</b>                |  |

### Benefits

- It will improve independence choice and control
- It is in line with best practice
- It will maintain current domestic arrangements / friendships
- HB and additional residents benefits will provide alternative funding routes reducing the care purchasing budget commitment
- Additional savings are made once the period of TUPE has ended.

### Risks

- Dols/ Best Interest Assessments will lead to Court of Protection applications being made. Delays in the Court hearing applications may impact on timeline and introduces further costs
- CQC inspection following receipt of application leads to delays in making service fit for purpose
- TUPE transfer of staff risk mitigation plan does not give potential care providers sufficient confidence to bid
- Savings identified not delivered in timescale originally required
- Legal challenge from family relatives concerned that the process is flawed.

## 5.0 Implementation Plan

5.1 There are a number of actions required to move the project towards a successful conclusion, an implementation plan has been developed. Close project management will be needed to pull the various work streams together to achieve the projected transfer date. The work to achieve the recommendation and transfer to an external RSL and care provider would be delivered as indicated below:

**Delivery of an external supported living service December 2015 – Nov 2016**

| <b>Work streams</b>          | <b>timeline</b>  | <b>Actions</b>  |
|------------------------------|--|---|
| Asset transfer /management   | Dec 2015- March 2016   | <ul style="list-style-type: none"> <li>Agree transfer of Duke St residential homes to provider</li> <li>• Agree lease/ownership terms</li> <li>• management arrangements</li> <li>• set rents</li> <li>• Void Cover</li> <li>• Agree nominations right process</li> <li>• Agree asset up-grade (phased process)</li> </ul>  |
| Residents                    | Dec 2015- April 2016   | <ul style="list-style-type: none"> <li>• Complete Best Interest Assessments</li> <li>• Initiate the Court of Protection/Dols application</li> <li>• Commission external support to Work with families/advocates to develop support plans</li> <li>• Work with Welfare Rights to apply for housing benefit claims</li> </ul>   |
| Tender for new care provider | Dec 15- Feb 16 ( 8 wks + Christmas break)<br><br>March-May 2016<br><br>June- July 2016<br>August 2016<br>August 2016<br><br>August –October 2016<br><br><br><br>Nov 2016 | <ul style="list-style-type: none"> <li>• Development of due diligence tender pack</li> <li>• Tender Exercise</li> <li>• Evaluate/permission to award</li> <li>• Award</li> <li>• Link in with external support planning and families to finalise support plans</li> <li>• TUPE discussion period for staff (3 months)</li> <li>• Agree and set up Service Level Arrangement agreement with Housing Provider</li> </ul> <p>New service operational</p> |
| CQC                          | August 2016  | <ul style="list-style-type: none"> <li>• Develop new statement of purpose for service with new provider</li> <li>• Application to de-register residential service(care provider)</li> </ul>   |

|  |  |   |
|--|--|---|
|  |  | <ul style="list-style-type: none"><li>• Application to register as supported living(care provider )</li><li>• CQC inspection (assuming this is required)</li><li>• CQC issue new registration</li></ul> <p>New S/Living service operational</p> |
|--|--|---|

## 6.0 Risk associated with implementation plan

6.1 The following potential risks could arise:

- 6.1.1 The need to make applications to the Court of Protection could impact on the timeliness of implementation and introduces further costs. In order to mitigate this risk, the Court of Protection costs and implementation process have already been identified. It is understood that as long as the required Deprivation of Liberty and Court applications have been made, the Council will be able to continue the de-registration and re-registration process ensuring that due process has been followed in line with the Mental Capacity Act 2006 and it has been agreed that it is in the 'best interests' of the residents.
- 6.1.2 The registration of the new service will require a Care Quality Commission (CQC) inspection following the receipt of the application. Current work with providers indicates that this process takes a minimum of 12 weeks. Commissioners will work closely with CQC to manage the process and minimise this risk.
- 6.1.3 External providers have voiced concern over the potential pension and redundancy liabilities associated with a TUPE transfer of the current staff team. A full due diligence information pack containing pension actuarial and redundancy information will be included as part of the tender notification.
- 6.1.4 Potential providers may feel unable to utilise the site given the limitations of its current configuration. An estimate on the potential cost of a refit at Duke Street has been obtained from the council's internal quantity surveyors.
- 6.1.5 The complexity of the process could mean that savings are not delivered within the timescale originally required. A robust project management and escalation process will be implemented to support the change management process.
- 6.1.6 The families of the current residents at Duke Street have expressed concern about the proposals, and could seek to make a legal challenge. Over recent months officers have been meeting with family members. Regular meetings have been taking place to explain the process and the implications for each resident. Legal advice has been sought throughout the process.

## 7.0 Financial implications

7.1 The 2015/16 controllable budget for Duke Street (before savings) is £1.5 million.

- 7.2 The Medium Term Financial Strategy includes savings proposals totalling £3.1 million by 2016/17 for the implementation of reduced-cost delivery models for disability in-house provision.
- 7.3 A move to supported living will produce potential savings of £303,000 for Option 1 and £378,000 for Option 2 (after an agreed period of TUPE protection). To test the viability of the savings for Option 2 formal market testing will be carried out to confirm there is interest in the market and to confirm that the predicted savings will be achieved.
- 7.4 Costings quoted in this report are based on initial market testing and the number of proposed hours to be delivered, however when compared to benchmarking costs against other neighbouring local authorities these savings appear to be realistic. The actual cost of the contract will form the basis of the negotiation with any successful provider.
- 7.5 One off additional costs of £32,000 has been identified to ensure that the Council follows statutory requirements to provide best interest/Dols applications and Court of Protection orders to support the residents with the transfer to a supported living model. This one-off cost will be funded from the savings identified in year 1.
- 7.6 The actual costs associated with the TUPE transfer are unknown but will be considered and resolved as part of the contract negotiations with the selected provider. [AS/30102015/F]

## **8.0 Legal implications**

- 8.1 There are legal implications associated with this report. A contract would be required between City of Wolverhampton Council and the RSL, a new care and support provider would need to be tendered for and contracted with, and any change of provider or external outsourcing of the service would likely bring about the transfer of staff, subject to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), as later amended.
- 8.2 Applications to the Court of Protection will be needed in some instances. These are required for all adults assessed as not having capacity to make a decision about changes to their living arrangements.  
[RB/22092015/B]

## **9.0 Equalities implications**

- 9.1 Equality analysis (EA) has been undertaken, using the individual community care assessments and the personal profiles developed for each resident. The analysis indicates that there is the potential for differential impacts to be felt by some of the residents should a decision to move to a supported living model be approved. A bespoke individual action plan will be developed for every resident to describe the steps the Council are taking to minimise these impacts.

## **10.0 Environmental implications**

10.1 There are no environmental implications associated with this report.

## **11.0 Human resources implications**

11.1 There are human resource implications associated with this report as it recommends a restructure of the service and a transfer under TUPE regulations. This will be completed in line with human resource policies and procedures.

## **12.0 Corporate landlord implications**

12.1 There are corporate landlord implications as there is an option to transfer the building to a Registered Social Landlord, taking it out of the corporate landlord portfolio. Should this report be approved a further report will be prepared for Cabinet Resources Panel seeking approval for said transfer to take place.

## **13.0 Schedule of background papers**

13.1 Outcome of consultation on the future of In House Services March 2015.