
ADULT, COMMUNITY AND HOUSING SERVICES SCRUTINY COMMITTEE

4TH MARCH 2014

Report of the Director of Adult, Community and Housing Services

New Bradley Hall – up-date and next steps.

Purpose of Report

1. To up-date the Adult, Community and Housing Services Scrutiny Committee about the developments of work to secure a new provider to deliver the residential care services located at New Bradley Hall and for the Committee to comment on possible scenarios once a new provider has taken on the service.

Background

2. New Bradley Hall is a council-owned and administered residential care home. On-site management is provided by a Registered Manager under the Care Quality Commission's requirements. About 40 staff currently work at the home mainly in direct caring roles but also including management, administration, and domestic roles support. A growing proportion of staff are employed on an agency basis. There are 31 rooms available. 26 are allocated to permanent residents and five for people using respite care services.
3. Complying with the Council's Constitution, the following decision was made on 25th October 2013 through the Council's Decision Sheet (Ref. No: DACHS/010/2013) process, by the Cabinet Member for Adults and Communities, Cllr Dave Branwood, *"To take steps to procure a not-for-profit provider to whom the ownership, maintenance and on-going development of New Bradley Hall, Kingswinford, as a going concern including the on-going care to high standards allowing all people who currently live there on a permanent basis to continue doing so with their needs being met as required and securing on-going employment for staff."*
4. The Decision Sheet was not 'called-in' by Scrutiny under the rules of the Council Constitution and as a result work to implement the decision to secure a non-profit provider to take over the residential care provision at New Bradley Hall began. The work which commenced following the decision included the development of the first stage of the tender process through which Expressions of Interests could be made by interested providers. This first stage commenced at the end of October 2013 and 13 expressions of interest from qualified, non-profit providers were received. The next stage of the procurement process commenced on 31st January 2014 when the tender documentation was published in the relevant location.

5. With regard to the wider background, the Adult, Community and Housing Scrutiny Committee are aware of the wider context for the decision given its consideration of the “Making It Real” agenda in adult social care at its meeting of 24th September 2013. Amongst other things, the Committee
 - were advised of the background for overall development of adult social care services including the challenging financial context and the need to maintain and develop services across a range from prevention to more complex care
 - noted that the Directorate had a duty to deploy its specialist resource where it would have the most impact and promote independent and good quality outcomes for the residents of the Dudley.
 - acknowledged the reality of a mixed economy of care providers involving the private sector, independent and voluntary sector and in-house as well as the need for the Directorate to continue to strengthen its approach to commissioning, to provide the most robust quality assurance, safeguarding and enable quality of life standards to be achieved.
 - noted that the partnership and shared philosophy of the Directorate with the Dudley Clinical Commissioning Group that any unplanned hospital or residential care admission would be viewed as a failure and this has been developed since the September Committee in work to develop “Better Care Fund” proposals which were considered by January’s Health and Well Being Board.
 - considered how the above combined with the greater choice and control afforded by Making it Real would give the people of Dudley the greatest chance of fulfilled independent lives where institutions were the place of last resort.
6. The Decision Sheet also acknowledged the wider background of the factors affecting and direction for the residential care provision at New Bradley Hall. It also noted the engagement which had taken place as follows:
 - the extensive public engagement undertaken during 2012/13 as part of the Council’s work to determine the best direction for this provision in the light of needs of the residents and wider responsibilities of the Council when there was engagement with about 100 people including people who use the service, relatives and friends, representatives, advocates and members of the public through five events managed by the local charity, Dudley Age UK
 - engagement and communication has also continued through the Tender process e.g. communication with people living at New Bradley Hall, their relatives or representatives as well as staff occurred at the time to advise them of the steps being taken and to address any questions that they might have had.
 - communications have been taking place with relevant Trades Unions.
 - weekly meetings with people living in the home and / or their carer / representative were arranged in the period up to Christmas 2013 to shape the Evaluation Criteria to be used in the evaluation of the Tenders. This process recommenced on 22nd January 2014.

7. A number of requests for information have been made by various parties throughout the process and responded to. The Council has received both written requests and questions presented verbally by residents /relatives/ interested parties at weekly discussion sessions on site at New Bradley Hall. Responses to the questions are regularly updated on the Council's web-site at:
<http://www.dudley.gov.uk/media/latest-news/new-bradley-hall/>
8. A public meeting was convened at the Kingswinford Methodist Church, Stream Road, on Tuesday 17th December 2013 by a campaign group. This was attended by Cllr Dave Branwood along with DACHS and finance officers: Brendan Clifford, Assistant Director – Adult Social Care; Stuart Lackenby – Head of Commissioning, Personalisation & Efficiency; and Paul Benge, Head of Accountancy.
9. To add to the re-assurance being given to those concerned as residents, relatives or representatives of people living at New Bradley Hall, one of the comments made at this public meeting was the suggestion to give the Council's Adult, Community and Housing Services Scrutiny Committee further opportunity to consider a range of scenarios linked to the next steps which are being taken. A number of initial questions have been identified, therefore, linked to the requests for information made by the public which have been very comprehensive in their nature. These are placed before the Scrutiny Committee as an Appendix to this Report and oral responses will be made at the Committee as needed. The questions and response made under Freedom of Information enquiries are also attached below.

Finance

10. All financial arrangements relating to the Tender for the transfer to a new provider have been done in accordance with the Council's Sanding Orders and with full engagement from specialist finance and procurement officers. .

Law

11. The Council's responsibilities for commissioning, assessment and provision of care and support for adults are currently covered by a wide range of legislation including the NHS & Community Care Act 1990 and its associated guidance. The current wide range of legislation is being brought together under a new Care Bill which is intended for enactment in 2015.
12. The Council can do anything incidental, conducive thereto, or which facilitates the discharge of this function under section 111 of the Local Government Act 1972.

Equality Impact

13. An existing Equality Impact Assessment was updated in support of the Decision Sheet issued on 25th October 2013.

Recommendation

14. That the Adult, Community and Housing Services Scrutiny Committee:

- Note the up-date about the developments of work to secure a new provider to deliver the residential care services located at New Bradley Hall and comment on possible scenarios once a new provider has taken on the service.

A handwritten signature in blue ink, appearing to read 'Andrea Pope-Smith', with a stylized flourish at the end.

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APPENDIX A

NEW BRADLEY HALL –

POSSIBLE SCENARIOS

1.What will happen if the new provider wants to change the home in any way such as building on the land?

The lease agreement associated with New Bradley Hall, between Dudley MBC and the identified not for profit provider will through clauses of the lease provide the local authority with an absolute veto on any external alterations and structural alterations to the building. This includes the entirety of the land and building associated with New Bradley Hall.

Internal works to improve the quality of the home is permitted outside of this clause.

2.What will happen if the Council is not happy with the quality of the provision?

Maintaining the quality of provision at New Bradley Hall is based around a multi faceted approach that includes;

- The Service agreement
- Annual review of people who use the service
- Access to the statutory complaints procedure
- Care Quality Commission regulation
- Safeguarding approach

The not profit provider successfully appointed through the tender will sign the Council's service agreement (contract) for new Bradley hall. This agreement outlines the council's requirements and expectations with regard to the quality of the provision at New Bradley Hall through the service specification. This agreement is reviewed on an annual basis.

The agreement, through clause 5 enables the council to manage any shortfalls against this service specification. Clause 5 defines in detail the Council requirements, expectations and approach to maintain the level of quality of provision at the home.

The approach is based around an ongoing required monitoring arrangement between the council, CQC and Clinical commissioning group.

The clauses below provide an example of the requirements of the service agreement and consideration given to the ongoing needs of the residents.

5.1 The Service provided shall be of the standard and quality required by this Agreement and any Individual Care Instruction, to the satisfaction of the Contract Manager."

5.2 The Provider must maintain such systems, documentation and monitoring systems as the Contract Manager shall reasonably require.

5.3 The Contract Manager shall have the right to make visits to the home at all reasonable times and without prior notice to assess the performance of the Provider and to inspect all relevant documentation.

5.4 The Contract Manager shall have the right to conduct an audit of care to satisfy the Council that the provision of the Service does not fall short of that specified should occupancy in any single care home operated by the Provider in which the Council has placed a People who use the service fall below half of the total available, registered places.

5.5 The provider shall provide a copy of any Provider Compliance Assessment (PCA) or any equivalent Quality Self Assessment to the Contract Manager not more than four weeks after the provider has submitted the assessment to the Care Quality Commission.

5.6 The provider shall notify the contract manager of any CQC inspection within 28 days, stating the date of the inspection, the inspectors name and details of any immediate requirements or recommendations that were made as part of the inspection.

5.7 The Provider shall provide to the Contract Manager notification in writing of any changes to any quality rating attributed by the Care Quality Commission to the Providers service or to any service(s) within the Provider's group of services where the Council has placed people who use the service. The notification must be made to the Contract Manager within 7 days of the Provider being informed of the quality rating by the Care Quality Commission.

The example clauses above are central to the councils overall approach to Quality and monitoring of the 60 contracted residential and nursing homes in Dudley

In the event of a quality issue being raised the councils approach is again defined in the service agreement but is based around working with the provider to produce action plans to resolve any issues arising.

The service agreement enables the council is a worse case scenario to suspend new referrals to the service and in extreme cases take over the management of the home on a temporary basis until identified issues have been resolved.

3.What will happen if the new provider goes bankrupt?

As with quality monitoring the council takes a proactive approach to ensuring the financial viability of organisations to which it awards contracts. Section 3 of the New Bradley Hall invitation to tender, sets out the financial requirements any organisation must have to be awarded the contract.

The costing model for New Bradley Hall has been built around the standard existing funding levels provided to care homes in the borough and as such has an evidence base around sustainability. Providers in the tender process who quote costs below this level will be excluded from the process.

Upon contract award and service delivery should a provider encounter financial challenges then the council will work with the provider to maintain continuity of care provision to people who use services. In extreme cases this may require the council to take over the management of the home on a temporary basis until identified issues have been resolved. The provision for such response is built in to both the service agreement and the lease.

4. Requests For Information

Questions raised and responses: A wide number of questions have been raised in relation to New Bradley Hall, some of a similar nature. The questions below are the questions most raised and responded to.

Question:- What exactly is going to happen to New Bradley Hall? Will the buildings and its surrounding land be sold as some people tell us it is or is it being given away for nothing to a favoured provider?

Response:- The proposal is for the building to be transferred to the successful bidder on a 99 year leasehold arrangement. Covenants will be established within the said lease to ensure future usage for the benefit and care of older people in the Dudley Borough. The Council will undertake a valuation of the home prior to commencing the tendering exercise. The home will be formally transferred to the successful bidder and the value will be reflected in the contract costs.

Question:- Is New Bradley Hall and its surrounding land being sold?

Response:- The home will be transferred to the new organisation. They will have a view of its value to them and this will in turn be reflected in the charges they quote us for delivering the care. It's not being 'sold' in that money will not change hands directly for the building, and it's not being 'given away' because its value will be reflected in the tender bids. The proposal is for the building to be transferred to the successful bidder on a 99 year leasehold arrangement. Covenants will be established within the said lease to ensure future usage for the benefit and care of older people in Dudley Borough. The Council will undertake a valuation of the home prior to commencing the tendering exercise. The home will be formally transferred to the successful bidder and the value will be reflected in the contract costs.

Question:- What measures will be put in place to ensure the Home is kept as a residential care home?

Response:- We are working closely with legal advisers to ensure that adequate protections are in place. This process will be concluded prior to the tender process being concluded.

Question: - What is "the legal position should the not-for-profit organisation fail?"

Response: - We will investigate the financial make up of each organisation that bids to provide the service. These will be organisations which have an established and proven record in delivering services to local people. The Council will work

closely with the chosen organisation to monitor its progress and delivery of service and this will allow opportunities to address and seek to resolve difficulties arising. In the unlikely event that the not for profit organisation should fail it would default on the lease and the home would return to council control.

Question: It is said that 'Following the sale of New Bradley Hall the home would remain open and all residents will be able to stay where they are. Would the Council please advise what contractual guarantees will be put in place to ensure that this happens?

Response: - This will be a matter addressed in any formal contractual discussions. There are no plans to move any of the existing residents unless a) they express a preference to live elsewhere or b) the home cannot continue to deliver the level of care required to meet the assessed needs of the individual in line with registration with the Care Quality Commission. This is at the heart of ensuring the home is viable in the future.

Question: - Will the Council please provide all documentation surrounding the decision to select New Bradley Hall from all the others and ultimately outsource the home?" **And-** "When was the decision to Privatised/Outsource New Bradley Hall made?

Response:- It was confirmed that a Decision Sheet was published on the 25th October 2013 in relation to New Bradley Hall. In addition:- Relevant documents were provided as requested. An extensive public engagement was undertaken during 2012/13 as part of the Council's work to determine the best direction for New Bradley Hall. It was clear from this public consultation that the strong view of the local community was that the home should stay open and the residents should be allowed to remain there. Available options were reviewed and the one which delivered this within existing financial constraints was decided upon.

Question: What allocation of respite care will remain?

Response:- The Council will establish a formal contract for publicly funded residents. The contract will include clauses about provision of respite requiring 5 respite beds for Local Authority use.

Question:- What arrangements will be made to ensure that care fees remain at the level that the Council allocates for the care of the residents that it currently funds?" **Also:-** Could I seek further clarification on the possible impact on self funders?

Response:- The Council will establish a formal contract for publicly funded residents. The Contract will include clauses about annual inflationary increases and third party top ups. The Council will also scrutinise the business model of bidding organisations to ensure there is a clear understanding about the basis for charging self-funders.

Questions:- Firstly, we would very much like to see the documents showing where and when and by whom the decision to outsource New Bradley Hall was made. Secondly, we would very much like to see the document detailing where, when and by whom that decision was ratified?

Response:- Please see attached the Decision Sheet provided to you in November 2013. Complying with the Council's Constitution, a decision was made on 25th October 2013 through the Council's Decision Sheet process, by the Cabinet Member for Adults and Communities, Cllr Dave Branwood, "To take steps to procure a not-for-profit provider to whom the ownership, maintenance and on-going development of New Bradley Hall, Kingswinford, as a going concern including the on-going care to high standards allowing all people who currently live there on a permanent basis to continue doing so with their needs being met as required and securing on-going employment for staff." The Decision Sheet was not called-in by Scrutiny under the rules of the Council Constitution and as a result work to implement the decision to secure a non-profit provider to take over the residential care provision at New Bradley Hall began

Question:- Has a "Best Value" Report been carried out? If so may we see it?

Response:- The Council has not conducted a Best Value Review of New Bradley Hall. The decision to seek an alternative provider is based on safeguarding the future of the home and maintaining the continuity of care. The Council has however benchmarked the unit cost of care at the home against the cost of private and independent sector residential care provision and is confident that a not-for-profit provider could deliver good quality sustainable care.

Question:- Will the Council carry out a Public Consultation on this new proposal?
And:- Why was this decision not consulted upon before its announcement?

Response:- An extensive public engagement was undertaken during 2012/13 as part of the Council's work to determine the best direction for this provision and having listened carefully to the Community a clear plan has been set out in relation to New Bradley Hall. In addition to the communication that has already taken place you will also be aware of the weekly meetings held at New Bradley Hall for Residents, Relatives and Interested Parties.

Cllr Branwood and Senior Council Officers attended a public meeting in December 2013 to answer questions and address any queries raised. In addition the weekly discussion sessions at New Bradley Hall began on the 12th November 2013 and have continued; providing opportunities for Residents, Relatives and Interested Parties to raise any questions or concerns.

Question: The following three questions were received and responded to together. "We are told that the Home needs to be got rid of by the Council because it requires £750,000 to be spent on it. And, "Would the Council please advise how many of the currently cash strapped "non-profit making organisations/charities" that may be eligible to tender for the Home are capable of losing £750,000 from their reserves for purely humanitarian reasons and not see a return?" And, "If there are no charitable or not for profit organisations available

with that kind of money available, then will the Council please advise who will pay the £750,000 required to update the home?

Also:- Additional Questions raised regarding the possible costs of work-with requests for ‘ the building report on New Bradley Hall where it is claimed would cost £750,000?’

Response:- A breakdown of the costs were provided to the individual requestors. A requestor was advised that ‘This situation is one that Councils, regionally and nationally are increasingly faced with. Councils are recognising that they do not have the resources to maintain all services as before and as a result are increasingly looking to Independent Providers to take on the delivery of some services. This does not and will not mean that our ongoing responsibilities and commitment to ensuring the delivery of quality service to local people will be diminished in any way. We will investigate the financial make up of each organisation that bids to provide the service. We will specifically ask about how each organisation proposes to inject capital to address the work that is required at the home. It would not be prudent at this stage to pre-empt how each potential bidder will secure the necessary funding, but the question will be raised as a component of the tendering process. Many not for profit organisations have previous experience, internal resources and expertise with regards to the renovation and maintenance of properties. This ability would see not for profit organisations able to deliver the required capital works in a more cost efficient manner than the Local Authority.

Questions:- If there are no not for profit organisations available with that kind of money, then will the Council please advise who will pay the £750,000 required to update the home? **And** - If the Council is going to carry out the work or provide the new provider with a loan, then why can’t they do it now?

Response:- A breakdown of costs associated with New Bradley Hall was provided together with the following response. In addition to the breakdown I am advised that expenditure on repairs to New Bradley to be approx £30k per year over the last three years. This situation is one that Councils, regionally and nationally are increasingly faced with. Councils are recognising that they do not have the resources to maintain all services as before and as a result are increasingly looking to Independent Providers to take on the delivery of some services. This does not and will not mean that our ongoing responsibilities and commitment to ensuring the delivery of quality service to local people will be diminished in any way.

You ask ‘ If the Council is going to carry out the work or provide the new provider with a loan, then why can’t they do it now? The Council will not be providing a loan to the new provider. We will investigate the financial make up of each organisation that bids to provide the service. We will specifically ask about how each organisation proposes to inject capital to address the work that is required at the home. It would not be prudent at this stage to pre-empt how each potential bidder will secure the necessary funding, but the question will be raised as a component of the tendering process. Many not for profit organisations have previous experience, internal resources and expertise with regards to the renovation and

maintenance of properties. This ability would see not for profit organisations able to deliver the required capital works in a more cost efficient manner than the Local Authority.

Question: What other Local Authority establishments are being considered for sale / give away?

Response:- To assist I can advise that the Councils Revenue Budget Strategy is within the public domain. If you require any assistance in finding the link to it or the details please let me know.

Questions: What negotiations have taken place that gives the Council confidence that it can achieve a sale by April 2014? "What is the Councils contingency plan if there are no bidders for the home come next March?

Response:- The Council is receiving interest from relevant independent providers to this opportunity. If, however, the process does not deliver an organisation capable of securing the long term future of the home then we will review why it hasn't, and consider our options at that point. Any decisions made will need to be part of the medium and long term strategy of the Council. This is a reality for Councils nationally and regionally. Indeed it should be noted that similar interventions have been undertaken successfully within two other Black Country Authorities within the last five years. Such interventions generated sufficient interest in order for an appropriate organisation to be identified, and as such we have no reason to believe that there will be insufficient interest to achieve the outcome being sought.

Question:- With regards the staff, we know that there is TUPE and that their existing terms and conditions may be time-limited. So will the Council advise if they will be offered redundancy or will they be expected to transfer to the new company? If so, what safeguards will be put in place to protect their current salary levels, hours and conditions?

Response:- All matters relating to employee rights will be discussed with staff members and union representatives. It would be inappropriate for separate discussions to take place. It is anticipated the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to this contract.

Question:- Keeping New Bradley Hall in Council Control. " We have emailed a number of money making suggestions ... No Reply!"

Response:- You may be aware that the decision-making for this is the responsibility of the Directorate of Adult Community and Housing Services and that responses have been provided to the queries raised. Given the significant financial pressures facing the Council we cannot afford to invest significant capital in the site, the need to invest will only increase over time and it would not be prudent or in the interests of residents or staff for the Council to avoid tackling the difficult issue of addressing the long term financial sustainability of the home. A

new provider may wish to consider these ideas in the context of their overall business strategy and we will draw the suggestions to their attention.

Question:- request to clarify “ the contract arrangements and New Bradley Hall”?

Response:- Tender documents were provided to requestors to assist.

Tender Documents:- Tender documentation went into the public domain on Friday, 31st January 2014. Those documents have also been provided directly to a number of people on request.