

Annex C Legal Implications

Equalities Act 2010

The Council must have due regard to the need to eliminate discrimination and promote equality with regard to race, disability and gender, as well as promote good race relations. The Council needs to assess the potential equality impact of changes to policies, procedures, practices and changes in services. A full Equality Impact Assessment has already been carried out and the results were outlined in the November Cabinet Report.

Should the Members agree to close the homes, in the case of all residents a full multi-disciplinary assessment of their needs will be carried out to inform their care plan and they will not be offered alternative placements which do not meet those needs. That assessment process will also take into account their specific needs and be tailored to their disabilities. eg. mental capacity assessments and best interests assessment will be carried out where required and advocates used where required.

Human Rights

If the Council decides to close any of its care homes, then it will need to demonstrate that it has considered the appropriate articles of the European Convention for the protection of Human Rights and Fundamental Freedoms. A number of articles have been considered by the courts as potentially relevant to the issue of potential home closures.

City of York Council is a public authority within the definition of the Human Rights Act 1998 and under Section 6 (1) of that Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right.

Article 2 “right to life”

It is acknowledged that there is some risk in moving frail elderly people which can never be completely eliminated. Research suggests, however, that the risks can be minimised and managed. It has been stated in a recent judgement by the European Court of Human Rights “For the Court to find a violation of the positive obligation to protect life, it

must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”.

The court further added “that the scope of any positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, including in respect of the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising.”

The risk has been carefully considered by officers who can use a range of measures, based on a mixture of research and experience as described in the section on good practice, under the guidance of an experienced senior manager. These help to mitigate the risks involved to older people undertaking any move.

Article 3

This article prohibits torture and inhuman and degrading treatment or punishment. This is referred to as there have been some instances of this article being raised in cases involving closure of homes, although without success as the line of court decisions on this matter highlight that Article 3 addresses a high degree of severity, usually where public officials positively behave in a manner which deserves a high degree of opprobrium and not to cases where policy decisions are made on the allocation of resources. By way of reassurance, members are referred to details of how the moves will be planned and the use of assessments. The needs, comfort, and safety of the residents will be at the core of any move.

Article 8 - “provides a right to respect for one’s “private and family life, home and correspondence” Where residents regard a Council residential home as their home, closure of that home leads to consideration of Article 8.

The article reads in full :-

- Everyone has the right for his private and family life, his home and his correspondence.

- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

To close the home and move a resident may be considered to constitute an interference of the human rights of that resident. Article 8 does allow for such interference, but there must be a justification which is necessary, reasonable and proportionate.

A balancing exercise must be undertaken by the Council to determine that this action is justified while taking into account the human rights considerations of those affected by the decision to close that particular home.

Officers are acutely aware of the need to minimise disruption to residents and are anxious to ensure that should residents move, their family and friendship links will be preserved as far as reasonably practicable. The section on review of risk and good practice indicates how the Council have considered its responsibilities and outlines some of the factors that are taken into account when moving older people.

Article 14. This prohibits discriminations on any ground for example, sex, race, colour, language, religion, political or other opinion.

These proposals have been subject to a full equalities impact assessment and officers are satisfied that these proposals are not discriminatory and have at their heart the need to modernise care and ensure that resources are allocated appropriately to meet the needs of more older people in the way they would wish.