

**Executive**

**16 March 2017**

**Report of the Corporate Director of Health, Housing and Adult Social Care from the portfolios of the Executive Member for Adult Social Care and Health, the Executive Member for Finance and Performance and the Executive Member for Culture, Leisure & Tourism**

**Burnholme: the sale of land to facilitate the development of a Care Home; agreement to management arrangements for the Community & Library facilities; disposal of the Tang Hall Library site**

This report updates Executive on progress made towards delivering health & wellbeing services at Burnholme. The report seeks consent to enter into a long lease with a care home developer over a portion of the Burnholme Health & Wellbeing Campus site. The report also seeks approval to enter into a head lease over the Community & Library facilities and the disposal of the Tang Hall Library site.

**Recommendations**

1. The Executive are asked to:
  - a) Note the appointment of Ashley House working with HC-One Care Group as the developer and operator of the care home on the Burnholme site and the partner in a contract to provide 25 care beds for up to fifteen years at an agreed price.
  - b) Agree to grant Ashley House a long lease of the 1.13 acres of land at Burnholme which will be used for the development of the care home for a term of 125 years in return for the Council receiving payment of a premium of £500,000.
  - c) Agree that the Council enter into a head lease with Explore York Libraries and Archives Mutual Limited for the management of community and library facilities at Burnholme on substantially the terms outlined within the report.
  - d) Agree to sell the Tang Hall Library land on Fifth Avenue for development or alternatively for the Council to undertake development of the land for housing and the funds released by this

sale or development are used to support the provision of community, library and sports facilities on the Burnholme Site.

Reason: To progress to deliver the Burnholme Health & Wellbeing Campus including the delivery of a Care Home as part of the Older Persons' Accommodation Programme.

## **Background**

2. In October 2015 Executive agreed to redevelop the site of the Burnholme School to deliver a Health and Wellbeing campus, as shown in **Annex 1**.
3. Following detailed design work and extensive public engagement, Executive agreed on 19<sup>th</sup> May 2016 to:
  - a) procure a developer/operator to construct and operate a Care Home on the Site;
  - b) dispose of the site of the Care Home to its developer by way of a long lease in return for payment of a premium/capital sum;
  - c) impose a condition within the lease that the land can only be used as a Care Home for a specified period; and
  - d) procure a contract under which the Council would seek to purchase access to a specified number of beds in the Care Home at a specified rate for a specified number of years.

In order to proceed with the redevelopment of the Burnholme school site to deliver care, health, community and sports facilities as well as new housing.

4. Executive on 19<sup>th</sup> May 2016 also agreed to receive the recommendation to dispose of land for the Care Home by way of a long lease to the preferred bidder in accordance with Financial Regulations. This report presents that recommendation.
5. Executive on 7<sup>th</sup> December 2016 agreed to recommend to Full Council the capital investment in the refurbishment and redevelopment of Community and Library facilities at Burnholme (to be called The Centre @ Burnholme), subject to Department for Education (DfE) consent to the sale of redundant land to the south of the site, and requested that a report is brought to Executive in 2017 to agree the management arrangements for the Community and Library facilities.
6. DfE consent for the disposal of the land at Burnholme has been obtained and Full Council has agreed the capital investment in the

Community and Library facilities. This report seeks the agreement to the management arrangements for those facilities and the sale/development of the Tang Hall Library land that will be released by that move.

7. Acting under its powers pursuant to Section 123 (2A) of the Local Government Act 1972 (as amended) the Council gave notice in January 2017 that it intends to dispose of the land to the south of the Burnholme Community & Wellbeing Campus for residential development. The land is proposed to be developed as an integral part of the creation of the Burnholme Health and Wellbeing Campus, this specific area being disposed for residential development. A public notice was published in the York Press on two occasions and a plan showing the land and statement of reasons was available at West Offices reception and on the Council website from 3rd until 31st January 2017. No objections were received.

### **The Care Home**

8. The opportunity to develop, construct and operate a care home on the Burnholme site was advertised in the Official Journal of the European Union in August 2016. 1.13 acres of land (see **Annex 2**) was offered to bidders who would use the land to provide a residential and nursing care home including care for people with dementia.
9. Following an initial assessment of those interested in the opportunity, three bidders were shortlisted and invited to tender. Two responses to this Invitation to Tender were received on 24<sup>th</sup> January 2017 and following evaluation of both the qualitative and financial elements of each proposal, Officers have selected Ashley House working with HC-One as Preferred Bidder because they scored highest against both the quality and financial evaluation criteria and also scored highest overall because their proposal most closely accords with the specification and financial criteria set down in the procurement exercise.
10. The Ashley House working with HC-One Care Group proposal offers:
  - a) A residential and nursing care (including dementia care) with 70 beds comprising a target of 30 x residential care beds, 10 x nursing care beds, 20 x residential care with dementia beds and 10 x nursing care with dementia beds. The exact mix of beds will be flexible to meet residents' needs.
  - b) Care beds will be "clustered" into sets of 10 beds with each cluster having its own lounge and dining area, outdoor terrace and other dedicated facilities.

- c) The Council will have exclusive access to 10 Residential Care with dementia beds, 5 Nursing Care beds and 10 Nursing Care with dementia beds for up to 15 years and which will be purchased at the Actual Cost of Care rate agreed by Executive in October 2016.
  - d) The proposed new care home will be built on a courtyard plan with 1-storey on the western boundary, stepping up to 2 and then 3-storey in the centre of the site, built around a central garden. Both the first and second floor will have “roof gardens for residents with less mobility”.
  - e) A central “hub area will be a lively space with shops, a gym, hairdressing salon, cinema, activities room and community café”.
  - f) All of the 70 bedrooms will be 15 sq m in size and each will have a 5 sq m ensuite bathroom. There will be 583 sq m of communal space.
  - g) The home is expected to be completed for occupancy between December 2018 and March 2019.
11. The Preferred Bidder has, as part of their bid, offered to pay £500,000 to the Council for being granted a lease of the site for a term of 125 years for development of a care home. The lease will prohibit the site from being used for any purpose other than a care home for the first 25 years of the lease term.
12. The procurement of a new care home at Burnholme, while helping deliver new care beds for the city, is no longer linked to the consultation on closure and, subject to the outcome of that consultation, subsequent closure of a council run care home. For this reason TUPE is not expected to apply to a cohort of staff from a Council-run home in relation to the Burnholme care home procurement. The care beds procured at Burnholme will be allocated to clients who need that type of care at the time that the home is available to let, either in Q4 2018 or Q1 2019. For this reason we are confident that we can properly accept an offer based on TUPE not being applicable, although this cannot legally be contracted out of.

### **Management of The Centre @ Burnholme**

13. The Centre @ Burnholme is focussed around the existing school hall, which is a highly valued facility for the area, and will, on completion, include a reading cafe, library space, children’s reading area, a child care nursery, music workshop spaces, office spaces and meeting rooms. The design of The Centre promotes the sharing of spaces,

which are bookable on a sessional basis, for meetings, education and training and group activity.

14. As described in a paper to Executive in May 2016, negotiations were undertaken with Explore York Libraries and Archives Mutual Limited (“Explore”) to take on the management of this facility, alongside their own activities on site, as an extension of their current service contract with the Council for the operation of libraries.
15. Heads of terms have now been agreed with Explore, as follows:
  - a) Explore will vacate and surrender the lease of its current building at Tang Hall Library.
  - b) The surrender of the lease of Tang Hall Library will not trigger the payment, by the Council, of the Release Value of £20,000 per annum.
  - c) The Facility will be branded “The Centre @ Burnholme” and Explore will brand their occupation as “Explore @ Burnholme”. The “Explore @ Burnholme” branding will be clearly displayed on the front of the building with additional movable and changeable branding also in use and paid for by the Service, and as agreed by the Council.
  - d) The Service will take a head-lease of the whole of the Facility and will enter into sub-leases with current tenants who are Burnholme Nursery, Tang Hall SMART and York Community Church (together the sub-tenants). Any variation to the terms of sub-leases will only be permissible with the express consent of the Council.
  - e) The income from the annual, inclusive rents payable by the sub-tenants along with any reasonable increase (to be approved by the Council) will be payable to Explore as head lessee.
  - f) Other existing community users will be facilitated to continue to book suitable spaces on a sessional basis. These include York Community Church, G2 Church, Slimming World, Fight Fit and the Four Seasons Orchestra. The income from sessional use will also flow to Explore or other future operator of the library service. Fees for sessional use will be set by the Service as head lessee on an annual basis and will only be implemented following approval by the Council as head landlord.
  - g) A new tenant will take up occupation upon opening. This is an Adult Activity Service commissioned by Adult Social Care (currently provided at Burton Stone Lane Community Centre). The inclusive rent, which will not exceed current budgets, will also belong to the Service.

- h) When not otherwise in use, a range of meeting and activity spaces are available to be hired out by the Service to third parties on a temporary basis which will provide additional income to the Service. The task of letting these spaces and maximising income will be the responsibility of the Services.
  - i) Explore/the Service will be expected to operate a reading cafe and will take a commercial view regarding opening hours of this resource.
  - j) Minimum opening hours for The Centre will be agreed with the Council.
  - k) Explore/the Service will take responsibility for the running costs of the building including heat, light, cleaning, rates, security, repairs and maintenance (the Council will insure the building. Day-to-day bookings and sub-tenant requests will also be managed by the Service.
  - l) Explore/the Service will pay the Council £66,000 per annum (£5,500 per calendar month) rental, which will be deducted from the Price paid by the Council to Explore under the terms of the Service Contract signed on 2nd May 2014.
16. The Contract signed on 2nd May 2014 between the Council of the City of York and Explore will be varied to reflect the new arrangements listed above and these new arrangements will be in place until the contractual period of the current contract expires on 31<sup>st</sup> March 2019.
17. If and when the contract for the library service is re-advertised and re-let, whether to Explore or to an alternative provider, the site will be mandated within the tender and the appointed provider will enter into a new the head lease on substantially the same terms.
18. Once the Library service moves to the Burnholme Site the Tang Hall Library land (see **Annex 3**) on Fifth Avenue will be sold for development or alternatively the Council will undertake the development of the land for housing and the funds released by this sale or development are used to support the provision of community, library and sports facilities on the Burnholme Site.

## **Implications**

### **Financial**

19. The procurement of a block contract to secure both residential and nursing care beds at an agreed price for up to fifteen years will deliver good value for money for the authority. The secured block purchase

prices are lower than our average price paid under spot purchase arrangements, potentially avoiding costs to the Council of £1.6m over the 15 year life of the contract.

20. The financial model and approved capital programme for the Burnholme Health and Wellbeing Campus assumes that capital receipts of £5.998m will be used to fund the demolition and enabling works (£1.071m) and the development of the Centre @ Burnholme, repairs to the sports hall roof and to improve the site infrastructure (£4.927m). The development at Burnholme is part of the wider Older Persons' Accommodation Programme which is anticipated to generate capital receipts (subject to market fluctuation) in excess of the cost of the total programme. Receipts will be generated from the sale of its existing homes and other sites sold for development.
21. A capital receipt will also be generated by the sale/development of the Tang Hall Library land on Fifth Avenue.
22. The operation of community facilities at Burnholme are currently funded from the building development budget while re-development takes place. The requirement is that any new provision is self-funding or income generating. The proposal for the management of The Centre @ Burnholme generates a revenue surplus via contract reduction.

## **Legal**

### The Care Home

23. The Preferred Bidder's obligation to:
  - (i) build a care home of the size and design proposed in their bid
  - (ii) provide the Council with access to the care beds at the price referred to in paragraph 9(c)
  - (iii) take a 125 year lease of the site (and therefore pay the Council the capital receipt/Premium offered in their bid)will be conditional upon them being able to secure planning permission (on viable terms acceptable to them) within a specified period.
24. The 125 year lease (to be granted following satisfactory completion of construction of the care home if and when the Preferred Bidder obtains planning permission on acceptable terms) will prohibit the tenant from using the site for any purpose other than as a care home for the first 25 years of the lease term.

25. Section 123 of the Local Government Act 1972 authorises the Council to dispose of non-housing land without the consent of the Secretary of State (for Communities and Local Government) provided that the best consideration reasonably obtainable is being secured. The Council can still dispose of (whether by freehold transfer or grant of lease) non-housing land without the Secretary of State's consent for less than best consideration/full open market value provided that: (i) the difference between the price obtained and full market value does not exceed £2 million AND (ii) the Council (acting reasonably and properly) considers that the disposal will facilitate the improvement of economic, environmental or social well-being of the area.
26. A fully compliant procurement process has been followed to find a partner to develop and deliver care services on the site. The issue of state aid is a factor in this project as Council land is being made available as part of the tender. Factors such as size and quality of development, bed numbers and prices, nomination rights, use restrictions and other facilities offered to the Council or its residents, will have an impact on the value bidders are prepared to offer for the land itself. This has resulted in less than full market value being obtained and thus potentially be seen as a state resource being made available on preferential terms, which is a characteristic of state aid.
27. The fact that the Council has conducted a fully compliant procurement process where all parties have had equal chance to express an interest and bid and that the price offered for the land is part of the evaluation model, should ensure that no advantage is being given to one organisation over another and that there is no distortion of either competition or the market. That being the case, it is highly unlikely that the Council is in contravention of EU state aid regulations and thus unlikely to be subject to any challenge in this respect. It is not unlawful to offer an incentive to allow a project to come to fruition as long as the opportunity is open to all. The actual amount offered by the proposed tenderer shows we are nevertheless getting a reasonable proportion of the market value as set out in paragraph 30 below.

#### The management of The Centre @ Burnholme

28. The Contract between the Council and Explore dated 2<sup>nd</sup> May 2014, allows variations to be made if these are agreed between the Parties.
29. If the expiry date of the head lease of The Centre to Explore is to be a later date than 31<sup>st</sup> March 2019 then the head lease will contain a provision in the Council's favour giving the Council the following options



in the event that the service contract is not renewed with Explore on that date:

- a) require Explore to assign/transfer the head lease to any new alternative library service provider or
- b) obliging Explore to surrender (hand back) the head lease to the Council

failing which the head lease will automatically terminate.

### **Property**

30. The care home site measures 1.13 acres and has been valued at approximately £730,000 with a block contract arrangement in place. This advice regarding value was obtained before undertaking a formal procurement exercise based upon the Council's care requirements and, most importantly, the setting of the price at which the Council is willing to pay for care. As stated above, the financial benefit to the council of both the premium paid for the lease and the beneficial price paid for the use of care beds demonstrates value for money and is compliant with the provisions of Section 123 of the Local Government Act 1972.
31. When the Explore library service vacates the Tang Hall Library building on Fifth Avenue the Council will seek to see this site redeveloped for housing. Members are asked to approve the dispose of the site.

### **Equalities**

32. In considering these matters the Council must have regard to the public sector equality duty. In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equalities Act 2010.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
33. The Equalities Act 2010 explains that having due regard for advancing equality involves:
  - Removing or minimising disadvantages suffered by people due to their protected characteristics.

- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
  - Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
34. An Equality Impact Assessment (at that time a “Community Impact Assessment”) for the Site was undertaken in July 2014 and remains valid. It particularly highlighted the positive implications of the Project for the health, security and wellbeing of all residents. This will continue to be updated as the project progresses.
35. An Older Persons’ Accommodation Project Board and a Reference Group have been established to act as a sounding board for the development of plans as the implementation of the Project unfolds. The project team also continues to use established channels to communicate with, and gather the views of, members of the local community, partners, stakeholders and staff.

### **Human Resources**

36. The procurement of a new care home at Burnholme, while helping deliver new care beds for the city, is no longer linked to the consultation on closure and, subject to the outcome of that consultation, the closure of a council run care home. For each home, should the decision be made to close, each resident is supported to move to an Extra Care facility or care home of their choice and thus no single care home is the destination of preference. Further, Executive agreed on 7th December 2016 to consult residents of Haxby Hall on the option to seek a partner to take over the ownership and management of this facility and, should that progress, TUPE obligations for Haxby Hall staff will crystallise into that procurement. For this reason TUPE should not apply to the Burnholme care home procurement. The care beds procured at Burnholme will be allocated to clients who need that type of care at the time that the home is available to occupy, either in Q4 2018 or Q1 2019.

## **Crime & Disorder**

37. Since the school closed and a large part of it is empty, the Site has been the subject of vandalism and trespass, including access to roof areas, which carries significant risk to the persons involved. We therefore seek to move forward with redevelopment as quickly as possible in order to remove these risks.
38. During redevelopment, plans will take account of design features, which minimise opportunities for vandalism and trespass and thus risk to the individuals concerned and ultimately financial risk to the Council.

## **Information Technology**

39. There are no direct Information Technology implications to this report.
40. Provision has been made within the budget for the installation of an appropriate level of IT access for community use.

## **Other Implications**

41. There are no other implications arising from this report.

## **Risks**

42. The key risks of this proposal are:
  - a) The robustness of the care home bid in terms of price and quality.
    - Specialist advice from members of the evaluation team concludes that the successful bid is financially deliverable.
    - Qualitative statements included within the bid will be incorporated into the contract.
  - b) Failure by the care home developer to secure planning consent for the proposed building.
    - Evaluation of bids has included an assessment of bidders' proposals for achieving timely consent. However, this remains a risk to delivery.
  - c) Delay in construction of the care home causes delay to service commencement
    - Evaluation team has concluded that the bidder has submitted a realistic programme of works for the design and development of the care home.
    - Documentation permits an extension of time for delays which are outwith reasonable control.

- d) Relationship between members of the successful bidder consortium break down prior to service commencement
- The Council will work with the care home developer to identify alternative care provider.
- e) The care home is not attractive to privately funded residents, leading to financial difficulties for the developer/care provider
- Level of interest from developers and care home providers.
  - Developer's building design, its co-location with other services on site and marketing plans.
- f) TUPE transfer challenge.
- The procurement of the care beds at Burnholme is separate from any consultation to close and any subsequent closure of a council-run care home.
  - Residents of any care home that is being closed each decide where they wish to move to, choosing from a wide range of Extra Care and care facilities.
  - However, it is noted that TUPE obligations can not legally be contracted out of.
- g) The ability for the Explore Service to manage the Centre and manage relationships with sub-tenants.
- Meetings between Explore representatives and existing tenants are already being facilitated by the Council Burnholme development team.
  - Provision will be made in the agreement with Explore to have regular meetings between the Council and Explore to review the management of the centre.

## Contact Details

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		<b>Report Approved</b>	<input checked="" type="checkbox"/> <b>Date</b> 6 <sup>th</sup> March 2017
<b>Specialist Implications Officer(s)</b>			
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<b>Wards Affected:</b> Heworth, Heworth Without, Osbaldwick,			
<b>For further information please contact the authors of the report</b>			

## Annexes:

**Annex 1** - Spatial plan for Burnholme

**Annex 2** - 1.13 acres of land for the Care Home @ Burnholme

**Annex 3** – Tang Hall Library land

## Abbreviations:

DfE Department for Education

TUPE Transfer of Undertakings (Protection of Employment) Regulations  
2006 (as amended)

## Background Papers:

19 July 2011	Report to Executive giving formal approval for the commencement of the Programme.
1 Nov 2011	Report to Executive giving the results of consultation and proposed a programme of closures, supported by a further consultation period on proposed closures of Oliver House and Fordlands.

10 Jan 2012	Report to Executive authorising consultation with staff, residents and their families and carers on proposal to close Fordlands and Oliver House, including changes to day care services as a result. Recommendation to close Fordlands and Oliver House.
15 May 2012	Report to Executive noting the successful homes closure and transition for residents
4 June 2013	Report to Executive seeking agreement on modernisation programme. The Council to fund the building of the two new care homes and so retain ultimate ownership of the buildings and the land with care homes designed, built, operated and maintained by an external provider.
3 Mar 2015	Report to Executive seeking approval of revised proposals based on creating new Extra Care Housing and reforming the Council's existing ECH stock; building a new care home on the Burnholme site as part of wider health and community facilities; and working more closely with current care providers to deliver more specialist dementia accommodation across the city.
30 July 2015	Report to Executive seeking approval of the Business Case for the Older Persons' Accommodation Programme and agreement to proceed.
29 Oct 2015	Report to Executive providing the results of the consultation undertaken with the residents, relatives and staff of Grove House and Oakhaven residential care homes to explore the option to close each home with current residents moving to alternative accommodation. Executive agreed to close Grove House and Oakhaven.
29 Oct 2015	Report to Executive regarding securing a viable future for the Burnholme school site in Heworth ward. Following extensive public consultation Members agreed to sanction further work to identify partners to progress the continued community and sports use of the site, complemented with wider health and enterprise services, the building and operation of a residential care home for older people and the provision of housing.
19 May 2016	Report to Executive that obtained consent to begin to deliver the Burnholme Health & Wellbeing Campus and secure a viable future for the former Burnholme Community College site (the <b>Site</b> ) in Heworth ward.
14 July 2016	Report to Executive by the Director of Adult Social Care. Agreement to move forward with examination of the development potential for Lowfield, alternatives to closure of Haxby Hall and sanction to consult on the closure of a further two older persons' homes.

28 <sup>th</sup> Sept 2016	Report to the Audit & Governance Committee by the Programme Director, Older Persons' Accommodation, providing an update on progress of the Programme and actions taken to address External Audit recommendations.
24 <sup>th</sup> Nov 2016	Report to Executive by the Corporate Director of Health, Housing and Adult Social Care. The Executive received the results of the consultation undertaken with the residents, relatives and staff of Willow House residential care homes to explore the option to close the home with current residents moving to alternative accommodation, and agreement to close Willow House and sell the site.
7 <sup>th</sup> Dec 2016	Report to Executive by the Corporate Director of Health, Housing and Adult Social Care. The report obtained consent to complete the next phase of delivery of the Burnholme Health & Wellbeing Campus including sanction for the investment of £4.73m in new and refurbished community and library facilities, subject to Department for Education (DfE) approval to dispose of redundant land, as well as £200,000 in urgent repairs and works to the sports facilities on site.
9th Feb 2017	Report to Executive by the Corporate Director of Health, Housing and Adult Social Care. The Executive agreed to sell the site of the former Fordlands Road older persons' home to Octopus Healthcare who propose to develop a residential and nursing care home on the site.