

**Executive**

**21 January 2020**

Report of the Corporate Director of Health, Housing & Adult Social Care.

Portfolio of Executive Member for Adult Social Care & Health and  
Executive Member for Finance and Performance

**The Transfer and transformation of Haxby Hall Care Home (by way of long lease) and associated land transactions.**

**Summary**

1. The proposals described in this report will deliver our objective to ensure that the Council is purchasing high quality care in high quality facilities at Haxby Hall care home, while ensuring existing residents remain in their home and enabling staff to retain their employment.

**Recommendations**

2. The Executive is asked to:

- Note the appointment of Yorkcare Homes Ltd (Yorkcare) as Preferred Bidder to be the new residential care provider for Haxby Hall Care Home, which, when transferred as a going concern, will enable uninterrupted care for the residents as well as continued employment for the staff working there, via a relevant transfer.
- Approve the acquisition of two adjacent properties on York Road, Haxby from Yorkcare at an agreed combined purchase price of £500,000 providing access for the redevelopment of Haxby Hall.
- Agree to grant Yorkcare a long lease of the Haxby Hall site, and of the two adjacent properties, for a term of 125 years in return for the Council receiving payment of a premium of £450,000.
- Approve, were it to be available for sale within two years of the transfer of Haxby Hall, the purchase of the existing Haxby ambulance station at a cost to the Council of £150,000.
- To further approve that, if the purchase of the ambulance station site were to proceed, to grant Yorkcare a lease of that site (for a

Term equal to the then remaining period of the lease of the main care home site) in return for Yorkcare paying a Premium to the Council. The Premium to be an amount equal to any costs incurred by the Council in purchasing the freehold of the ambulance station site which are in excess of £150,000.

Reason: To enable Haxby Hall care home to be transferred as a going concern, and modern care home facilities to be developed from the south of the site. To enable the residents of Haxby Hall to avoid the upheaval and uncertainty of what for some residents would be a second home move in a relatively short time frame following the closure of their previous home(s) earlier in the programme.

## **Background**

3. Haxby Hall Care Home cannot continue to provide care in its current condition due to poor facilities, including lack of en-suite bathrooms and general poor environmental quality. It is no longer fit for purpose and does not meet the requirements of our residents with high physical care needs. If an application were made to the CQC for a new registration in the current building, it would be refused.
4. On 25<sup>th</sup> January 2018, following consultation with staff and residents, Executive agreed that a developer/operator should be procured, who would take over Haxby Hall residential home as a going concern, with a commitment to deliver improved care facilities on the site. In accordance with this approval, an OJEU notice was issued on 3<sup>rd</sup> May 2018., the supporting documents for which ensured that bidders put forward proposals which
  - a. Would demonstrate that the bidder is a high quality, CQC registered provider who would offer back to the Council a minimum of 8 residential beds for people living with dementia for 10 years (with an option to extend the contract for a further 5 years) at the Actual Cost of Care rate.
  - b. The care of the existing residents of Haxby Hall would be transferred into the care of the successful bidder which would trigger a transfer of the staff in accordance with TUPE<sup>1</sup> regulations. The care provider would then improve, remodel or redevelop Haxby Hall.

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<sup>1</sup> Transfer of Undertaking Protection of Employment regulations 2006 (TUPE) as amended by the collective redundancies and transfer of undertakings (protection of employment (Amendment) Reg 16

5. The Care Act 2014 enshrined a statutory duty for councils to shape their local market. That is to say, to ensure a stable supply of sustainable, good quality services for people who need to use them, and to forecast changes in demand over the long term. The proposals for Haxby Hall are one component of the council's response to this duty.

### **The Procurement Process**

6. Following evaluation by a multi-disciplinary team, and based on Yorkare's high quality bid submission, the Corporate Director for Health Housing & Adult Social Care, under delegated powers, has appointed them as the Preferred Bidder pending entry into contract.
7. The bid from Yorkare, which was conditional on their being able to access the rear of the site for a phased development, includes:
  - a. an offer to contract back with the Council an additional bed (i.e. a total of 9) for residential care for people living with dementia at the Council's Actual Cost of Care rate.
  - b. an offer of £300,000 to the Council as a premium for the grant of a 125 year lease for the current Haxby Hall site.
  - c. the phased redevelopment and expansion of Haxby Hall into a 63 bed residential care home
8. Yorkare, who would be a new provider in York, have demonstrated to the project team, which is reinforced by 'good' and 'outstanding' CQC inspection ratings, that they deliver a high standard of care in their five existing homes and that they have appropriate levels of experience in the design and development of new care homes.
9. Currently, however, no access is available to the rear of the site and it would not be possible to redevelop the care home while continuing to provide care to the residents and to retain the staff during the development.
10. If Yorkare were not able to retain the staff and residents on site (or identify an alternative care home, which is CQC registered and acceptable to the Council, to which staff and residents might temporarily move), then the procurement would be void and alternative options would need to be explored for Haxby Hall care home.

## **Ability to redevelop the Haxby Hall site**

11. In order for the residents, service provision and staff to remain on site, the redevelopment must be undertaken in two phases for which access is needed to the rear of the site. This will allow a new building to be developed behind the operational care home into which, once complete, residents will be moved to permit redevelopment of the front of the site.
12. The procurement documentation suggested that the ambulance station site might be able to be acquired, along with the potential to secure at least temporary access via the Ethel Ward playing fields.
13. The Council has been working with Yorkshire Ambulance Service for some time to identify an alternative site for the existing ambulance station. While the Council has put a variety of options forward, the ambulance service have not yet reached a decision as to how they would like to proceed.
14. When the semi-detached house at No. 7 York Road, Haxby was marketed for sale, Yorkare Homes Limited were able to proceed quickly to purchase it with a view to securing an alternative access.
15. Yorkare have also approached the owner of the semi-detached house at No. 5 York Road, Haxby who is also prepared to sell their property, and negotiations are now well progressed. The acquisition of these two properties will permit Yorkare to access the rear of the site.
16. As Haxby Hall is proposed to be leased for a period of 125 years, it would not be appropriate for Yorkare to control the freehold of part of the site, particularly as it will be the access route to the newly constructed care home. It is therefore recommended that the Council acquire the freehold of 5 and 7 York Road from Yorkare in order that these two properties can also be leased back to Yorkare alongside the Haxby Hall site.
17. An independent valuation has been sought and has confirmed that given their importance to the assembled site, it is reasonable for the Council to purchase No. 5 and No. 7 York Road, Haxby for the combined consideration of £500,000. Yorkare are prepared to sell the properties at this price.

## **Haxby Ambulance Station**

18. The existing ambulance station is in a poor state of repair and is detrimental to the visual amenity of the street scene, as well as the environment for residents of the care home.

19. Irrespective of whether or not alternative access is achieved via the properties as described above, the acquisition of the Ambulance Station Site for incorporation in the care home development would be beneficial, to the Council as freehold owner of the wider site, to the residents of Haxby Hall for additional amenity and to Yorkare, who are keen to ensure that the new care home development is as attractive as possible to residents. Within their bid, Yorkare offered an additional sum of £150,000 towards the purchase of the ambulance station site.
20. Yorkare have offered that this £150,000 could be paid over to the Council on the proviso that, should the ambulance station site become available within two years of the transfer of Haxby Hall, it will be made available, as originally intended, towards the purchase of the site.
21. Yorkare have also indicated that, if it is Yorkshire Ambulance Service's preference, and if it would facilitate the sale of the existing station site, they may be able to incorporate an ambulance stand-by point within the care home redevelopment, depending on the timing of any decision by the ambulance service.
22. If purchased, the freehold of the ambulance station site would be vested in the Council and leased back to Yorkare for the remainder of the term of the 125 year lease.
23. If the ambulance station site is NOT purchased within the two years, Yorkare have confirmed that the Council can retain the £150,000.
24. It should be noted at this point that, if the ambulance station site is not acquired, there is a risk that it is purchased by others and put to an alternative use, which is not consistent with or appropriate to its adjacency to the care home.

## **Financial implications**

### Capital

25. On 14<sup>th</sup> July 2016, the Executive approved £600,000 to be added to the Capital Programme to meet the acquisition costs as well as to fund enabling and related works regarding development of the Haxby Hall site. This was to be funded from sales of the Council's Older Persons' Homes.
26. Yorkare have offered a premium for the Haxby Hall care home lease of £300,000 plus a further contribution of £150,000 irrespective of whether or not the ambulance station site is to be purchased.

27. The proposal contained within this report fall within the capital budget previously proposed and approved for the scheme.
28. Further detail regarding the capital transactions is shown at Annex 2  
Revenue
29. The revenue implications of this proposals fall within current budgets.
30. Detailed revenue considerations are included in Annex 2

### **Timescales**

31. Assuming that all agreements and approvals are forthcoming, and subject to all parties continuing to be fully engaged, we are working to the following timetable:

Council and Yorkare develop legal documentation	December 2019 – January 2020
Yorkare and Council engage and consult with staff in relation to TUPE	January 2020 – March 2020
Yorkare and Council enter into Business Transfer Agreement	February 2020
Transfer of Haxby Hall Care Home to Yorkare	April 2020
Yorkare consultation and planning submission	June 2020
Yorkare commence first phase of redevelopment	Autumn 2020
(if available for sale) Council purchases ambulance station site for inclusion in Yorkare lease and redevelopment site	Within two years of transfer

Any changes to the above timescales will be communicated immediately to staff and residents at Haxby Hall and reported to the Executive Member for Adult Social Care and Health.

### **Property and Legal implications**

32. The legal and property implications of this proposal are detailed at Annex 3.

## Human Resources

33. Executive agreed to consult residents and staff at Haxby Hall on the option to seek a partner to take over the ownership and management of this facility. This consultation identified the expectation that, should this progress, a relevant transfer will be deemed to take place. As a result the TUPE regulations will apply to those employees assigned to Haxby Hall, which will see their employment transfer to the new care provider in accordance with the regulations.
34. The Business Transfer Agreement reinforces the expectations of the transferor and transferee in respect of TUPE, with any transfer arising to be managed in accordance with the legislation.
35. Yorkare adhere to the Fair Work Framework, providing staff with an effective voice, opportunity, security, fulfilment and respect, which contributes to emotional wellbeing.

## Equalities

36. In order to fully understand the implications of the proposals for Haxby hall and the associated land deals, a Best Decision making assessment has been undertaken. This is contained at Annex 4
37. The assessment highlights the positive impacts for older residents. The recommended further actions have been shared with Yorkare.

## Risks

38. The original risk to delivery of a redevelopment of Haxby Hall care home was that the ambulance station site would not be available for access. Yorkare have overcome this risk to delivery by having identified and secured the opportunity to access the rear of the site via the residential properties on York Road.
39. The proposals within this paper include that the Council and Yorkare, as partners with shared objectives, share the risk of whether the ambulance station site becomes available for purchase.
40. The key risks to delivery of this proposal are:

Risk	Mitigation
Inability to negotiate terms for land transactions, which are acceptable to all	<ul style="list-style-type: none"><li>• Terms as described within this paper have been agreed with Yorkare</li></ul>

parties	
Parties to the proposal decide not to proceed or the scheme is otherwise aborted.	<ul style="list-style-type: none"> <li>• The properties at No. 5 and No. 7 are in the ownership of Yorkare, who are keen to proceed with the proposal put forward.</li> </ul>
Yorkare fail to secure planning consent for the proposed redevelopment.	<ul style="list-style-type: none"> <li>• Tender documents includes a feasibility appraisal and planning officer's response, giving design guidance to bidders.</li> <li>• Evaluation of bids has included a viability assessment of the proposals.</li> </ul>
Concerns reported to the Council regarding ongoing care provision following transfer	<ul style="list-style-type: none"> <li>• CQC inspections of the Yorkare's existing four care homes have rated three of them as "outstanding" and one as "good", taking account of all five areas of safe; effective; caring; responsive and well-led.</li> <li>• Yorkare has demonstrated in their tender submission that they will respond sensitively to residents and staff, during the redevelopment of the site</li> <li>• As a contracted care provider, Yorkare will be subject to the Councils Adult Social Care annual programme of Contracts Monitoring and Quality Assurance</li> </ul>
TUPE transfer process and procedures	<ul style="list-style-type: none"> <li>• The transfer of Haxby Hall Care Home will trigger a TUPE transfer of the staff. The Council has extensive experience of conducting such transfers.</li> <li>• The Business Transfer Agreement reinforces the requirements of transferor and transferee</li> </ul>
State Aid challenge	<ul style="list-style-type: none"> <li>• Any aid in terms of making land available or monetary sums paid by the Council is lawful as it, was within the remit of the public procurement and available to all participants and, at the values proposed, is permitted as being within the de-minimis levels contained within the State Aid regulations .</li> </ul>



**Annex 1 Site plan**

**Annex 2 Financial Analysis**

**Annex 3 Legal Assessment**

**Annex 4 Best Decision Making Assessment**

**Contact Details**

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<b>Wards Affected:</b> Haxby and Wigginton			