

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: ADULT SOCIAL CARE SCRUTINY COMMITTEE**

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**Date of Meeting: 5<sup>th</sup> July 2012**

**Report of: Lynn Glendenning**

**Subject/Title: Proposal for Development of Respite Service**

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### **1.0 Report Summary**

- 1.1 This report gives the background to and outlines the proposal from 3L Care to develop a respite service in the Crewe & Nantwich area as an alternative to Cheshire East Council carrying out an adaptation at Lincoln House that would provide short break accommodation for adults with a learning disability.

The adaptation at Lincoln House was to provide an alternative to the current provision at Queens Drive and to provide for more complex needs respite which is currently not available in the Crewe and Nantwich area. Queens Drive is due to close in September as part of the Improvements to Adult Social Care work which concluded that it was not fit for purpose.

Officers have worked with 3L Care to see if their proposal can be developed and 3L Care have now sourced a building in the private sector that may be suitable to provide this service.

This report examines the areas that need to be considered as part of the proposal and asks for views from Members.

### **2.0 Recommendations**

- 2.1 That consideration is given to Cheshire East Council continuing to work with the private market to expand the choices available for respite provision in the Cheshire East area.
- 2.2 That the decision to remodel services at Lincoln House be reexamined in the light of any new provision in the area.

### **3.0 Reasons for Recommendations**

- 3.1 To support market development for the provision of respite services.
- 3.2 To ensure services meet the needs of residents both now and in the future.

## **4.0 Wards Affected**

4.1 All.

## **5.0 Local Ward Members**

5.1 All.

## **6.0 Policy Implications**

6.1 Part of the Improvements to Adult Social Care work approved by Cabinet on 5<sup>th</sup> March 2012.

## **7.0 Background**

### **7.1 The Consultation**

A consultation was held on proposed changes to day and respite services (named 'Improvements to Adult Social Care Services'). As part of the consultation the closure of Queens Drive in Nantwich was suggested giving Mountview in Congleton as an alternative. The reason for selecting Queens Drive was primarily as it was unsuitable for people with more complex needs and could not be adapted but also due to the low usage of the existing facility (54% occupancy).

A number of representations were received about Queens Drive during the course of the consultation. This included the problem of transport to the alternative centre in Congleton and the feeling that Queens Drive offered a homely environment which would be hard to replicate elsewhere.

As a result of this a modified proposal was put to Cabinet on 5 March 2012 to offer alternative respite provision at Lincoln House as well as Mountview. This proposal was endorsed by Cabinet.

### **7.2 Post Consultation**

Correspondence from some members of the public since the Cabinet decision has continued to maintain that Lincoln House would be an inadequate replacement for Queens Drive. Lincoln House is seen by some as a centre for older people completely unsuitable for younger people with learning disabilities. In fact, it has been stated that going there would create a 'stigma'. This is despite the fact an emphasis has been put on a self-contained wing being created at Lincoln House for this client group, with appropriate furnishings and a separate entrance.

Work is ongoing to firm up the cost for changes to Lincoln House. The figure given in the report to Cabinet was costs circa £31,192 for modifications. This figure was arrived at by carrying out a desktop exercise based on the known cost of equipment and change of use of existing rooms. The price quoted by the consultants subsequently employed (David Trowler Associates) was

originally £83k. This has now been reduced to £73k following a request to them to cut out all cosmetic and unnecessary costs.

The main reason for the difference between the estimate from the desktop exercise and the current estimate from Trowlers is unforeseen construction costs. This is because we are unable to simply change the use of existing rooms – regulations about the permitted size of bedrooms and bathrooms, plus the space needed for ceiling track hoists means there is construction work involved that was not originally expected. A further reason for the difference in cost is the need to create a separate entrance.

If the work at Lincoln House does not go ahead there will be implications for the Care4CE staff currently working at Queens Drive as there was an expectation that they would transfer to Lincoln House and Mountview. However, Care4CE are confident that alternative posts can be found.

### **7.3 Proposal Put Forward to Cheshire East Council by 3L Care**

On 13<sup>th</sup> May an e-mail was sent to Cllrs from Marcus Tarrant from 3L Care with a supporting letter from Mike Card (a parent/carer) this letter is attached as Appendix 1. The proposition is summarised as follows:-

- 3L Care would enter into a lease for the currently empty property (vacated by Cheshire & Wirral PCT) at 30 Primrose Avenue, Haslington which is owned by Cheshire East Council. This property was previously used for short break Health respite for people with a learning disability.
- 3L Care would refurbish the accommodation to ensure that it is brought up to standard needed to provide a high level of care for young people with learning disabilities. This will be done in consultation with the families and would be at no cost to the Council in its role as Landlord.
- 3L Care would provide the staffing and infrastructure to deliver the care needed through Personal Budget.
- 3L Care would then replace the existing service at Queens Drive without Cheshire East having to spend money at Lincoln House for a service that families do not want.
- Should Cheshire East Council wish to dispose of the property in the future to generate further income 3L Care would be happy to enter into negotiations for the purchase.

#### **The rationale from 3L Care is as follows:-**

- They have the existing infrastructure and staffing to make this happen quickly and effectively.

- The young people and families who currently use Queens Drive will have an immediate alternative solution more suited to their needs, that they have involvement in and would prefer.
- Cheshire East Council will save money on the planning, refurbishment and implementing of a relocation to Lincoln House which will also ensure that the current residents of Lincoln House are not disrupted.
- This will be a great example of the Council working with families and local business to provide cost effective solutions and demonstrate that cost cutting can be performed with minimal disruption to services.
- It will bring "back to life" an empty Council building not being utilised at the moment.
- It will create revenue for the Council from the building lease and potential future sale.
- It is a solution that benefits all parties involved and has direct input from the families concerned.
- It brings to an end the current uncertainty of the families over a proposal that they are very much against.

3L Care are a relatively new company having been registered with Care Quality Commission since 7<sup>th</sup> October 2011. They have a care home in Winsford and CEC have one resident placed in the service. CQC have yet to inspect the service. It may therefore be prudent to have contingency plans in place for the service.

#### **7.4 Actions to Date**

A meeting took place between Marcus Tarrant from 3L Care and Lucia Scally and Lynn Glendenning on Monday 11<sup>th</sup> June to discuss the proposal in more detail. It was accepted by 3L Care that any care provision would be via personal budgets. The remaining issue was around the building. The Council's position was explained in that a decision would be required to ascertain that using the building for respite would be best use of the building and also that any lease granted on a property owned by the Council would need to go to competitive tender (see 8.1, 8.2 and note at 11.2) and Marcus agreed to then look for properties in the private sector and support from CEC Contracts team was offered where appropriate.

Following this meeting an e-mail was received from 3L Care stating that a colleague was aware of a similar situation in another local authority where the tender rules had been waived and that they would come back to us with further details.

A second meeting took place on 21<sup>st</sup> June 2012 where 3L Care stated that the situation they had referred to in another authority had taken place quite a few years ago and it would not be possible to move forward in that way under current legislation. Further discussion took place regarding 3L Care continuing to look for properties in the private sector.

On 23<sup>rd</sup> June 2012 an e-mail was received from 3L Care stating that a possible property had been found in the Crewe area. 3L Care are now in discussion with Cheshire East Council planning department with regard to a request for a change of use for this property. They have also been in contact with CQC regarding registration for the service.

Business information provided by 3L Care is attached to this report as Appendix 2.

Two engagement events for service users and their families and carers have been arranged at Macon House at 10am and 5pm on 6<sup>th</sup> July 2012. This will allow the Council to discuss these developments with the current families who use Queens Drive to ascertain their views directly.

## **8.0 Issues to be Considered**

### **8.1 Use of the Property in Primrose Avenue**

The Corporate Landlord function has confirmed that this site is one that is being considered for affordable housing and Strategic Housing have confirmed that there is considerable need in this area. If the building is not used for affordable housing it would be surplus to CE requirements and would therefore be sold. The property also is subject to covenants which could make it unsuitable for use as respite by a private provider.

### **8.2 Granting a Lease on the Primrose Avenue Property**

The Council has no power to dispose of the property (which includes granting a lease for 7 years or more) unless it secures the best consideration reasonably obtainable or it has Secretary of State consent. There is a blanket consent (General Disposal Consent 2003 - GDC) which applies if a well being objective is satisfied. Our Corporate Landlord would need to determine if the 3L Care offer constitutes best consideration or, if it does not, whether a lease at undervalue to 3L Care is desirable and, if so, whether the criteria in the GDC are satisfied. Regardless of whether the General Disposal Consent applies the Council has to fulfil its fiduciary duty to tax payers. A tender process for the lease of the property is the usual way for a local authority to satisfy itself that it will secure best consideration and fulfil its fiduciary duty but a tender is not required if our Corporate Landlord is satisfied by reference to a valuation for the purposes of the GDC that it will receive best consideration and has sound reasons to proceed with 3L Care as opposed to another tenant. There is concern that 3L Care may be seen as being preferentially treated and to ensure that this is not the case, it is recommended that the lease is advertised to establish what other offers may be available from the market. On condition that there are no services or works being offered as part of the lease, then Procurement Rules and Regulations do not apply.

### 8.3 Demand for Services

Queens Drive is a 6 bed unit and the utilisation over the past 12 months has been as follows:-

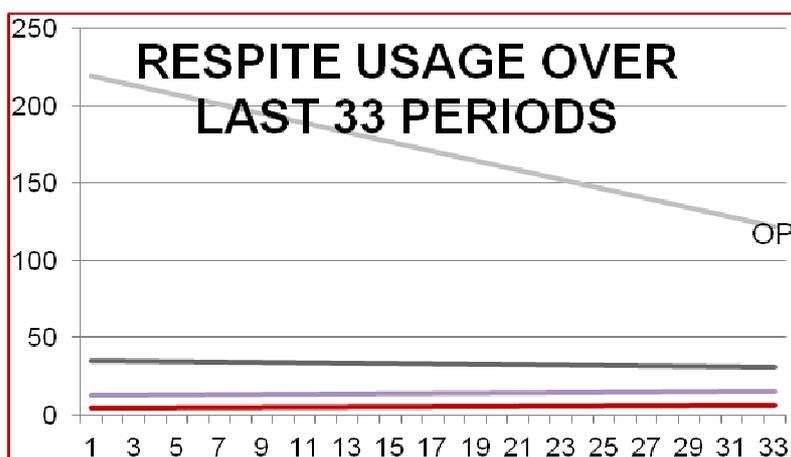
June 2011	50%	December 2011	54%
July 2011	49%	January 2012	45%
August 2011	73%	February 2012	61%
September 2011	58%	March 2012	38%
October 2011	61%	April 2012	32%
November 2011	47%	May 2012	42%

The 3 beds at Mountview has been utilised for 36% of the time over a period from January 2012 to June 2012. The view from Individual Commissioning is that there is currently an overprovision of building based respite for this client group.

The information below has been taken from the Improvements to Adult Social Care business case:-

[http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000241/M00003637/AI00015501/\\$AppendixBBBRBusinessCasefinalversion220212.docA.pdf](http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000241/M00003637/AI00015501/$AppendixBBBRBusinessCasefinalversion220212.docA.pdf)

#### Care4CE short breaks usage trends



	TOTAL USAGE APR-JUNE2009	TOTAL USAGE AUG-OCT 2011	CHANGE
LD	104	88	-15.4%
MH	14	24	+71.4%
OP	660	423	-35.9%
PD	30	46	+53.3%

The reasons for this overall reduction, as outlined in the report, was identified as follows:

- The increased take-up of Direct Payments has moved 'demand' into the private sector where increasing competition is offering lower cost services (especially respite) in higher quality establishments
- Direct payments cannot be spent on Council-run services
- People are using the principles of choice and control to find innovative alternatives to traditional service offerings
- The offer of free reablement services as part of initial assessment or review is helping to reduce the need for long-term support
- Improved information, prevention and signposting is redirecting some people to other solutions
- The rigorous application of Fair Access to Care guidance and Council policy is ensuring that council-funded support is only directed towards those with the greatest need

The only growth areas are those of Mental Health and Physical Disability respite. It should be noted the numbers involved here are relatively small, therefore it only needs a handful of users to change the trend in usage.

#### **8.4 Current Provision**

The only services provided directly by the Council are those provided by Care4CE, which include provision at Mountview and Warwick Mews, and Shared Lives. There is provision in the private sector but these services tend to cater for people with high and complex needs. Several other services are available in Stoke-on-Trent and Tarporley but these services also tend to cater for people with high and complex needs.

#### **8.5 Provision of Care Services**

If it was decided that Primrose Avenue would be used to provide the services this would not be on a block contract but by service users and families utilising their personal budgets. This would therefore mean that there are no issues regarding the procurement of care. It would be up to the individual families to book their places at any agreed scheme. This means that any care provider would not have a guaranteed income. It is likely additional occupancy would need to be sourced to make the proposal more financially viable.

Should 3L Care be successful in securing the building identified in the private sector the care would still be paid for by utilisation of personal budgets.

#### **9.0 Risk Management**

Should the Authority decide to go ahead and grant a lease to 3L Care without undertaking a full market evaluation, they would be at risk of challenge from other providers who may wish to develop a similar service. It would set a precedent of offering properties to specific providers without going to the

market. It would also be difficult to prove “best consideration” if no market testing was to be carried out.

There is a risk due to the lack of demand for services that the provider would, at a later date, look for a change of use for the building although the lease could prohibit any such change of use.

If 3L Care develop a service in the Crewe area this calls into question the need for the adaptation and development of a service at Lincoln House.

## **10.0 Financial Implications**

10.1 The savings relating to the closure of Queens Drive have already been taken in to account financially. Delays to the closure reduce the part year effect being delivered in 2012/13 and add to an already over stretched revenue position.

10.2 Account needs to be taken of any financial impact of issuing personal budgets and the availability in the market of any alternative respite accommodation.

10.3 Account needs to be taken of the need for building adaptation at Lincoln House that could avoid capital expenditure referenced at 7.2.

## **11.0 Legal Implications (Authorised by the Borough Solicitor)**

11.1 If 3L Care move forward with a private property this negates any immediate consideration of legal issues with regards to the property at Primrose Avenue as a lease of the property would not be being granted to 3L Care nor would a tender process for a lease of it to provide a respite service be undertaken.

11.2 If 3L Care does not proceed with a private property and wishes to proceed with Primrose Avenue the following issues need to be addressed:

11.2.1 Planning permission for change of use would be required prior to the grant of the lease as the property is currently private residential and the judicial review period in respect of the planning permission would need to expire without challenge;

11.2.2 As stated in 8.3 the Council has no power to lease the property unless it secures the best consideration reasonably obtainable or can rely on the GDC and regardless of whether the GDC applies the Council has to fulfil its fiduciary duty to tax payers. Moreover, accepting undervalue could constitute unlawful State aid. Market testing by open competition is the safest way of establishing best consideration.

11.2.3 If there is intended to be any agreement with 3L Care with regard to the manner of use of the property or its development then it will probably amount to a public contract or concession. In such case there would have to be an EU compliant competition. Controls arising in contracts other than the lease are likely to bring the deal within the ambit of the EU regulations.

11.2.4 The Council would have to be satisfied that there is the soundest justification for proceeding with 3L Care rather than undertaking a tender process and be reasonably confident that its desired outcome will be achieved.

11.2.5 Under the Treaty of Rome there has to be fairness and transparency and an `even playing field`. Early discussions with 3L Care could bring into question whether they are eligible to be considered as bidders in a later competitive process.

These issues will also be relevant if the lease of another property to 3L Care is considered.

11.3 CQC registration for the property would be required prior to the granting of the lease.

11.4 The Right to Challenge, part of the Localism Act, comes into force on 27<sup>th</sup> June 2012. The right to challenge will allow voluntary and community groups, charities, parish councils, and local authority staff to bid to run a local authority service where they believe they can do so differently and better. This may be a whole service or part of a service.

11.5 Use of Personal Budgets avoids the need for procurement of the care by Cheshire East Council.

## **12.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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## **Appendices**



Appendix 1 - Letter from Mr Card.docx



Appendix 2 - 3LCare Business Summary.dc