

<b>Item No.</b> 26.	<b>Classification:</b> Open	<b>Date:</b> 12 December 2017	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Increasing Nursing Home Provision in Southwark	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Richard Livingstone, Adult Care and Financial Inclusion	

## **FOREWORD – COUNCILLOR RICHARD LIVINGSTONE, CABINET MEMBER FOR ADULT CARE AND FINANCIAL INCLUSION**

In late 2015, it became clear our borough had a significant problem with its lack of good quality nursing home provision. All three of the nursing homes in the borough where the council funded placements had received poor inspection outcomes from the Care Quality Commission (CQC), preventing the council placing new residents in their care. In early January 2016, Camberwell Green nursing home closed.

Since then, Tower Bridge Care Centre has worked hard to address the CQC's concerns and received a rating of Good in March this year. However, the on-going quality concerns at Burgess Park nursing home and the closure of Camberwell Green have left the borough short of nursing home places.

This strategy sets out how the council will resolve this lack of current capacity through work with partners to develop two new nursing homes in the borough, together with interim measures to provide additional capacity whilst these homes are being built. By 2020, there will be a total of 361 nursing home beds available, compared to the 115 beds in the borough currently in use.

## **RECOMMENDATIONS**

1. That Cabinet notes the commissioning intention and strategy to increase local nursing homes beds that the council can access to over 300 beds by 2020.
2. That Cabinet notes the granting of a Licence to Assign of the lease, held by Four Seasons at Picton Street and known as Burgess Park, to Country Court Care Homes 2 Ltd.
3. That Cabinet notes the intention of Country Court Care Homes 2 Ltd to rebuild the home at Picton Street so that the number of rooms is increased from 55 to 70.
4. That Cabinet notes the negotiations taking place to reopen a nursing home at D'Eynsford Road.
5. That Cabinet notes the intention to undertake a procurement exercise in relation to securing a minimum number of beds and best value in relation to the re-modelled and/or newly constructed homes.

## BACKGROUND INFORMATION

6. In order to increase the number of nursing home beds in Southwark, commissioners need to facilitate the market so that new care homes are opened and existing care homes are re-modelled. Southwark Council has the opportunity to do both of these things due to being a significant landowner with assets that can support developing the market. With IBCF (Improved Better Care Fund) investment the council can achieve its commissioning intention to increase the number of local nursing home beds, which will benefit the council, CCG and local acute providers. This increase in capacity and choice of quality local nursing home provision will directly support the DTOC targets agreed by the council and CCG.
7. Southwark has three care homes registered to provide nursing care. Two are rated as Good by CQC and the other is rated as Inadequate. Across the three homes there are 271 rooms registered with CQC. However, one of the care homes, Queens Oak, is block-booked by Lambeth Council and has 88 rooms. This home is rated as Good. The other two homes are available to the council to purchase placements for its residents. These homes are Tower Bridge (rated as Good) and Burgess Park (rated as Inadequate). There is a fourth nursing home in the borough which is mothballed. This home is on D'Eynsford Road.

## KEY ISSUES FOR CONSIDERATION

### Needs analysis

8. The council currently has 291 people placed in nursing care. Of these placements 115 are local. To enable residents of the borough to stay local, when needing residential nursing care, there needs to be at least 100 additional beds in the borough. This determination is based on the number of nursing home placements funded by the council (291) and the number of placements that are out of borough (176). Of these placements, it can be argued that 25 are due to the council not being able to place up to the 80% (44) of beds in Burgess Park; and that the fact that some of the out of borough placements are due to service user and family choice rather than lack of supply. The reasons for not accessing the 44 beds in Burgess Park are set out in paragraph 14.
9. The overview of past, current and projected number of local nursing home beds, by nursing home, in the borough is shown in the table below:

Nursing home	2015	2017	2020
Burgess Park, Picton Road	55	0 <sup>1</sup>	70 <sup>3</sup>
Camberwell Green, D'Eynsford Road	55	0 <sup>1</sup>	75 <sup>4</sup>
Tower Bridge, Tower Bridge Road	128	128	128
Queens Oak	88 <sup>2</sup>	88 <sup>2</sup>	88 <sup>2</sup>
<b>Total</b>	<b>326</b>	<b>216</b>	<b>361</b>

<sup>1</sup> Zero, because an embargo means no new placements, or closed and mothballed

<sup>2</sup> These beds are block booked by Lambeth Council until 2022

<sup>3</sup> Estimated number by the provider in the intended planning application

<sup>4</sup> Median number of beds from the provider's estimation

10. In order to increase supply, commissioners need to open new care homes or re-model existing care homes. Southwark has the opportunity to do both of these things.

### **Opening new care homes**

11. The freehold of the care home at D'Eynsford Road is owned by the council and the lessee is Excelcare. Excelcare also owns Queens Oak, which is block-booked by Lambeth Council for the next 15 years. Discussions are taking place with Lambeth Commissioners and the provider about Southwark Council placing in this home.
12. Discussions are taking place with Excelcare about reopening D'Eynsford Road. These discussions relate to opening a purpose-built nursing home, for the 21<sup>st</sup> century, with 70 to 80 beds.

### **Re-modelling care homes**

13. The freehold of Burgess Park is owned by the council and the lessee is Four Seasons. The lease arrangements require that the lessee makes available at least 80% (44) of the beds in the home.
14. Burgess Park is currently rated as Inadequate. The home had a Notice of Proposal to withdraw registration of the home, which CQC has withdrawn. There are 26 people currently at Burgess Park. The council currently has 19 people placed in the home and cannot place any new people due to the issues related to the Inadequate rating of the home. To ensure the safety and care of those that continue to reside in the home, the council and CCG have regularly visited the home to monitor and support implementation of Four Seasons' action plan.
15. Part of Four Seasons' action plan for Burgess Park is to transfer the lease and, therefore, responsibility for running the home to Country Court Care Homes 2 Ltd. Four Seasons made this proposal at the end of April 2017.
16. Officers have undertaken due diligence in relation to the capability and financial standing of Country Court Care.
17. The Quality and Performance Manager has researched the CQC reports of Country Court Care Group, spoken with other LA commissioners, in particular, Sheffield City Council, and received written references. The Director of Commissioning and the Quality and Performance Manager, with a representative from the CCG, visited a Country Court Care home in Sheffield, which was their first 'turnaround' home. Additionally, Country Court Care reviewed the assessed needs of those at Burgess Park for both the council and the CCG, as well as, providing their own action plan for improving the quality of care at the home. The Director of Commissioning is satisfied that Country Court Care is a capable provider and therefore supported assignment of the lease to Country Court Care Homes 2 Ltd.
18. Finance has reviewed the financial standing of Country Court Care Homes 2 Ltd. Their review is detailed in the 'Financial implications' section of this report. Based on this assessment, the Director of Commissioning supported assignment of the lease to Country Court Care Homes 2 Ltd.

19. As part of granting the Licence to Assign of the lease, Country Court Care sought to vary the deed so that they can refurbish or rebuild the home to accommodate 21<sup>st</sup> century standards. The key features of the renegotiation includes:
  - 14.1 Relaxation from enforcement of the lease in relation to beds not being available during refurbishment or reconstruction for up to 4 years – during this period they do not need to apply for a Licence for Alterations.
  - 14.2 Relaxation from enforcement of the lease in relation to the home being registered with CQC for up to 4 months after the home is refurbished or reconstructed.
  - 14.3 Updating the inflationary uplift mechanism
20. A key element of Country Court Care's plans for improving care is to remodel the home so that the rooms are larger. Larger rooms will make delivery of care and, in particular, hoisting easier. The remodeling will also include en-suite rooms. Subject to planning permission, they intend to build a 70-bedded home. Discussions are continuing about the number of beds that the council would seek to access in relation to the new home but officers have indicated that they intend to secure at least 50 beds; under the current lease arrangements, we are entitled to 44.
21. In order to remodel the home, the council would be required to pay an increased bed price in the home to accommodate a reduced number (approximately 10) of residents staying on the site whilst works take place; or the council would need to support re-locating our residents elsewhere. Both options have cost and resource implications for Adult Social Care and Commissioning and therefore officers have secured an agreement from Four Seasons to contribute to these costs. This agreement is set out in the 'Resource implications' section of this report.

### **Procurement implications**

22. Council standing orders require that contract values over £100k should be the subject of a tender. The council spends £8 million per year on nursing home provision, this is in excess of the £589k threshold in the European Union procurement regulations, and therefore requires a OJEU Notice to be published. Nursing provisions falls within the categorization of 'light touch' services and therefore the council has flexibility on how the procurement is undertaken
23. The two contracting opportunities relating to the homes in Picton Street and D'Eynsford will be part of this wider procurement exercise for providers across London and minimum block contracts for local provision. The procurement exercise will take place in 2018 and is on the department's Forward Procurement Plan. This exercise will be led by the Partnership Commissioning Team and will relate to securing bed prices in relation to all nursing home placements.

### **Policy implications**

24. The Care Act 2014 introduced new duties on local authorities to facilitate a vibrant, diverse and sustainable market for high quality care and support in their area, for the benefit of their whole local population, regardless of how the services are funded.
25. Council priorities include 'diversification of nursing homes'. By assigning the lease to Country Court Care Homes 2 Ltd, the council will fulfil its duties by maintaining diversity of providers within this small market for the borough. Country Court Care is a family run business with a proven track record of taking responsibilities for care homes and improving their quality of care.

26. In 17/18, the Department of Health introduced the IBCF (Improved Better Care Fund). The IBCF is designed to fund adult social care activities that support timely discharge from hospital. In September 2017, the CCG agreed that the council should invest the IBCF in homecare and nursing homes, therefore, as previously stated, the IBCF investment will enable the council to achieve its commissioning intention to increase the number of local nursing home beds. This investment will benefit the council, CCG and local acute providers. This increase in capacity and choice of quality local nursing home provision will directly support the DTOC targets agreed by the council and CCG.

### **Community impact statement**

27. Based on active discussions with Excelcare and Country Court Care, and subject to any planning applications, Southwark will see an increase in local beds from over 200 to over 350 by 2020.
28. Both care homes would provide employment opportunities for local people.

### **Resource implications**

#### **Costs of the Licence to Assign the Burgess Park lease**

29. Four Seasons is required, in the lease, to cover all reasonable costs related to The Licence to Assign the lease. Therefore, all costs related to due diligence (time of officers and disbursements) were collated.

#### **Re-provision costs during remodeling of Burgess Park**

30. It is arguable that due to the length of the lease, there would, from time to time, be a need for the council to relocate service users to enable the building to be fit for purpose in relation to the delivery of care, Four Seasons has acknowledged that the timing of this decision has been affected by the company's lack of attention to the fabric of the building as well as the quality of care. Therefore, Four Seasons has offered a benefit in kind so that the council does not experience an 'unplanned' cost pressure in relation to the placements at Burgess Park.
31. Four Seasons has offered to find alternative placements within their London portfolio for service users who are currently at Burgess Park. These alternative placements will be at the prevailing 17/18 or 18/19 Burgess Park prices.
32. Additional re-provision costs relate to the travel costs of next of kin (or close friends that regularly visit a resident) continuing to visit their loved one where they would have to travel outside of Southwark. These costs have been calculated based on an average of three visits per week per client for 18 months and this amount to over £180k. Given that the temporary relocation of the residents is with the agreement of the council, these additional costs should be funded by the council. The payment from FSHC would fund this cost pressure for the council.
33. A dedicated social worker will oversee the mobilisation (decant) of the residents; and a dedicated contracts manager will ensure that FSHC uses its 'best endeavours' to accommodate the remaining residents within the FSHC portfolio. The payment from FSHC would fund this cost pressure for the council.

34. The Social Worker and Contracts Manager will work closely with the Multi-Disciplinary Team, which is led by a clinician, to ensure that any moves that take place are suitable alternatives that are appropriate for the person's needs.

### **Securing value for money in relation to bed prices**

35. The Partnership Commissioning Team will lead a procurement exercise to ensure that value for money is secured for nursing homes generally, including these homes. A Gateway 0 report will be presented to Cabinet in February to set out the procurement options and how the current spend of over £8 million per annum can deliver value for money.
36. Following the GW0, the GW1 report, 'Procurement Strategy', will consider issues such as the London Living Wage and Trade Union Recognition

### **Legal implications**

37. Legal colleagues, specialising in Property Law and Contract/Procurement Law, have been providing advice in relation to the granting of a Licence to Assign Burgess Park.
38. The enforcement of a covenant is complex procedure and therefore this presents a risk, which both Property and Legal colleagues are exploring how to manage in terms of drafting.

### **Financial implications**

39. The report explains the granting of a Licence to Assign of the Burgess Park Care Home lease from Four Seasons to Country Court Care Homes 2 Ltd (CCCH2), a subsidiary of the Country Court Care Group. The finance team have undertaken appropriate due diligence, including a review of the latest accounts and credit checks which show the company trading as a going concern. CCCH2 Ltd has a good credit rating (89) and MINT rates CCCH2 Ltd's likelihood of failure as 0.9%.
40. The deal will result in an increased number of beds in the borough at a favourable price.
41. For the remainder of 2017/18 and until the end of the construction works, the incumbent provider has agreed to re-locate the existing 18 residents at no additional cost to the Council. The cost of the construction works is to be borne by CCCH2.
42. Once the construction works are complete and residents repatriated, the increase in bed price will impact future budgets. Based on the current occupancy level of 18 beds, the annual pressure will be in the region of £111k (see table below), although this will be offset if residents currently in more expensive placements can be moved to Burgess Park.
43. An uplift formula has been discussed to inform the development of a framework contract to be procured in 2018. This formula will assist both the council and providers to plan for additional costs as a result of inflation. Of particular note is the risk around the National Minimum Wage which has rose from £7.20 to £7.50 per hour, a figure the Chancellor has pledged to see rise to £9 by 2020. The OBR predict the government will fall 25p short of this target. Assuming a straight line increase between 2017-18 and 2020-21, this averages at 6.3% per annum based on the government target or 5.3% if using the OBR forecast. At this stage it

seems sensible to cap any inflationary increases at no more than 2%.

### **Consultation and engagement**

44. This report was presented at CAB on 26 July 2017 and supported assignment of the lease to CCCH2 Ltd. The granting of a Licence to Assign was agreed on 6 November, ASC officers have written to service users and their families about this change in provider.
45. Officers have engaged with the CCG and CQC throughout these discussions.

### **SUPPLEMENTARY GUIDANCE FROM OTHER OFFICERS**

#### **Strategic Director of Finance and Governance**

46. The strategic director of finance & governance notes the recommendations contained within this report and in particular the contents of the financial implications section. Increasing the quality and availability of local nursing and residential provision will reduce the council's reliance on more expensive spot and out of borough placements. The council is subject to significant cost pressures from care home placements and delivery of the two projects outlined in this report will contribute to stabilising these in the medium term. It is noted within this report that Four Seasons are covering the costs of the lease reassignment and variation at Burgess Park, therefore it is not expected that the recommendations will impact outturn 2017-18.

#### **Director of Law and Democracy**

47. The report refers to the assignment of the existing lease to Country Court Care Homes 2 Limited ("CCCH"). This has been the subject of detailed negotiation both with CCCH and also the existing leaseholder which is Four Seasons. CCCH have asked for a number of variations to the terms of the existing lease which is dated 11 March 1994 and the impact of these variations on the value of the reversionary interest have been costed by an external valuer. The assignment of the lease by Four Seasons to CCCH was approved by the Council in accordance with the requirements of the Lease and accordingly a Licence to assign will be provided.
48. Paragraph 12 of the report refers to the negotiations for a separate care home being the D'Eynsford Road site. The Council will need to ensure that it receives the best consideration which can be reasonably obtained for any interest which it transfers in order to comply with section 123, Local Government Act 1972.
49. As noted in paragraphs 5 and 35-36, a procurement process will commence in 2018 for the provision of nursing beds. The services to be procured are classed as 'light touch' services (being Schedule 3 'social and other specific services) and as they will exceed the threshold of £589k, must be tendered in accordance with the light touch regime under the Public Contract Regulations 2015. However the council is given flexibility as to how those services are procured, provided it advertises the service in OJEU and runs a transparent and non-discriminatory process that treats providers equally. Further advice will be given on the procurement implications in both the gateway 0 and gateway 1 reports'.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

## APPENDICES

No.	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Richard Livingstone, Adult Care and Financial Inclusion		
<b>Lead Officer</b>	Genette Laws, Director of Commissioning		
<b>Report Author</b>	Genette Laws, Director of Commissioning		
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	<b>Cabinet Member</b>	Yes	Yes
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