

## **CONSULTATION ON THE CLOSURE OF ARTHUR NEAL HOUSE RESIDENTIAL CARE HOME**

### **1 Additional Factors to Consider**

When a Council makes a decision to close a Residential Care home they must demonstrate they have satisfied certain legal tests and that they had sufficient information to allow them to make a fair, balanced & legally sound decision. These tests are set out & addressed below.

### **2 Consultation**

It is often argued that the consultation process was flawed in some way. There were four requirements identified in *R v Brent London Borough Council ex parte Gunning* to make any consultation valid. This approach was confirmed in *R v North and East Devon Health Authority ex parte Coughlan*. They are:

- consultation must be at a stage when proposals are still at a formative stage
- the proposer must give sufficient reasons for the proposal so as to 'permit of intelligent consideration and response'
- adequate time must be given for consideration and response
- the product of consultation 'must be conscientiously taken into account in finalising any statutory proposals'.

The main criticism of the consultation exercise carried out in this case is that the decision had already been made before it took place. In other words the first and last requirements were not fulfilled. Appendix two sets out the consultation which has been carried out on this occasion & officers believe that it meets all of the requirements above.

### **3 Home for Life**

In *Coughlan* a precedent was established that – in certain circumstances – if a resident had been given a clear & unequivocal promise of a home for the rest of their life this was a significant factor in deciding whether a care home could close. The facts in this case are very different and can be distinguished.

No residents were given an assurance that they could live at Arthur Neal for the rest of their life & none of the written information produced suggests this would be the case. It would be misleading & inaccurate to do so as Arthur Neal is a residential care home & it is common that a resident will need nursing care as their needs increase & this would necessitate a move of accommodation. When residents move into the home they sign a standard agreement which makes it clear they are granted a licence rather than a

tenancy which would confer additional rights.  
During the consultation process there have been no indications from residents or their families that such a promise was made.

#### **4 Human Rights Act**

Article 8(1) of the European Convention on Human Rights ('the convention') provides that everyone 'has the right to respect for his private life, his home and his correspondence'

Article 8(2) provides that interferences are only justified if they are permitted by law, and if they are measures necessary in a democratic society to meet a pressing social need and are proportionate to the aim being pursued. Legitimate aims include the economic well-being of the country or the protection of the rights and freedoms of others.

In the case of Arthur Neal there is a persuasive argument that Article 8(1) would apply to people who now live there as permanent residents. That being so it would be necessary to demonstrate that Article 8(2) is satisfied in order to make a decision to close the home.

The Courts have held that a Local Authority can legitimately decide to close based on the aim of using available resources to meet the needs of older people across a local area. This is with the proviso that all current residents are offered suitable alternative accommodation. In the case of Arthur Neal House that justification can apply. The rationale for deciding to close the home is based on a need to improve accommodation provision for older people & all residents will be offered an alternative which is suitable for their own individual needs after discussion with an allocated member of staff.

An argument has been advanced that a transfer of residents may amount to a breach of Article 2 of the Convention which covers right to life or are unreasonable according to 'Wednesbury' principles. A recent decision in *R v Havering London Borough Council : R v Coventry City Council* held that this might only apply where there is evidence to show that there is a real & imminent risk to life as a consequence of closure & that the Local Authority had not taken steps to address that

There is no specific evidence that has come forward in this case & needs to be considered. The court reviewed the medical evidence of the risks to residents and concluded that they presented a very mixed picture & that different people reacted to a move in different ways.

The Havering & Coventry decision also gives important guidance about how individual assessments should be carried out. It stresses the importance of sensitivity & care with each person but concludes there is no need to assess risk to individuals prior to a decision to close. This is consistent with the approach we have adopted. Residents & their families have been advised that they will be allocated a worker who will talk to them about their wishes for a move & try to minimise the upheaval & risk of a move as far as possible.

## **5 Health Impacts**

Although medical opinion is not unanimous on the nature and extent of risks to health it is clear that moving elderly and frail residents could have adverse effects on their physical and mental health. R on the application of Rutter v Stockton on Tees Borough Council provides useful direction on how this should be considered by Local Authorities when making a decision. This is in addition to the Human Rights considerations set out at 4 above.

It should be demonstrated that Council Cabinet was aware that there are possible risks to the health of individual residents when making a decision. Critically, there must be due consideration of whether adequate steps are taken to address and minimise that risk.

During the consultation residents and their families have been assured that they will receive considerable support if they need to move. This would include discussing their preferences for where they would like to go, visiting other accommodation, advice about the financial impact, passing on detailed information to the new care provider and follow up checks after a move. The proposed timescale for closing the home gives a period of several months to find a suitable alternative and make the practical arrangements to move. This should also help to minimise the potential risks.

Council Cabinet should be satisfied this is the correct approach to minimise risks to health and that the legal requirements are met. The view of officers is that this is appropriate.

## **6 Consideration of Alternatives**

One of the recurring criticisms in the consultation responses was that only one option had been presented. In particular a considerable number of respondents questioned whether a phased build approach would be possible, which might allow the home to remain open during the first phase of the building work.

With this in mind we have done some additional work with Sanctuary Housing Group who are our development partner to look at the viability of a phased build. This approach would result in significant additional costs and lengthier timescales. In addition, there would be quality of life implications and disruption for residents while building takes place. The phasing proposal would also result in greater risks to the funding of the scheme. This is referred to in the main report & these findings were taken into account when making the recommendation to close the home.

## **7 Mental Capacity Act 2005**

This requires that we ensure people who lack the capacity to make decisions are still properly consulted about the decision. There were no clearly identifiable residents who had no understanding of the basics of the proposal or no ability to express themselves.

We did ensure that independent advocates from Age Concern were available to all residents. The service was promoted at meetings in the home & by displaying promotional materials. Staff at the home deliberately approached individual residents who did not have any direct family involvement to ensure they were aware of the service being offered.

The consultation approach of having individual and private meetings for residents encouraged responses & made it easier for residents to be directly involved rather than relying on a third party.