



Agenda Item 11

**Residential Short Breaks –
Thornton Gardens, Bonnybridge**

Falkirk Council

Title: Residential Short Breaks – Thornton Gardens, Bonnybridge
Meeting: Executive
Date: 8 October 2019
Submitted By: Head of Integration

1. Purpose of Report

1.1. At its meeting on 5 April 2019 the Integration Joint Board (the Board) approved a proposal to relocate the residential short breaks service from the Rowans bungalow, owned by NHS Forth Valley at the Lochview Hospital site but managed by the Social Work Adults Service, to a Council owned property at Thornton Gardens, Bonnybridge. This possibility arises because of two events: the Rowans bungalow has developed a major structural fault; and the current tenant at Thornton Gardens, Bield Housing Association Limited (Bield), have ceased their residential care service there and wish to renounce the lease.

1.2. The lease with Bield contains provisions governing liability as between the landlord and tenant for funding obtained by Bield at the time (1991) to build the property. There is an outstanding Housing Association Grant (HAG) owed by Bield to Scottish Government. Discussions have taken place between the Council, Bield and Scottish Government to resolve the question of liability by agreement. This report outlines, and seeks approval for, such agreement.

2. Recommendations

2.1. The Executive is asked to:

- 1) note the requirement for the residential short breaks service delivered currently at the Rowans to relocate due to the building having developed a structural fault.**
- 2) note the proposed relocation of the residential short breaks service to the Council owned facility at Thornton Gardens, Bonnybridge.**
- 3) to facilitate the relocation of the residential short breaks service, authorise:**
 - (i) acceptance of the renunciation of the current lease at Thornton Gardens by the tenant Bield, so returning the beneficial ownership of the property to Council;**

- (ii) acceptance by the Council of the continuing Housing Association Grant liability equivalent of £524,630 which is tied to the property on the terms agreed with Scottish Government as set out in paragraph 4.7 below.**

3. Background

- 3.1. The primary users of the Rowans, carers of younger adults who have learning disabilities, report high satisfaction levels with the service. The cared for people who take up the service, staying at the Rowans usually for periods of up to one week at a frequency determined by assessment, also report high satisfaction levels. There is limited capacity at the Rowans and on occasion demand has to be met from external providers, usually outwith the Council area.
- 3.2. There would be significant costs and disruption associated with a renovation project to correct the structural fault to continue delivering the service at the Rowans.
- 3.3. Initial appraisal of the Thornton Gardens building confirms that it would be feasible to deliver the residential short breaks service at the site and with increased capacity. The Board approval from 5 April 2019 is based upon a re-location of the existing service, including transfer of the totality of the existing service revenue budget. A modest increase in funding requirement is anticipated, associated with the requirement for a building repair and maintenance.
- 3.4. A relocation of the residential short breaks service to Thornton Gardens would result in the service being no longer restricted to offering a maximum of 3 short breaks at any one time. The facility is significantly more spacious than the existing Rowans building. Bield offered 13 residential care placements at the property.
- 3.5. Within the existing revenue budget, and subject to a future discussion with Care Inspectorate partners whose guidelines we follow regards staffing ratios, it is anticipated an increase in provision from 3 to 4 placements will be possible immediately upon completing the re-location. The flexibility to deliver increased level of short breaks supports the case for relocation of the service. Staffing initially will come from the Rowans but as the occupancy increases this will need to be reflected on the staffing ratio and requirements of the Care Inspectorate and Health and Safety.
- 3.6. The Board's Carers Strategy has a revenue funding stream intended to support increased provision of short breaks. This funding stream could facilitate the proposed re-location by resourcing the maintenance and repair budget (para.3.3 above).

- 3.7. Capacity at Thornton Gardens exceeds the space required to meet the residential short breaks service as presently provided at the Rowans and projected demand (including that currently unmet). Under-utilisation of the building asset is recognised as a suboptimal medium and long term outcome. Further work is envisaged to develop a business case exploring best use of the excess space. Extended uses of the space might include crisis intervention and short term assessment services, not necessarily limited to any one service user group. The design of future extended use proposals will follow co-production principles, protecting and enhancing the quality of the existing short breaks service.
- 3.8. Thornton Gardens is the subject of a complex leasing arrangement between the Council and Bield. During the past year there has been discussion with relevant stakeholders around a solution allowing termination of the lease. The Scottish Government provided financial support for the original build costs of the facility and retains an interest in the matter. They have therefore been included in the discussion as an interested third party. The Council's Legal Services have guided these discussions.
- 3.9. The three parties have reached agreement in principle on an approach which would facilitate the transfer of the building to Council use, risk having been appropriately managed with regard to the HAG liability.
- 3.10. The intention is to have the residential short breaks service operational from Thornton Gardens by the 1 December 2019. Discussions with the Care Inspectorate and contractors are in progress to facilitate this timeframe. A meeting has been arranged with the Care Inspectorate for 27 September 2019 and they will be visiting both the Rowans and Thornton Gardens.

4. The Lease

- 4.1. The lease was entered into by Central Regional Council with Bield for a period of 60 years from 8 November 1991 to 7 November 2051 with an annual rent of £1.00. Falkirk Council inherited the ownership and landlord responsibility at reorganisation in 1996.
- 4.2. The lease has termination provisions which cover the potential for compensation to be due by the landlord to the tenant in certain circumstances. That includes where termination arises because the maintenance and operation of the development (i.e. the care home) becomes impossible by any action of the landlord. Compensation, if due, would be based on any outstanding loan or housing association grant pertaining to the property.
- 4.3. Bield argue it was impossible to continue with their residential care service because it was no longer economic to run. This, they argue, was because of reductions in funding from the Council. Initially there was Joint Management Group between the then CRC and Bield to oversee the operation, and a funding arrangement. The Council's view is that market forces or costs are

not relevant to the question of impossibility; if something costs more it does not become impossible, just more expensive. It is also possible Bield's decision was a strategic one and not related to the specific situation at Thornton Gardens. There is clearly risk to both parties. It is not possible to say with any degree of certainty which way a court would decide if litigation resulted. Both parties recognise this and that litigation is best avoided. Therefore a negotiated resolution is being recommended.

- 4.4. The current level of liability is £524,630 relative to the Housing Association Grant. This is grant received by Bield from the Scottish Government to build the property. A property valuation instructed by Bield in March 2018 valued Thornton Gardens at £275,000 (as care home and free of the leasehold - £175,000 with the leasehold)
- 4.5. The only liability outstanding on the property has been confirmed by Bield as the Housing Association Grant. The Scottish Government have confirmed that they are not willing to write off the HAG debt. They are willing to "recycle" the debt, meaning it wouldn't become payable provided a compatible alternative use was agreed. They are in agreement that the proposed use of Thornton Gardens to provide the residential short breaks service is compatible.
- 4.6. Voluntarily taking on a new financial liability would not normally be recommended. The reasons for doing so in this situation are:
 - There is a risk that the liability to pay compensation could be triggered by the termination of the lease and fall upon the Council in any event.
 - The pressing need to relocate the residential short breaks service is an important driver to agreeing a managed resolution
 - Appropriate safeguards have been negotiated to keep the arrangement cost neutral to the Council to a large extent.
- 4.7. The safeguards agreed are:
 - "(i) No obligation to repay arises where the property continues to be used to provide the residential short breaks service (or other compatible use agreed with the Scottish Government, acting reasonably). The HAG debt will expire after 32 years on 7 November 2051 (the expiry of the original lease period).
 - (ii) Any obligation to repay that does arise, such as on a sale, or a change of use not compatible with HAG in the Scottish Government's reasonable view, will be linked to the value of the property rather than the level of the debt. For example, if the property is sold by the Council for £200,000, the Council would only have to pay Scottish Government that £200,000 (subject to deduction of certain costs such as demolition or site clearance, if it was a cleared site being sold) to extinguish the whole HAG debt. If the sale value was greater than the HAG debt the Council would be able to keep the surplus."

5. Consultation

- 5.1 The existing Rowans service is highly valued by carers and cared for people and there is a need to offer reassurance that change involves maintenance of the existing benefit, with potential for enhancement of the service offer. The proposal also involves a change of workplace location for staff. The service has convened meetings with the above stakeholders to ensure information sharing and assurance where necessary. Families, service users and carers are very supportive of this new service as there is a real need for it in the Falkirk area and the building lends itself well to being further developed to meet the needs of Falkirk citizens.

6. Implications

Financial

- 6.1. The relocation is based upon transfer of the Rowans' existing revenue budget, there remaining a requirement for a modest adjustment of revenue funding to have in place a maintenance and repair budget for the facility.
- 6.2. Bringing about the end of the current lease agreement by agreement with all involved includes the Council taking on responsibility for the historic Housing Association Grant liability due to Scottish Government and which was used by the tenant, Bield, to build the property. The HAG debt is £524,630 with appropriate safeguards negotiated as outlined in clause 4.7

Resources

- 6.3. It is anticipated that the relocation will allow existing resource to be leverage so as to increase directly provided short break provision, with an anticipated decrease in externally commissioned provision. The IJB has the Carers' Strategy funding stream which is subject to a formal governance process. Work will be undertaken to determine if an application to the Carers Strategy funding stream or the wider Partnership Funding pot is required. Such a resource could offer some scope to fund expansion of provision, this to be subject to further resource planning and decision making.

Legal

- 6.4. As outlined in paragraph 4.

Risk

- 6.5. As outlined in paragraph 4.

Equalities

- 6.6. Moving the residential short breaks service to Thornton Gardens will enhance the service and increase capacity.

Sustainability/Environmental Impact

- 6.7. The increased capacity at Thornton Gardens will minimise the need for service users to travel outwith the Council area to receive the service.

7. Conclusion

- 7.1. The relocation of the residential short breaks service to Thornton Gardens provides a solution to both the structural problems discovered with the Rowans and the decision of Bield to end their residential care service leaving the property empty. The nature of the lease obligations mean it is reasonable for the Council to take on the Housing Association Grant liability that is tied to the property alongside the safeguards agreed with Scottish Government.

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Appendices

None

List of Background Papers:

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973:

- Report to the Integration Joint Board 5 April 2019 - Residential Short Breaks Proposal – Rowans Service