

Report of: Director of Adult Social Services

Report to: Executive Board

Date: 4th January 2012

Subject: Outline Plan for Brook House, St. Anne's on Sea

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. In line with the proposals made by the Assistant Chief Executive (Corporate Governance) and the Director of Resources in their July report to Executive Board, on the transfer of dormant funds to launch a new `City of Leeds Fund`, administered and managed by Leeds Community Foundation, Adult Social Care are proposing to establish a trust fund that will be administered and managed by Leeds Community Foundation, based on the proceeds of the sale of a property known as Brook House.
2. Brook House is a property owned by Leeds City Council at 151 St. Andrew's Road St. Anne's on Sea (a map of the area is attached at Appendix 1). It was purchased in 1980 by Leeds City Council following a bequest for residue of the estate amounting to £64,000 in the will of Harry Brook. The bequest stipulated that the property be used "as a holiday home for aged, sick or infirm or disabled Citizens of the City of Leeds."
3. People staying at Brook House do not have to be eligible under the Fair Access to Care Services criteria and so there is no assessment of need in order to access the service. The provision of a holiday service is not part of the Adult Social Care's core business.
4. The use of Brook House has decreased over the years; in the past there were a number of regular users of Brook House but this reduced to one family in 2010.

Adult Social Care have fully subsidised this service since 2004. No bookings for Brook House for the financial year 2011/12 have been sought by the Council.

5. It is proposed that better use is made of the bequest through the sale of the property with the proceeds being held in a trust, and that alternative arrangements are put into place for people to access the trust. The expectation is that this would result in many more people benefiting from the bequest than the current arrangements are now achieving and also provide people with more choice and control in determining their own holiday arrangements and destination.

Recommendations

Executive Board Members are recommended to approve the following:

- 1 That the Council submit a proposal to the Charity Commission for the disposal of the property known as Brook House demonstrating why the intended new purpose is in the best interest of the charity.
- 2 That if approval is given by the Charity Commission to the Council's proposals, that the Council proceeds with the sale of the property known as Brook House.
- 3 That the Council continues to work with Leeds Community Foundation to further an agreement on the establishment of a trust fund to continue to meet the broad requirements of the bequest from Harry Brook.

1. Purpose of this report

- 1.1 The purpose of this report is to seek agreement for the outline plan for Brook House - as detailed in Section 3 of this report. In summary, this is to cease use of Brook House, sell the property and pass the proceeds of the sale to Leeds Community Foundation, to hold in trust for the people of Leeds (who broadly meet the requirements of the bequest) to support access to their individual choice of holiday arrangements.

2 Background information

- 2.1 Brook House is a property in St. Anne's on Sea that was purchased in 1980 by Leeds City Council following a bequest that the residue of the estate of Harry Brook be used for that purpose. The bequest stated that a property be used "as a holiday home for aged, sick or infirm or disabled citizens of Leeds" in memory of his mother and his sister.
- 2.2 The property is a double fronted detached bungalow that is fully accessible for disabled people. The property sleeps 7 people in shared rooms. Since it was purchased in 1980, Adult Social Care have maintained the essential aspects of the property and its contents, however, there has been no refurbishment of the property.
- 2.3 The residue of the estate of Harry Brook amounted to £64,500. After the purchase of the bungalow and the cost of equipping it to make it suitable for older and disabled people, approximately £17,000 remained. Although a charge has been made to those using Brook House, over the years financing has been required to

maintain the property over and above the income and so the funds were gradually eroded until they were exhausted in June 2004.

- 2.4 The Best Value Review of services for Older People in 2000/01 recommended that holiday provision for older people and vulnerable adults was not part of the core business of Social Services and that Brook House should become self financing.
- 2.5 A subsequent review of Brook House was undertaken by the Corporate Efficiency Team (CERT) in November 2004, and this recommended that "...tentative enquiries are made to the Charity Commission for an opinion on the disposal of Brook House..."
- 2.6 Counsel opinion was sought in 2006 and subsequent to this a letter was sent to the Charity Commission with proposals for the future of Brook House on 24th December 2008. Counsel advised that the proceeds of the sale must continue to be used to fulfil the requirements and spirit of the bequest and not to be used for mainstream services. Since that time there has been protracted correspondence between legal services and the Charity Commission that failed to find a way forward until recently with the involvement of Leeds Community Foundation as the potential trustees.
- 2.7 Brook House is the only holiday provision owned by Leeds City Council and Adult Social Care does not provide holiday funds outside of this provision to the people of Leeds. Adult Social Care does provide and commission some short break and respite services for people who are FACS eligible. Services can be provided in the Service Users home, the professional carers' home, or in a registered care home.
- 2.8 The money from the bequest that remained after the purchase of the property, ceased to contribute to the cost of the service in June 2004 and since then the service has been provided at a cost to the Local Authority. The contribution that we make to Brook House is from the overall budget that we have to meet the assessed needs of people in Leeds.

Details of the income and expenditure for Brook House from 1994/95 to date are provided on the next page:

Financial year	Income £	Expenditure £	Deficit £
1994/95	5158	17632	12474
1995/96	3511	4527	1016
1996/97	4476	4359	-117
1997/98	5228	5771	543
1998/99	4096	7358	3262
1999/00	4404	6544	2140
2000/01	4058	9813	5755
2001/02	9890	15769	5879
2002/03	9437	11300	1863
2003/04	4962	5665	703
2004/05	4844	15758	10914
2005/06	5198	7895	2697
2006/07	4602	11671	7069
2007/08	8572	8139	-433
2008/09	6613	19746	13133
2009/10	3119	9853	6734
2010/11 ¹	1199	6295	5096

It should be noted that the financial position does/did not take into account the cost of transporting people to and from Brook House; this service was provided free of charge. Even though such transport costs are not reflected in the above annual figures, they show that Brook House represented a cost to the Council in all but two of the last seventeen years.

Although the level of subsidy to this service on an annual basis has not been significant, the more important issue is that the service, and in particular a potentially valuable asset, is being underutilised and is only benefiting a very limited number of people each year.

- 2.9 Electronic records have been maintained, for booking and charging purposes, since 2002. The historical usage of the facility since 2002/03 and the financial year 2010/11 is shown in the table below:

Financial year	Number of weeks in use	Number of weeks used by ASC establishments
2002/03	23	14
2003/04	15	11
2004/05	17	10
2005/06	20	14
2006/07	10	4
2007/08	11	3
2008/09	10	1
2009/10	5	0
2010/11	3 weeks and 2 days	1

¹ Brook House was last used between the 6th and 10th September 2010 as no new bookings have been taken since then pending finalisation of the proposals outlined within this report.

2.10 Brook House is available for 52 weeks a year, but as shown in the above table Brook House has never been fully booked. There are number of issues that have impacted on the use of the service:

- Brook House did have people and organisations using it regularly but this has diminished over time. There was only 1 regular user of the service when bookings for the service were suspended in September 2010. Since 2005/06, APS Breakaway 2000, trading as Avalon, a national charitable organisation regionally based in Harrogate, had increasingly booked the majority of weeks in use up to the financial year 2009/10 and then ceased making bookings.
- The majority of bookings were taken during the months of May to September, outside of this period it is perceived that the weather conditions are not so attractive to people in using the service.
- In the past, people living in Local Authority hostels or group homes made up a significant proportion of the users of this service, however, that pattern changed and this can be evidenced in the table above.
- More recently there has been an increase in choice for people, with people choosing holidays in other geographical areas or more preferable facilities within the St. Anne's area for a similar price.
- The property was tired (as noted in the consultation feedback), and in need of refurbishment (See appendix 2).

2.11 In December 2008, the Council made its first contact with the Charity Commission proposing to sell Brook House and invest the proceeds of the sale in a trust fund for the people of Leeds, who broadly meet the bequest criteria, "*aged or sick or inform or disabled*" to access.

2.12 In April 2011, the Charity Commission advised whilst there is no power for the Council to sell the property, unless the plan is to purchase a replacement property, held for the same purpose, that they could authorise a 'Scheme' which would give the Council the power to sell the property and establish a new trust that would be more appropriate to the original purpose.

To make a 'scheme' the council is required to demonstrate:

- a) a failing trust and;
- b) the new trust that we propose is close to the original and;
- c) more appropriate to the original purpose and we are able to demonstrate how this is done (how it is managed).

This report makes it clear that the current arrangements represent a failed trust and it is the intention of officers, subject to approval of this report, to make representation to the Charity Commission on this basis. Should the Charity Commission accept that this is a 'failing trust', officers in conjunction with the Leeds Community Foundation will undertake the more detailed work with the Charity

Commission to establish a new trust that satisfies both the conditions b) and c) above.

2.13 Leeds Community Foundation is an independent, non-profit making, charitable company which was set up in 2002 to help tackle issues facing some of the most marginalised and vulnerable groups in Leeds. It has two key roles. One is to act as a “donor services agency”, working with individuals and companies to establish and then manage a wide range of charitable funds. The second is to act as the bridge between the local community and voluntary sector, ensuring that grants are used to address real needs, problems and issues.

3. Main issues

3.1 A number of options have been considered for the future of Brook House:

3.1.1 Making it self-financing

- To make Brook House a viable self-financing service, we would need to refurbish the home, both in terms of the fabric of the building and the facilities/contents in the property. The funding for this work would have to come from the general budget for meeting the needs of FACS eligible people of Leeds.
- As there is no statutory duty on the Council to provide this service, it is not a priority service area for the Council.
- There is no guarantee that a refurbishment, plus marketing, would make a difference to take-up of the service across the whole of the year. This would mean that the charge for the service would have to meet the cost of providing the service (which we have not sought to do in the past) and this may be too expensive to people who would consider using the service.
- In the financial year 2010/11, the service was offered at a reduced price, that is £400 per week instead of the normal price which was between £712 per week² and £825 per week³, to try and attract people to the service, yet we only had bookings for 3 weeks and 2 days.
- In 2001, the ‘Best Value Report of Social Services for Older People in 2000/1’ noted that:

“Judging by the latest figures that would involve increasing the charge by 50%, which might well defeat its object to provide a holiday home for aged, sick, infirm or disabled citizens.”

3.1.2 Outsourcing the management of the holiday service

- This may not resolve the issues around the under use of the service as there is no indication that the management of the service is an issue.

² The charge for an establishment using Brook House

³ The charge for a person living in the community

- We will need to refurbish the home and its facilities/contents, and this will be an additional cost to the Council; we will still need to pay for the regular maintenance and upkeep.
- It will add additional costs to the service as the Council will have to pay an organisation to manage it.

3.1.3 Disposing of Brook House as a going concern

- It is probable that we would be required to refurbish the home, both in terms of the fabric of the building and the facilities/contents in the property, prior to disposal, as a new organisation may not wish to incur these additional capital and revenue costs. The funding for this work would have to come from the general budget for meeting the needs of FACS eligible people of Leeds
- The need for Brook House to be self-financing or commercially viable would be an issue. There is no guarantee that future use will increase.
- There is no general market for this service. There are other facilities (hotels, self catering holiday homes and bed and breakfasts), that are now more accessible to disabled people; there are a number that are available in St. Anne's-on-sea
- If the property is to be subsequently sold, who would receive the benefit of the proceeds of the sale? Counsel opinion taken in 2006 would still apply, in that the proceeds of the sale would have to be used to fulfil the original bequest.

3.1.4 Sell the property and use the proceeds of the sale to set up a trust fund that can be accessed by the people of Leeds who broadly meet the bequest criteria. This is the Council's preferred option.

It would be the Council's intention to place the property on the market. In 2008 we had three valuations of the property from Estate Agents. The valuations were £195,000, £220,000 to £225,000 and £225,000.

- Counsel advice obtained in 2006 stated that the proceeds of the sale must continue to be used to fulfil the requirements and spirit of the bequest and not to be used for mainstream services but noted that approval should be sought from the Charity Commission.
- Leeds City Council, as trustees will need to demonstrate to the Charity Commission will need to submit a case under Section 13 of the Charities Act 1993, for the Charity Commission to consider making a scheme, a legal document that could extend the objects of the charity.
- In considering the submission of Leeds City Council, the Charity Commission will apply the legal doctrine of `cy-pres`⁴ to ensure that the spirit (or the underlying intention) of the existing objects and of current social and economic circumstance is accounted for.

⁴ Norman French for `close to`

- Whilst Leeds City Council is the current trustee of the charity, it would be our intention to enter into an agreement with Leeds Community Foundation for the future administration of the trust. Leeds Community Foundation has indicated their willingness to enter into this agreement. This organisation already manages a number of trusts and so it would be unlikely to represent an onerous task for the organisation.
- This option would provide Best Value in terms of the use of an asset as more people would be able to access the trust fund and it can be used to enable people to exercise choice.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Consultation has taken place with Avalon and with the remaining regular user of the service. The feedback from the consultation is as follows:

- They understand the need to change the service
- The Council's preferred option would be a better use of resources and more in line with current needs and requirements, and
- Would provide people with more choice and control in arranging their holidays

4.1.2 Consultation with the Executive Member – Health and Adult Social Care will be maintained throughout the period of transition.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Impact Assessment has been completed and the main findings from this are as follows:

- We have not requested equality and diversity information from people using the service as this service has not been part of the 'normal' business of the local authority and we do not have a duty to provide holiday services. We do know that people have met the broad conditions of being "aged, sick or infirm or disabled" as they have been referred either through care managers or through our internal service provision.
- There is only 1 person/family that has consistently used the service since we started maintaining records of the use of the service; we know and understand the equality characteristics of the family. We will ensure that the family has access to the trust fund and appropriate support to ensure holiday arrangements are maintained.
- We identified specific barriers in terms of 'Information and Communication', 'Cost' and 'Customer Care'. To mitigate the negative impact of the changes we will:

- Make the trust accessible to a wider number of people by providing a holiday fund.
- Once the trust is established we will raise awareness about the trust and how it can be accessed.

4.3 Council Policies and City Priorities

- 4.3.1 Local Authorities do not have a statutory duty to provide holiday services and nor did they at the time that the decision was made to use the bequest to purchase the property. However, in 2006 Counsel advised that it not being a social care duty to provide a holiday home does not absolve Adult Social Care from the responsibility to meet the requirements of the bequest, having agreed to the bequest at the time.
- 4.3.2 The proceeds of the sale must be used to meet the requirements of the bequest; they cannot be used for any other purpose. Our proposal is to use the proceeds of the sale to set up a trust fund for the benefit of the people of Leeds.

4.4 Resources and Value for Money

- 4.4.1 The proposals represent better value for money, in that a greater number of people who fit the broad criteria defined in the original bequest, will be able to access the trust fund.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Disposal of the building will be in accordance with Asset Management guidelines and in compliance with legal requirements. As the property is part of a bequest the sale or transfer of the property must be with the Charity Commission's consent and approval.

5 Conclusions

- 5.1 This report outlines the historical circumstances surrounding the Council's ownership of the Brook House property in executing the terms of the bequest made by Harry Brook in 1980, together with the declining use of the property as a holiday home for aged, sick or infirm or disabled citizens of Leeds in recent years. It also identifies the actions taken in an attempt to stimulate increased usage, reflects on the changed expectations of service users, and the potential future options.
- 5.2 In summary, the report concludes that the use of this property in the current way and its current condition clearly does not represent the best use of such a valuable asset to assist in meeting the current needs and expectations of vulnerable adults. The outcome of this review is for officers to recommend that the property is sold and the proceeds transferred to the Leeds Community Foundation, who will administer the funds via a trust arrangement that will better meet the intentions of the bequest and the current needs and expectations of vulnerable adults in Leeds.

6 Recommendations

- 6.1 Executive Board Members are recommended to approve the following, subject to the acceptance of the proposed course of action by the Charity Commission:

- That the Council submit a proposal to the Charity Commission for the disposal of the property known as Brook House demonstrating why the intended new purpose is in the best interest of the charity.
- That if approval is given by the Charity Commission to the Council's proposals, that the Council proceeds with the sale of the property known as Brook House.
- That the Council continues to work with Leeds Community Foundation to further an agreement on the establishment of a trust fund to continue to meet the broad requirements of the bequest from Harry Brook.

7 Background documents

7.1 Equality Impact Assessment

Appendix 1 - Map of the Brook House locality at Lytham St Anne's

Appendix 2 - Photographs of the internal aspects of Brook House