

Report of the Director of Resources and Housing and the Director of Adults and Health

Report to Executive Board

Date: 27th June 2018

Subject: Provision of a Loan facility to Donisthorpe Hall Nursing Home

Are specific electoral wards affected? If yes, name(s) of ward(s): Moortown	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" 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: 2a (including Annexe A, B & C) and 2b – Access to Information Rule 10.4 (3)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary of main issues

1. Donisthorpe Hall is a registered charity run by a Board of Trustees and it provides residential and nursing care for older people including dementia care facilities in the Moortown ward of the city. The home mainly caters for the Jewish community in the city however, it will accept residents of any denomination. It is currently registered with the Care Quality Commission (CQC) to provide care for a maximum of 189 people.
2. The contract between the Council and Donisthorpe was suspended in August 2015 following serious concerns about the quality of the service being provided at the home and had been subject to a Notice of Proposal to withdraw registration from the CQC. Over the past year the senior management team and Board of Trustees at the home have worked to significantly improve the standard of care provided at the home and the home has now received a higher rating from the CQC. The Council and the Leeds CCG have now lifted the suspension on placements in April 2018.
3. However, given the suspension on placements and the review of operations by the senior management team at the home, this has led to the home currently only operating a maximum of 94 beds and resident numbers have fallen to 67. Given the significant reduction in the number of residents at the home, the income received from placements has fallen significantly and has caused serious financial issues for the organisation.

4. The Board of Trustees have commissioned an accountant to compile an income forecast review for the home which has shown how the organisation can recover its financial position in the short term. Part of that recovery plan includes a loan facility from the Council and this report seeks approval to provide this loan facility.

Recommendations

The Executive Board is asked to:

1. Approve the provision of a secured loan facility funded from the Council's balance sheet from the Council to Donisthorpe Hall care home in the sum of Three Hundred and Fifty Thousand Pounds plus accrued interest: this loan facility to be allocated and repaid in accordance with the provisions stated in this report and the exempt Appendix 2a (including Annexe A, B & C) and 2b.
2. To authorise the Director of Adults and Health and Director of Resources and Housing in conjunction with the City Solicitor and the Chief Officer Financial Services to ensure that the decision is implemented.

1. Purpose of this report

- 1.1 The purpose of this report is to seek approval to make a secured loan facility of Three Hundred and Fifty Thousand Pounds plus accrued interest available to Donisthorpe Hall care home in order to assist with the care provider's financial recovery plan.

2. Background information

- 2.1 Donisthorpe Hall is a registered charity run by a Board of Trustees that provides residential and nursing care for older people including dementia care facilities. The home mainly caters for the Jewish community in the city however, it will accept residents of any denomination. It is currently registered with the Care Quality Commission (CQC) to provide care for a maximum of 189 people however, due to the recent closure of certain units in the home, the maximum capacity has been reduced to 94 beds. Currently, there are 67 people resident at the home in all care categories: residential, residential dementia, nursing and nursing dementia care beds, the latter of which are in short supply in the city. The property in which the care home is run is situated in the Moortown ward in Leeds and is wholly owned by Donisthorpe Hall Ltd through its trustees.
- 2.2 Donisthorpe Hall has been part of the Council's residential and nursing framework contract since 2012 and for the first few years of the contract the home was an 'Enhanced Home' (as defined by the LCC Quality Framework), providing very good quality care and always had a very high occupancy rate. Adults and Health Contracts Team first started to notice problems in the quality of care being provided early in 2015. This was following the departure of most of the senior management team. In March 2015, Adults and Health withdrew the enhanced status of the home. Following further contract visits and a CQC inspection Adults and Health and the Leeds CCG suspended further admissions to the home in August 2015. CQC published their inspection report in November 2015 and gave the home a rating of 'Inadequate'.
- 2.3 Since the publication of the report in November 2015, CQC made further inspections at the home and found a number of concerns relating to the quality of service being provided, which culminated in the CQC serving a Notice of Decision to cancel registration to the Home on 10 January 2017, which is the next stage in a legal closure process. The Home sought legal advice and lodged an appeal against the Notice of Decision to the First-Tier Tribunal within the 28 day timescale.
- 2.4 Following Donisthorpe's appeal against the CQC's Notice, the CQC requested a 3 month stay until June 2017, to allow a further inspection to take place in order to present up to date information at the hearing and this was granted by the Tribunal. The CQC undertook this inspection and published their report at the beginning of June, finding that the Home had improved sufficiently to receive an overall rating of 'Requires Improvement.' The Home had met 3 of the 6 regulations it was found to be in breach of in August 2016, however, at that time there were still breaches in regulations relating to safe care and treatment, consent to care and good governance. The Home was identified as 'Requires Improvement' in 4 of the 5 quality domains, but remained as 'Inadequate' in well-led, therefore it remained in

special measures. Given the improved rating, the home was granted a further six months to show improvement.

- 2.5 In February 2018, CQC carried out a further positive inspection. Through the senior management and trustees, the home was able to show significant improvements in quality of services delivered since the last inspection. The CQC have now rated all five domains as Requires Improvement and have now withdrawn the Notice of Decision and ended the tribunal proceedings. The home is no longer in special measures.
- 2.6 Since 2015 the home has been closely monitored by the Adults and Health Contracts Team and during 2017, the home has been given a significant amount of assistance and advice from Adults and Health, Leeds Clinical Commissioning Group and other NHS partners to assist with their improvement journey. Adults and Health Contracts Team and the CCG Quality Managers visited the home on the 29th March 2018 and continued to see improvements in the quality of service being delivered. On the 11th April 2018, both the Council and the CCG lifted the suspension of placements at the home subject to various conditions being met, such as a continuation in improvements being made and evidenced at the home, that the home continues to actively engage with the Council and CCG's monitoring and quality teams over the next 6 months and that the home only admits 1 state funded resident for the first 4 weeks following the lifting of the suspension. Since this time the Council and the CCG have met regularly with the management of the home and have evidenced further improvements to the services. The restriction on the number of placements the home can make is now being reviewed.

3 Main issues

- 3.1 Since August 2015, there has been a suspension of placements at Donisthorpe Hall which has had a significant impact on the occupancy levels at the home, which in turn has had a significant impact on the financial position on the home. The Council and the CCG have now lifted the suspension on placements however, occupancy levels in the home will take time to increase.
- 3.2 Since 2015, the home has had a number of changes to their senior management team and have also had significant changes to their Board of Trustees in that time. The current Senior Management Team and Board of Trustees, in addition to working with partners to improve the quality of the service at the home, have been reviewing the operational side of the business to address significant cost pressures that had arisen due to the low occupancy levels at the home. As part of this review process, the Board of Trustees made the decision to close a number of units at the home thereby reducing the overall number of beds available from 189 to 94.
- 3.3 The reduction in the number of beds available has had a significant impact on the annual income of the home which has almost halved in 2 years and has caused serious difficulties relating to cash flow since 2015. Recently, the Board of Trustees commissioned Deloitte to undertake an income forecast review for the home. As part of this financial recovery, the organisation has been able to secure significant loans from members of the local community however, in order to ensure the home's

continued financial recovery, the organisation has requested financial assistance from the Council. Through discussions with officers, the only way this could be provided was by way of a loan facility to the organisation secured against the property at Donisthorpe Hall. Donisthorpe Hall is located in the Moortown ward and has a significant land value with charges against the property, therefore taking a first charge, which ranks above all other charges, against this property in return for the loan facility amount would secure the Council's payment of the loan facility amount. The organisation has requested a loan facility amount of Three Hundred and Fifty Thousand Pounds.

- 3.4 In order to provide a loan facility of this nature, the Council must assure itself that any such loan facility would not amount to State Aid under the EU State Aid Rules. Following legal advice from the Council's Solicitor, the only way to avoid the State Aid Rules would be to provide the loan facility at certain prescribed interest rates which are safe from challenge, known as Safe Harbour interest rates. The amount of interest the Council will be obliged to charge is based on the organisation's credit rating and the amount of security that is offered against the loan facility value. The interest rate which would be applied to the loan facility amount to comply with the safe harbour rates is 4.86%.
- 3.5 Donisthorpe Hall is a significant community asset and is the only home in the city and the West Yorkshire region that is strictly observant of the Jewish faith. The home also provides a significant number of nursing and nursing dementia beds in Leeds, which are a vital part of the limited overall number of beds in the city. The home currently has 67 residents who the Council has a duty to ensure the continuity of care under the Care Act 2014, should the home be forced to close. Taking 93 beds out of the total provision of beds in the city would have a significant impact on the overall vacancy levels available for care home placements in the city, particularly in relation to nursing dementia care which is provided at Donisthorpe Hall. As such, Adults and Health would wish to support the financial recovery of Donisthorpe Hall to ensure the home remains open and a community asset.
- 3.6 In addition, were the home to close as a result of its cash flow position, alongside the potential emotional upheaval for existing residents and their families, the Council could potentially incur significant additional costs in re-provisioning the care of those existing residents. Significant social work input would be required for the assessment of the individuals affected, the sourcing of suitable other alternatives and the management of transfers to other homes. Also there would be the potential for additional ongoing placement costs should more expensive out of area provision be required.
- 3.7 In order to provide the loan facility to Donisthorpe Hall, the Council needed to undertake a number of due diligence checks against the organisation including:
- Undertaking an assessment of the financial accounts for Donisthorpe Hall to gain a full understanding of their current financial situation.
 - A valuation of and due diligence checks against the property at Donisthorpe Hall which is being offered as security against the loan facility.
 - Undertaking a credit rating to determine what the "safe harbour" rate of interest would be.
- 3.8 The due diligence that the Council has undertaken is included in the confidential Appendix 2a. The due diligence has considered a number of financial forecasts and

stress tested them for different scenarios and concludes that the loan facility is not without risk but is mitigated by securing a first charge. The financial projections support the repayment of the loan facility but are dependent upon achieving growth rates, which the Council deems reasonable, and care rate assumptions which whilst on the high side return a surplus over the period of financial projections provided. In order to secure the loan facility for the Council, a legal charge will be taken against the property for 100% of the loan facility value. This will be registered with the Land Registry and will be a first charge meaning that if it was necessary for the Council to force the sale of the property, it would get first access to the proceeds of sale to recover the loan facility amount and interest.

- 3.9 Donisthorpe Hall has indicated the organisation would like the loan facility to contain a provision to enable it to “drawdown” against the loan facility over 12 months up to the maximum amount of the loan facility, plus accrued interest meaning that the full amount of the loan facility would not need to be drawn down at the start of the loan facility. At the end of the drawdown period the loan facility will be repaid over 5 years.
- 3.10 The recovery plan includes an assumption that the occupancy rates within the home will increase significantly in the short term. Whilst the home is seeking to shift the balance of residents in the home towards self-funding clients, assumptions have been made in the future business plan for Donisthorpe Hall that the number of placements supported by the Council will increase by at least one per month over the next year. Whilst this assumption appears reasonable based on pre 2015 placement levels at the home, the Council can in no way guarantee this level of additional placements, as placement decisions are largely a matter of individual choice.

4 Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The Executive Member for Health, Wellbeing and Adults, the Deputy Leader and Executive Member for Resources and Strategy, the Chair of the Scrutiny Board for Adults and Health and the Leader of the Council have been consulted about the proposed loan facility.
- 4.1.2 Legal services and finance colleagues have been involved throughout the process of agreeing the terms of the loan facility and the due diligence process.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality Impact Assessment has been undertaken in relation to the provision of this loan facility, and this is attached as Appendix 1.

4.3 Council policies and Best Council plan

- 4.3.1 The provision of this loan facility will contribute to the financial recovery plan for Donisthorpe Hall ensuring this home remains an essential part of the local community. This will contribute to the Council’s policies and the Best Council Plan

including delivery of the Better Lives programme by contributing to: people living longer and healthier lives; helping people to live full, active and independent lives; ensuring that people's quality of life is improved by access to quality services; involving people in decisions made about them, and; helping people to live in healthy and sustainable communities.

- 4.3.2 Under the Care Act 2014, the Council is required to ensure a wide range of services to meet people's needs. Donisthorpe Hall is the only home within the West Yorkshire Region providing care that is strictly observant of the Jewish faith. In providing this loan facility the Council would be acting in accordance with its duties under the Care Act in seeking to support such an organisation back to a sustainable position and thus preserving this type of provision.

4.4 Resources and value for money

- 4.4.1 The loan facility will not be paid out in one sum to Donisthorpe Hall, this will be funded through the Council's balance sheet. Details of the repayment terms are shown in the confidential Appendix 2a.
- 4.4.2 Given that the Council will be charging interest on the loan facility at safe harbour rates, these rates compare favourably with interest rates the Council would be able to secure from alternative sources.

4.5 Legal implications, access to information, and call-in

- 4.5.1 The recommendation to approve the loan facility has been included in the List of Forthcoming Decisions. As the decision is taken by the Executive Board, it is therefore subject to call-in.
- 4.5.2 Legal advice has been sought concerning the provision of the loan facility to the care home. Legal Services have confirmed that in the absence of any specific powers, Section 1 of the Localism Act 2011 gives the Council power to provide a loan facility (Section 1 of the Localism Act 2011 gives the Council a power of "general competence" to do anything that individuals generally may do. Section 111 of the Local Government Act 1972 gives the Council the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Taken together these powers will permit the Council to enter into the Loan Agreement). However, the main caveat to this are the European Commission's State Aid Rules. These rules would apply if the provision of assistance by a public body to an undertaking engaged in commercial activities were to give it an advantage that was likely to distort competition between EU member states. Notwithstanding Donisthorpe Hall is a charity, it is engaged in commercial activities (owning and running a care home) and the Council providing it with a loan facility would give it an advantage it would not otherwise have.
- 4.6 Although the State Aid Rules would apply to a loan facility to Donisthorpe Hall, these rules provide that a loan facility at certain prescribed interest rates are safe from challenge. The rate to be charged ("safe harbour rate") is calculated by cross-referencing the credit rating of the borrower against the value of the security provided and then adding the rate arrived at to the current prescribed rate for the UK. This will give an interest rate that must be charged to avoid the application of the State Aid

rules. The loan facility provided to Donisthorpe Hall would have a safe harbour rate of interest applied to it.

- 4.7 The information contained in Appendix 2a (including Annexe A, B & C) and 2b relates to the commercial and business activities of Donisthorpe Hall and was used for the purpose of the Council undertaking its due diligence process. The information used for the due diligence process includes confidential information commissioned by the Charity for the purpose of restructuring its finances and as such, this information is confidential under 'Access to Information Rule 10.4 (3) - Information relating to the financial or business affairs of any particular person'.

4.8 Risk management

- 4.8.1 Donisthorpe Hall is a Leeds-based charity that operates a registered care home for older people, many with a diagnosis of dementia. The care home currently has 67 residents some who will have been at the home for a number of years. The home mainly caters for residents who are observant of the Jewish faith however the home will accept residents of any denomination. The home is the only home in Leeds specifically catering for the Jewish faith with the nearest alternative home being in Manchester.
- 4.8.2 The loan facility will not be without risk and members should note that its repayment is not certain. The Council will put in place measures to significantly mitigate this risk by ensuring the loan facility is secured by a first charge on the property. Members should also note that if the Council needed to enforce the legal charge it's possible that the owners and residents of Donisthorpe Hall could raise human rights arguments which could at the very least delay the Council realising its security and selling the property to discharge the debt.
- 4.8.3 The Council and the CCG will also continue to closely monitor the quality of service being provided at the home to ensure that the service continues on its improvement journey.
- 4.8.4 The loan facility will contribute to Donisthorpe Hall's overall financial recovery plan. Given the loan facility will be secured against the care home property as a first legal charge, the Council will be assured of the return of the initial loan facility plus any interest that may have accrued. Also, given Council will charge interest at a rate which is within the safe harbour rate of the European Commission's State Aid Rules, the loan facility will not fall foul of these rules.

5 Conclusions

- 5.1 Donisthorpe Hall has been through a difficult couple of years, which has seen the home going from a profitable care home which provided excellent quality of care to being rated as Inadequate by the CQC and having serious financial difficulties. Over that last year, the senior management team and Board of Trustees have worked hard to ensure the quality of care at the home has improved significantly however the home still remains under serious financial threat. The Board of Trustees have commissioned Deloitte to undertake an income forecast review to support the organisation to recover its financial position. If approved, the loan facility from the Council will form part of that financial recovery plan.

- 5.2 If Donisthorpe Hall was not able to enact its financial recovery plan and had to close the home, this would lead to the Council being responsible for finding alternative placements for all residents at the home which currently stands at 67. This would be a significant task to achieve, particularly given the limited numbers of nursing and nursing dementia care beds available in the city and could mean that current residents of Donisthorpe Hall would need to be placed outside the city - possibly at greater cost to the Council and would certainly not be in the best interests of those residents.
- 5.3 Whilst there is a risk to the Council in failing to recover the money from the organisation, this risk has been significantly reduced given the loan facility will be secured against the valuable asset of Donisthorpe Hall, with a first charge against the property and the significant improvements made to the quality of the service provided at the home.

6 Recommendations

The Executive Board is asked to:

- 6.1 Approve the provision of a secured loan facility funded from the Council's balance sheet from the Council to Donisthorpe Hall care home in the sum of Three Hundred and Fifty Thousand Pounds plus accrued interest: this loan facility to be allocated and repaid in accordance with the provisions stated in this report and the exempt Appendix 2a (including Annexe A, B, & C) and 2b.
- 6.2 To authorise the Director of Adults and Health and Director of Resources and Housing in conjunction with the City Solicitor and the Chief Officer Financial Services to ensure that the decision is implemented.

7 Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.