

Item: 9

Education, Leisure and Housing Committee: 6 February 2019.

Sheltered Housing Service.

Report by Executive Director of Education, Leisure and Housing.

1. Purpose of Report

To reconsider options for future provision of sheltered housing services.

2. Recommendations

The Committee is invited to note:

2.1.

That, on 12 September 2018, when considering the outcome of a consultation on sheltered housing services, the Committee recommended that consideration of removing the sleep-in provision from the Council's sheltered housing service be deferred to enable the question of removal of the sleep-in provision at Rae's Close, Stromness, in particular, to be remitted to the Orkney Health and Care Committee, in the first instance, to seek its view on wider health and social care matters.

2.2.

That, on 15 November 2018, the Orkney Health and Care Committee considered a report detailing the health, social work and social care services currently available overnight on mainland Orkney that supported individuals in their own homes, noting that support services were available to an individual following a community care assessment.

2.3.

That legal opinion from senior counsel, attached as Appendix 4 to this report, determines that the call out service is not required to be delivered specifically by a warden and that the service provided does not import a requirement that the warden must live on site and must personally provide the call in service or emergency call service.

2.4.

That, consequently the call out service could be delegated by the warden and the Council may choose to provide the emergency call service through another service such as the Community Responder.

2.5.

Options for future provision of sheltered housing services, as detailed in section 6 of this report, with the preferred option being Option 2, namely that the sleep-in provision be removed from Rae's Close, Stromness, as soon as reasonably practicable during financial year 2019 to 2020.

It is recommended:

2.6.

That the sleep-in provision be removed from Rae's Close, Stromness, as soon as reasonably practicable during financial year 2019 to 2020.

3. Introduction

3.1.

At its meeting held on 12 September 2018, the Education, Leisure and Housing Committee noted:

3.1.1.

That, in December 2017, the Council determined that the Executive Director of Education, Leisure and Housing should undertake a consultation in respect of redesigning the Sheltered Housing Warden Service, with a view that a warden service should continue to be provided, and to report the outcome of the consultation in due course.

3.1.2.

That the consultation in respect of redesigning the Sheltered Housing Warden Service, which took place between late April and 30 June 2018, included meetings with staff, Trade Unions, one of the two advocates and residents of both sheltered housing schemes.

3.1.3.

That those residents and any relatives, power of attorneys or advocates they wished to bring who could not attend were offered individual meetings with Council officers.

3.1.4.

That, during the consultation meetings, issues were identified with the data relating to callouts, resulting in a detailed analysis of the information held on the computers at each of the sheltered housing schemes.

3.1.5.

Responses to the consultation, as detailed in section 6 of the report by the Executive Director of Education, Leisure and Housing.

3.1.6.

That, as the consultation referred to the specific terms and conditions of a tenancy that could only be changed with agreement, any redesign of service must conform with the requirement of the tenancy agreement for there to be two warden visits per day.

3.1.7.

That the Council had received a petition, as detailed in section 6 of the report by the Executive Director of Education, Leisure and Housing.

3.1.8.

That the requirement to consider the wider concept of older persons' housing more fully would be progressed through development of the Local Housing Strategy.

3.1.9.

The options appraisal, detailed in section 7 of the report by the Executive Director of Education, Leisure and Housing, with the preferred option being Option 4, namely removal of the sleep-in provision to take effect as soon as reasonably practicable after 1 April 2019.

3.2.

The Committee recommended that consideration of removing the sleep-in provision from the Council's sheltered housing service be deferred to enable the question of removal of the sleep-in provision at Rae's Close, Stromness, in particular, to be remitted to the Orkney Health and Care Committee, in the first instance, to seek its view on wider health and social care matters.

3.3.

At its meeting held on 15 November 2018, the Orkney Health and Care Committee noted:

3.3.1.

The health, social work and social care services currently available overnight on mainland Orkney that supported individuals in their own homes, as detailed in section 4 of the report by the Chief Officer/Executive Director, Orkney Health and Care.

3.3.2.

That the support services were available to an individual following a community care assessment.

4. Background

4.1.

Information relating to the level of callouts, responses to the consultation and the original options appraisal were reported to the Education, Leisure and Housing Committee on 12 September 2018 and are replicated in Appendices 1 and 2 to this report.

4.2.

Information relating to health, social work and social care services which could be made available should the sleep-in provision at Rae's Close, Stromness, be removed, is detailed in Appendix 3 to this report.

5. Additional Information

5.1.

An independent legal opinion has been sought from senior counsel and is attached as Appendix 4 to this report.

5.2.

The opinion determined that the call out service was not required to be delivered specifically by a warden. In addition, the legal opinion expressed was that the service provided does not import a requirement that the warden must live on site and must personally provide the call in service or emergency call service.

5.3.

Consequently, the call out service could be delegated by the warden and the Council may choose to provide the emergency call service through another service such as the Community Responder.

6. Options Appraisal

6.1.

In considering an ongoing review of the sheltered housing service, having conducted a consultation and having sought the opinion of a senior legal counsel, there are two main options which remain available to the Council.

6.2.

Option 1 – the status quo

6.2.1.

The sheltered housing service could continue to be delivered in the same manner as is currently the case.

6.2.2.

However, further permanent enhancements would be required to be made to the budget in order to ensure the additional living wage rises which will impact on the sleep-in provision are affordable. This is anticipated to be £13,000.

6.3.

Option 2 – removal of the sleep-in provision at Rae's Close, Stromness.

6.3.1.

Members were previously advised of the low level of overnight callouts at Rae's Close, with the detail contained in Appendix 1 to this report.

6.3.2.

Counsel's opinion confirms that the Council does not have to deliver the sleep-in provision by providing a warden service.

6.3.3.

Therefore, the responder service could potentially cover for the loss of sleep-in provision at Rae's Close, Stromness, which would allow a reduction of £28,700. Otherwise the service could remain unchanged.

6.3.4.

The process of removing the sleep-in provision would require to go through a process which would take some time as outlined in section 7 of this report.

6.5.

The preferred option is Option 2, namely the removal of the sleep-in provision at Rae's Close, Stromness.

7. Human Resource Implications

7.1.

The proposed option to remove sleep-ins, if agreed, will have a significant impact for existing Council staff in respect of their terms and conditions of employment specifically loss of earnings and changes to working patterns.

7.2.

Should removal of sleep-ins be approved consultation and negotiation with the staff and their Trade Union representatives involving Human Resources will be necessary in respect of the implementation of the decision, which may impact on the level of savings able to be realised in year one.

8. Equalities Impact

An Equality Impact Assessment has been undertaken and is attached as Appendix 5 to this report.

9. Links to Council Plan

The proposals in this report support communities as outlined in the Council Plan strategic priority of Caring Communities.

10. Links to Local Outcomes Improvement Plan

The proposals in this report support and contribute to improved outcomes for communities as outlined in the Local Outcomes Improvement Plan priority of Living Well.

11. Financial Implications

11.1.

The cost of provision of the Sheltered Housing Warden Service totals £131,300 for financial year 2018 to 2019.

11.2.

While a rental charge is levied only 7 tenants are charged in respect of the support provision.

11.3.

While the budget received a permanent enhancement of £13,000 as a result of changes to the living wage impacting on the affordability of the sleep-in provision, additional enhancements to the living wage remain unaffordable and a shortfall of £13,000 is anticipated.

12. Legal Aspects

12.1.

The Housing (Scotland) Act 2001 section 54 requires the Council to consult with its tenants regarding any policy change which may affect them in connection with the standard of service in relation to housing management.

12.2.

There are two different appendices attached to the tenancies for sheltered housing.

12.2.1.

The first states that “Sheltered accommodation benefits from a warden who calls on residents twice a day and provides an emergency call service”.

12.2.2.

The second was introduced in 2012 after a Committee decision was made to introduce a charge for the Sheltered Housing Service. This was initially set at £1.00 and has increased by the same rate as the standard increase for fees and charges since then. It includes no specific references to the service to be provided but these tenants historically in general terms have had the same standard of provision as those with the other tenancies which specify the level of service i.e. a warden who calls on residents twice a day and provides an emergency call service. Therefore, this level of service is likely to be considered as an implied term.

12.3.

In terms of section 24 of the Housing (Scotland) Act 2001 the terms of the Scottish secure tenancy may only be varied by written agreement between the landlord and the tenant, or by court order under section 26.

12.3.1

However, there is sufficient scope within the contract for the warden to delegate the emergency call service to someone else e.g. a responder. This would apply whether the term is express or implied as referred to in sections 12.2.1 or 12.2.2 above, without any requirement for consent of the tenant or resort to court.

12.3.2

Opinion of senior Counsel, Scott Blair, has been obtained and confirms this. Scott Blair is one of the leading local government advocates in Scotland. He has acted in licensing appeals for the Council, given seminars on planning and given opinion such as the make-up of the College Management Council Sub-committee in the past. The detail of that opinion is set out in Appendix 4 attached to this report. Counsel has actually gone further and is of the view that it is arguable that the warden services might be just a description of a discretionary statutory service, and if that is correct it is not a contractual term and the Council has discretion whether to provide or not. If what has happened is not a change in the tenancy then the consultation obligations under the 2001 Act via section 54 might be seen as irrelevant.

12.4.

The requirement in the tenancy agreement for there to be two warden visits per day is more specific and if there was any proposal to alter that arrangement that would require a further report. Advice of senior Counsel was requested focused on the provision of the emergency callout service which had been the subject matter of reports.

12.5.

When taking the product of consultation conscientiously into account in finalising proposals, the decision report must include relevant representations made to the authority. It is essential that the Authority takes representations conscientiously into account and avoid any appearance of bias. An opinion from an advocate Gregory Saunders was obtained in 2010 but only dealt with the process and did not address any of the contractual questions. Senior counsel Scott Blair confirms that the process by the Council to date in considering this matter legally is all proper and correct and the equality impact assessment sufficiently robust.

12.6.

Under Section 50A(4) of the Local Government (Scotland) Act 1973, the public should be excluded from the meeting in respect of any discussion relating to Appendices 2 and 4. Appendices 2 and 4 contain exempt information as defined in paragraphs 1, 2 and 12 of Part 1 of Schedule 7A of the Act.

13. Contact Officers

Wilfred Weir, Executive Director of Education, Leisure and Housing, extension 2436, Email wilf.weir@orkney.gov.uk.

Frances Troup, Head of Housing, Homelessness and Schoolcare Accommodation Services, extension 2177, Email frances.troup@orkney.gov.uk.

14. Appendices

Appendix 1: Information relating to the level of callouts, responses to the consultation and the original options appraisal reported to Education, Leisure and Housing Committee on 12 September 2018.

Appendix 2: Consultation Results.

Appendix 3: Health, social work and social care services which could be made available should the sleep-in provision at Rae's Close, Stromness be removed, reported to Orkney Health and Care Committee on 15 November 2018.

Appendix 4: The Opinion of Senior Counsel Scott Blair.

Appendix 5: Equality Impact Assessment.