

## Wiltshire Council

### Cabinet

21 June 2022

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**Subject:** Change in commissioning care at Furlong Close

**Cabinet Member:** Cllr Jane Davies Cabinet Member for Adult Social Care, SEND, Transition and Inclusion

**Key Decision:** Key Decision

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#### Executive Summary

Furlong Close is currently owned by Hft which provides care there for 17 Wiltshire Council funded residents and 12 residents from 11 other local authorities. In February 2021, Hft gave notice on all contracts with Wiltshire Council with them ending on 19 May 2021. Due to its obligations under the Public Contracts Regulations 2015, the Council went out to tender for the delivery of services at Furlong Close but was unsuccessful in securing an alternative provider.

Following an inspection of Furlong Close by the Care Quality Commission, a report was published in September 2021 which found the service to be inadequate. A subsequent report published in March 2022 found the service as requiring improvement.

During this time officers have worked closely with the Friends and Families of Furlong Close to support alternative arrangements on the site. Hft is currently concluding the sale of the land and buildings at Furlong Close to Specialised Supported Housing (SSH). Officers have supported discussions for the site to change from Residential (which does not meet CQC standards of care due to the campus nature of the current arrangement) to Supported Living. This is a change in line with the wishes of the residents as well as Friends and Families. SSH in partnership with the Friends and Families group have selected Inclusion, a not-for-profit housing association, which will lease the site from SSH and manage the accommodation. In liaison with the Friends & Families, Inclusion has identified Agincare as the provider of care and support on the site. As Agincare is on the Council's Good Lives Alliance Framework, it has met the relevant quality checks.

The Council currently holds a covenant on the Furlong Close site which restricts its use to residential care only (this is known as C2 use). In order to deliver Supported Living on site the covenant needs to allow C3b use. C3b use will allow up to 6 people, living together as a single household and receiving care. By restricting to C3b rather than C3, which would allow general housing on the site, the Council is protecting the interests of the residents. The Council wants to ensure that the site cannot be used for purposes other than the care of the residents and any new people the Council wishes to place there

to receive care to meet their needs. The Council can only vary the covenant on the land which it has benefit from. Any other covenants will be a matter for SSH to resolve with the appropriate parties.

### **Proposal(s)**

It is recommended that:

- 1 Cabinet agrees to a variation of the covenant from C2 to C3b use only.
- 2 Cabinet agrees that a first nomination rights agreement is sought in favour of the Council to cover the situation if voids arise at Furlong Close.
- 3 Cabinet agrees to delegate to the Director of Procurement & Commissioning in consultation with the Corporate Director of People and the Corporate Director of Resources/Deputy Chief Executive all necessary steps, including the variation of the covenant and the nomination rights agreement.

### **Reason for Proposal(s)**

The Council has worked closely with the Friends and Families group to seek a long-term solution for Furlong Close. A provider to deliver residential care could not be found through a tender process, and there was also the risk that CQC would not approve registration due to the model not meeting their standards of care. Supported Living is concordant with CQC standards of care and will provide more opportunities for residents to develop independent lives and secure tenancies for their homes in line with their wishes.

**Terence Herbert**  
**Chief Executive**

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### Purpose of Report

1. This report outlines the reasons why a change in the covenant on the Furlong Close site is required.

### Relevance to the Council's Business Plan

2. The proposal is relevant to the following priorities and objectives laid down the Council's Business Plan<sup>1</sup>:
  - The people of Wiltshire are empowered to live full, healthy, and enriched lives
    - We get the best start in life
    - We stay active
    - We are safe
    - We live well together
    - We ensure decisions are evidence-based
    - We have the right skills to prosper
    - We have vibrant, well-connected communities

### Background

3. Furlong Close is owned by Hft which provides care for 17 Wiltshire Council funded residents and 12 residents funded by 11 other local authorities. In February 2021, Hft gave notice on all its contracts to Wiltshire Council with them ending on 19 May 2021. The February decision followed an earlier decision by Hft in October 2020 to close the site which was challenged in the High Court by a representative of a resident. Due to its obligations under the Public Contracts Regulations 2015, the Council went out to tender for the delivery of services at Furlong Close but was unsuccessful in securing an alternative provider.
  4. Following an inspection by the Care Quality Commission, a report was published in September 2021 which found the service to be inadequate. A subsequent report published in March 2022 found the service as requiring
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improvement. During this time officers have worked closely with the Friends and Families of Furlong Close to support alternative arrangements on the site. Hft is currently concluding the sale of the land and buildings at Furlong Close to be purchased by Specialised Supported Housing (SSH). Officers have supported discussions for the site to change from Residential (which does not meet CQC standards of care due to the campus nature of the current arrangement) to Supported Living. This is a change in line with the wishes of the residents as well as Friends and Families. SSH, in partnership with the Friends and Families group, have selected Inclusion, a not-for-profit housing association, to lease the site and manage the accommodation. In liaison with the Friends & Families, Inclusion have identified Agincare the provider of care and support on the site. In liaison with the Friends & Families, Inclusion has identified Agincare as the provider of care and support on the site. As Agincare is on the Council's Good Lives Alliance Framework, it has met the relevant quality checks.

5. The Council currently holds a covenant on the Furlong Close site which restricts its use to residential care only (this is known as C2 use). In order to deliver Supported Living on site the covenant needs to allow C3b use. This covers up to 6 people living together as a single household and receiving care. C3b use will allow up to 6 people, living together as a single household and receiving care. By restricting to C3b rather than C3, which would allow general housing on the site, the Council is protecting the interests of the residents. The Council wants to ensure that the site cannot be used for purposes other than the care of the residents and any new people the Council wishes to place there to receive care to meet their needs. The Council can only vary the covenant on the land which it has benefit from. Any other covenants will be a matter for SSH to resolve with the appropriate parties.

### **Main Considerations for the Council**

6. In order to secure the long-term future of Furlong Close, the current covenant needs to be varied to enable C3b use.
7. The Council wants to protect the wishes of the residents to live on the site. The new tenancies will enable residents to have their own homes and the Council will commission the care separately. Residents may wish to change care provider or receive a direct payment to pay for care in the future and officers will support them to promote their well-being, have regard to their views, wishes, feelings and beliefs and, where individuals lack capacity to make decisions, what is in their best interests.
8. By limiting the variation to C3b only the Council will prevent the site being used for general purpose housing which could put the long-term future of the residents' homes at risk. The Council will protect its position through a nomination agreement that will provide the ability for the Council to fill any vacancies in the property, should they arise.

### **Safeguarding Implications**

9. Safeguarding is a priority for the Council in respect of the residents of Furlong Close. There will be no increased risk to residents through these proposals.

## **Public Health Implications**

10. There are no Public Health implications.

## **Procurement Implications**

11. The Council conducted two separate procurement exercises seeking a provider to take over the site as residential provision, but these exercises were unsuccessful.
12. Inclusion have selected Agincare as the care and support provider at the site. Agincare is a provider on the Good Lives Alliance (which is the Council's established purchasing arrangement for the type of care and support provided at Furlong Close).

## **Workforce Implications**

13. There is not any expected impact on the workforce as a result of this proposal. TUPE arrangements are a matter between Hft and Agincare.

## **Equalities Impact of the Proposal**

14. The equalities impact of the proposed decision is believed to be low against all criteria on the Equalities Risk Criteria Table and, therefore, a full Equalities Impact Assessment is not required.

## **Environmental and Climate Change Considerations**

15. It is anticipated that the energy consumption and associated emissions will not alter from their current levels as a result of this proposal.
16. Officers will discuss with SSH how any refurbishments they make on the site can improve the environmental aspects.

## **Risk Assessment**

### **Risks that may arise if the proposed decision and related work is not taken**

17. If the proposed decision is not taken, the risk is that the current residents will have to be moved from Furlong Close, which is against their wishes.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

18. There is a risk that SSH might use the site to apply for planning permission for general housing. This risk is managed by having a variation that restricts usage to C3b only and not general C3 use.

## **Financial Implications**

19. The estimated financial impact of this change of service moving from residential to supported living anticipates seeing overall financial savings. The

new service will not be in excess of the current costs. There is a savings target of £250k in 2022-23 by changing commissioned care from residential to supported living and this proposal will support that.

20. The use of a Good Lives Alliance Provider will ensure the costs remain at agreed rates greatly reducing the level of financial risk.
21. The estimated level of saving is around £150k per annum. This estimate is based upon the current level of residents and assuming their needs do not change. However, this does not take into consideration additional requirements for 1:1 support etc. in the future. These variables will not result in the care package exceeding current rates as a residential care home.

### **Legal Implications**

22. The Council can only vary the C2 covenant to the extent that it has an interest in the land.
23. There are no specific implications for the Council under the Public Contracts Regulations 2015 ('the 2015 Regulations'). The existing supplier is proposing a sale and purchase of its business and the buyer is making arrangements for services to be delivered from the site from a third-party contractor. The buyer's service delivery contractor is an existing contractor of the Council. Where the Council purchases services from the contractor, it must do so in accordance with the terms of the relevant contract to ensure continued compliance with the 2015 Regulations.

### **Workforce Implications**

24. There are no workforce implications for the Council. The TUPE arrangements are a matter between Aginare and Hft.

### **Options Considered**

25. The options are to:
  1. Do nothing -  
This is not a viable option as Hft wants to leave the site and a provider for residential care cannot be found. There is a strong risk that CQC would not re-register the site as residential accommodation.
  2. Vary the covenant for C3b use only -  
This will allow the development of Furlong Close into Supported Living accommodation.

### **Conclusions**

It is recommended that:

- 1 Cabinet agrees to a variation of the covenant from C2 to C3b use only.**
  - 2 Cabinet agrees that a first nomination rights agreement is sought in favour of the Council to cover the situation if voids arise at Furlong Close.**
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**3 Cabinet agrees to delegate to the Director of Procurement & Commissioning in consultation with the Corporate Director of People and the Corporate Director of Resources/Deputy Chief Executive all necessary steps, including the variation of the covenant and the nomination rights agreement.**

**Helen Jones Director of Procurement & Commissioning**

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