

KENT COUNTY COUNCIL

CABINET SCRUTINY COMMITTEE

MINUTES of a meeting of the Cabinet Scrutiny Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Wednesday, 19 January 2011.

PRESENT: Mrs T Dean (Chairman), Mr L Christie, Mr R F Manning, Mr A R Chell, Mr E E C Hotson, Mr R E King, Mrs J P Law, Mr R J Lees, Mr R L H Long, TD, Mr J E Scholes, Mr C P Smith, Mr M J Whiting, Mr R Tolputt (Substitute for Mr R Brookbank) and Mrs P A V Stockell (Substitute for Mr M J Jarvis)

ALSO PRESENT: Mr B Hague, Mr J Porter, Ms K Baldwin, Mr D Lloyd, Ms J Tuck, Mr R Perry and Mr G K Gibbens

IN ATTENDANCE: Mrs M Howard (Director of Operations), Mr O Mills (Managing Director - Adult Social Services), Mr D Weiss (Head of Public Private Partnerships and Property Team), Mr P Sass (Head of Democratic Services and Local Leadership) and Mr A Webb (Research Officer to the Cabinet Scrutiny Committee)

UNRESTRICTED ITEMS

89. Minutes of the meeting held on 8 December 2010
(Item A4)

RESOLVED: that the minutes of the meeting held on 8 December 2010 are correctly recorded and that they be signed by the Chairman.

90. Follow-up Items from Cabinet Scrutiny Committee
(Item A5)

(1) Mrs Dean updated Members on the situation regarding gulley-emptying schedules, including the fact that Mr Burr had provided information on the all the gulleys in each Member's division. The Committee would receive a further report in the Autumn after Mr Burr had explored how the emptying schedules would be tackled with the new tenderers for the work.

(2) Mrs Law commented that Mr Burr had undertaken at the previous meeting to provide information on utility companies' use of some of the gulleys in her division, but she had not yet received this information. The Chairman explained that the gulley-emptying schedules item would remain in the recommendations until the further report had been received from Mr Burr.

(3) On the Kent Design Guide, the Chairman explained that the Secretary of State for Communities and Local Government announced that the maximum number of parking spaces in any new development would be abolished. Approximately half of Kent's District Councils had signed up to Guide, and Mr Burr would be reassessing whether it should be adopted on a countywide basis.

(4) Regarding the Review of SEN Units, the Chairman explained that the letter to the Secretary of State was distributed on 6 January 2011. She informed Members that

Mr Feltham had asked her to endorse the letter, to which she had agreed. The Chairman stated that she would like to draw the delay in discharging the recommendations to the Group Managing Director's attention.

(5) The Chairman informed Members that the paper related to Safeguarding would be considered at the end of the meeting, because it would have to be debated in closed session. *Post meeting note: Due to the length of the debate, it was resolved that this would be considered at the next substantive meeting of the Cabinet Scrutiny Committee.*

(6) On Inspection of Safeguarding and Looked After Children Services, the Chairman informed Members that the development of the improvement plan had not been concluded, therefore this item would not be pursued at this meeting.

(7) On Bold Steps for Kent – The Medium Term Plan to 2014, there were two outstanding recommendations:

1. Ask the Leader that any data on the increase in Small and Medium Enterprises (SMEs) accessing contracts be made available (The Chairman explained that the aim was to know if staff working on regeneration were effective in helping small business.)
2. Ask the Leader that ways of engaging members of the public in the Big Society who are not members of Local Strategic Partnerships or other similar bodies be addressed in the Medium Term Plan. (The Chairman explained that she expected a report on this work to be provided to Members)

RESOLVED: that the Cabinet Scrutiny Committee note the follow-up items report and responses to previous recommendations.

91. Notes of the Informal Member Group on Budgetary Issues held on 6 January 2011

(Item A6)

RESOLVED: that the Cabinet Scrutiny Committee approve the notes of the Informal Member Group on Budgetary Issues held on 6 January 2011.

92. Older Person's Modernisation

(Item C1)

(1) The Chairman explained that the running order of the debate would be as follows:

- Consultation
- The movement away from direct provision of services
- Comparative costs of private and public sector provision
- Discussions about individual decisions

(2) She explained that the Committee did not have the power to make decisions, but could ask others to review the decisions they had taken.

(3) Mr Gibbens introduced the item, stating that:

- The process over the previous 6-8 months had been to look at how the Council was providing care currently, while looking ahead to the demographic changes of the next 20-30 years.
- He fully understood that it was a stressful process and appreciated people's concerns.
- Changes would be undertaken carefully and sensitively, working with the individuals, their families and friends.
- It had been interesting to speak to service users and the people of Kent about how the Council would meet the challenges of the future demographic changes.

(4) Mrs Howard gave a presentation about the Older Person's Modernisation programme, which covered:

- Reasons for change
- Proposals for services in each of the sites affected
- The consultation, including a breakdown of the responses and common themes
- Numbers of users at each site
- Recommendations for each site
- The next steps in the process

(5) The external witnesses were then invited to give their statements:

David Lloyd, UNISON (speaking on the programme as a whole)

(6) Mr Lloyd explained that UNISON had been involved in a long campaign against the modernisation programme in conjunction with the people of Kent. Its principal concern was with the consultation process. Many people had expressed misgivings, via the media or by letter, but UNISON did not feel that these had been taken into account, and responses to a questionnaire had shown three-quarters of people wanted to services to remain in-house. UNISON doubted the private sector could run its services cheaper than KCC, and some private sector units provided more than 50 beds, whereas research had shown people preferred smaller units. People also thought that the standard of service provided by the Council was very high, and there were concerns about possible Adult Protection issues with private sector provision.

Richard Perry, Friends of Wayfarers

(7) Mr Perry felt that KCC should continue as a provider of residential accommodation due to the increasing number of older people needing residential care. He thought that KCC ran excellent homes, and in doing so set the standard for services and that external regulation could not fulfil this role. He was concerned that the money to be saved by placing residents within the independent sector would result in poorer standards, and it was inevitable that the skill and experience of the Wayfarers staff would cost more. Mr Perry disagreed with the argument that the buildings were unsatisfactory, since he felt that the quality of the care was more important than the facilities. He also questioned the shift of emphasis to Extra Care Housing, when increasing numbers required full supportive care. Mr Perry thought the sale of Wayfarers unviable, since the fact that the KCC proposals indicated the site needed redeveloping and its relatively small size would deter potential

purchasers. He also felt that the relationship of Wayfarers with the local community was mutually beneficial, particularly the proximity of family and friends to residents.

Joan Tuck, UNISON (speaking on the Blackburn Lodge decision)

(8) Ms Tuck raised concerns about lack of accountability if services were outsourced, particularly as the public would not be able to complain to their local councillors, and whether the new partner would deliver services of equal quality. Ms Tuck wondered how KCC would ensure that respite beds would continue to be available to families who relied on them to help care for their elderly relatives, and whether respite, daycentre and nursing care provision would remain at the same level. She also had concerns about how the partnership with the private sector would work, whether the new buildings would be built on land provided by the Council and how KCC would ensure that costs did not increase as the private providers sought to make a profit. Ms Tuck asked the Council to explain why they had allowed so many their homes to fall into disrepair. She went on to ask whether staff numbers would be reduced under the new arrangements, and whether the contracts with new providers would require them to carry out Equality Impact Assessments for residents and staff.

John Porter, Bowles Lodge Stays

(9) Mr Porter stated that 95% of consultees were against the proposals, and questioned whether the Cabinet Member had listened to people's views, since he was going ahead with the proposals. He asked that the decision to close Bowles Lodge be postponed pending a review by the full Council.

(10) Mr Porter asked why the Council refused his request to assess the risk of his mother (a resident at Bowles Lodge) dying as result of being moved and asked for evidence that the Council had been successful in moving elderly residents to new homes. He referred to the fact that six residents had died since the announcement of the proposals and one within weeks of moving to another home, and that 25 of the 54 people moved from homes in Hull, Southampton and Wolverhampton had died within months, and implored Members to ensure the same did not happen in Kent.

(11) Mr Porter posed a number of questions, including why:

- Social workers and community nurses thought the day centre had shut, when he had been told by an officer from Kent Adult Social Services (KASS) that new referrals could be made.
- The future costs of the Private Finance Initiative were not included in the report.
- Only one quote had been sought for the cost of replacing the roof.
- Figures evidencing the fact that the Council's homes cost twice as much as the independent sector had not been provided.
- He was not able to obtain a copy of the consultation questionnaire at Hawkhurst Library
- His proposal had been rejected before the Cabinet Member had made his decision, and why the evaluation panel was comprised entirely of Council officers.
- The primary element of his proposal, which was about preventing falls, was left out of the Council's summary

(12) Mr Porter went on to make the following points:

- That a KASS officer's presentation to residents did not take into account the needs of elderly residents with multiple disabilities, and appeared to be a 'done deal'.
- That several Conservative Members had expressed concerns to him about the consultation process.
- That the Cabinet Member had said the changes were about dignity and respect for older people, but that moving his mum would be undignified and disrespectful.
- In response to a previous statement from an officer that 'the risk of legal challenge from one of the campaigners is high', Mr Porter stated that he was seeking a Judicial Review of the decision to close Bowles Lodge.

(13) Councillor Ron Weeden, Tunbridge Wells Borough Council, had been invited to the meeting but was unable to attend due to illness. Instead he wrote a letter to the Chairman of the Committee concerning the Bowles Lodge decision, which Mr Sass read aloud to the Members and witnesses. A copy of this letter was made available at the meeting.

Brian Hague (speaking on the Ladesfield decision)

(14) Mr Hague challenged the four reasons set out for the proposals. Regarding the fact that more people were living longer and with dementia, and expected more choice, he accepted that there would be increased demand for home care and sheltered housing, but thought that the demand for residential care would also increase. In relation to the assertion that dignity in care was crucial, he made the point that there was no dignity in moving very elderly people against their will. Mr Hague stated the assessment that some of the buildings had reached the end of their useful life was subjective, and felt that the aspiration to provide en-suite facilities was superfluous because many residents required assistance with bathing and using the toilet. He thought Ladesfield looked run down because it had not been properly maintained, although the standard of care was excellent.

(15) Mr Hague questioned the fact that good quality care could be commissioned for less, since he thought that KCC buying more rooms in private care homes would reduce their revenue, and thought that cost would increase significantly in the future. He expressed a view that because staff in private homes were paid less and they delivered less hours of care per resident, many of these homes would be unwilling or unable to provide the care residents currently received. Mr Hague concluded by saying that he thought that the modernisation programme was a capital-raising exercise, and this was not a good reason to close the homes, and that the consultation was a sham.

Karen Baldwin, The Limes Focus Group

(16) Ms Baldwin asked that evidence be provided of provision for enablement and day care services in North West Kent, and of suitably trained staff in the independent sector. She was also concerned about the closure of respite beds at Gravesham Place, and asked why the service users, carers and families using it had not been included in the consultation. Ms Baldwin also drew Members' attention to bed blocking issues at the nearby Darent Valley Hospital. She thought the Council had

not listened to the needs of current service users and their carers, and was too focussed on the future.

(17) Ms Baldwin felt that the proposal put forward by the Limes Focus Group had not been taken seriously, and that the Council was more focussed on profit than the needs of service users. Referring to the £162 million recently announced by the Secretary of State for Health, Ms Baldwin asked that there be a delay in implementation while the potential use of this money was investigated. She felt that if the Cabinet Member had an open mind about the proposals, he would be willing to approach the Department of Health (DH) for funding. Ms Baldwin also said that the service users, their carers and families had been through a very stressful seven months, and this situation would continue for months to come.

(18) Ms Baldwin read from other short statements which had been provided by members of The Limes Focus Group. She went on to refer to a number of points in her written statement and asked for information to be provided under the Freedom of Information Act in relation to questions posed in the statement.

(19) The Chairman explained that questions would be taken from Members, and then external witnesses.

The Chairman sought assurances about the manner in which the consultation was conducted. Mr Gibbens responded by saying that it was intended to:

- Keep everyone properly informed; and
- Listen to responses and address anxieties that arose.

(20) He explained that before the consultation started he asked officers to evaluate all the options, and thought it had been the correct approach to only consult on the viable options. Mr Gibbens assured Members and the public that all the concerns had been listened to, but he had not expected service users to say the proposals were a good idea, and predicted that people would be hurt and upset. He felt the Council was in a difficult position, and people did not like change, but this situation was not unique to Kent, with Councils across the country needing to face up to the demographic challenges of the next 20 years.

(21) Mr Gibbens explained some of the changes which had resulted from consultation feedback, including:

- The provision of step-down facilities from the NHS at Kiln Court and Ladesfield
- Consideration of Extra Care Housing (ECH) in the Deal area, in respect of the Sampson Court proposals

(22) Mr Gibbens stated that he and officers had thought long and hard about the three ECH proposals, and felt that it was the correct decision, because of the benefits for older people.

(23) Responding to a question about how removing KCC provision would increase choice, given that choice was one of the aims of the consultation, Mr Gibbens explained that KCC already provided the majority of its social care through the private sector and this was an ongoing trend nationally. He referred to Bold Steps for Kent, and the move towards the Council becoming a commissioning body. He stated that

the provision of appropriate services to older and vulnerable people was a top priority.

(24) Mr Manning sought clarity and assurances in relation to the consultation, and asked whether the letter from Councillor Weeden, accurately reflected the situation. Mr Gibbens felt that it did not, and Mr Weiss added that Tunbridge Wells Borough Council (TWBC) had been fully involved in the identification of the site, were represented on the project board of Excellent Homes for All, and there had been a meeting with the leader and portfolio holder at TWBC to discuss the proposals in April 2010.

(25) Mrs Howard explained that Bowles Lodge was the best site, closest to the local community, and at the current stage the site for ECH had to be in the ownership of KCC. In this context, a KCC officer went out to do an evaluation of the sites based upon their location, suitability and availability, which resulted in the Bowles Lodge site being chosen.

(26) There was a discussion about how local councillors were consulted. Mrs Howard stated that they had been invited to local meetings as part of the consultation process, and Mr Gibbens explained that he had not responded to Councillor Weeden's concerns since he understood that TWBC would be in contact.

(27) Responding to a query about how the owners of Babies Castle (James Warner and Peter Brotherton) were approached about a possible sale of the site to KCC, Mrs Howard explained an officer had spoken to Mr Warner in August 2010 about opportunities for KCC to buy beds in the development he was proposing, and again in October 2010. Mrs Howard said she had spoken to Mr Brotherton about the possible sale of the site in late December 2010.

(28) Mr Weiss stated the background to the bid for £75 million of PFI funding, of which Bowles Lodge was a part:

- There were three groups of stakeholders – the Government, the bidders for the project and the District Council partners
- It was important to retain the confidence of the stakeholders, particularly when securing the funding.
- The sites were the biggest risk to any PFI project

(29) Mr Weiss explained that Government guidance presumed, at the stage of bidding and the outline business case, that sites would be in the ownership of the Council in order to ensure certainty of delivery. There might be cases where a site could no longer be used, and this is what had happened in January 2010 with the original site being called into question by a village green application. Following informal consultation with the Leader of TWBC, the Bowles Lodge site was then identified. Mr Weiss explained that, when a site was lost like this late in the project, the alternative had to be in Council ownership, otherwise the whole of the £75 million PFI funding would be put at risk.

(30) Mrs Howard was asked when she was aware of the dependence of the Private Finance Initiative (PFI) funding on the sites being in KCC ownership. She had become aware quite recently, and accepted that it would have been better to have made clear in public meetings that the other sites could not be considered for ECH at

that stage, but this was made clear in the report on the site investigation for Extra Care in Tunbridge Wells, dated 31 August 2010.

(31) Mr Christie stated that he was against Bowles Lodge being closed but believed in ECH, and felt that it should be provided in addition, rather than instead of, the residential care there. He had asked that the modernisation programme be brought in for scrutiny at the start of the process, and felt that the consultation was a pointless exercise since nothing had changed from the original proposals. He also expressed a concern that since Mrs Howard had led on the initiative, had chaired the assessment panel and was on the project board, there had been no independent assessment of the proposals.

(32) Mr Christie's concerns at the start of the process and at this point were that there was a political commitment for the Council to become a commissioning body, delivering services through the private sector. On this basis, he thought that the consultation was not an open one, and asked what the public could have said that would have stopped the proposals. Mr Christie sought justification for the Council's decision to move out of the market, which would mean it could no longer influence the cost of care. He pointed out that transferring staff under Transfer of Undertakings (Protection of Employment) Regulations (TUPE) would cost the same in the short term and that the comparison of costs between the public and private sector implied that the reason that the private sector was cheaper was because, unlike KCC, it did not provide relief staff to cover sickness.

(33) Mr Gibbens assured Members that he regarded the consultation as a genuine exercise, that it was important that the public understood the proposals and their rationale, and for the Council to listen to the concerns of the public. He did not expect that the majority of people who had been consulted would welcome the proposals, but felt that this did not invalidate the consultation.

(34) Responding to a query about whether alternative funding had been considered, Mr Mills explained that officers had looked at the needs of the population and the range of services the Council provided to decide which services needed to be developed. There was a need for more care services with independence, and officers had to look at what was affordable. For the previous ten years, PFI schemes had helped deliver ECH, and with careful consideration, the decision was taken to be part of the second wave of PFI funding. Once this process had begun, it was difficult for the Council to back out.

(35) In relation to questions about whether the new services would be better than those currently received by the service users affected, and whether assurances could be given that no-one would be moved until equal better services were available, Mr Gibbens responded that no transfers would occur until the alternatives were in place. The Chairman expressed a view that an independent arbiter should be appointed to ensure that service users received services that were equivalent to or better than those that were already in place.

(36) Responding to a query about whether it would be possible to ensure costs did not increase in the future once the services were provided by the private sector, and whether TUPE commitments would be honoured, Mrs Howard stated that a similar exercise had been undertaken by the Council previously and commitments to both the cost and TUPE arrangements had been honoured.

(37) On the fact that most consultees had expressed a desire for the homes to remain in KCC control, Mr Gibbens made the point that the role of the Council was to look at the current and future situation, and face up to the demographic challenges ahead, otherwise the future implications would be very serious.

(38) There was a discussion about the increased cost to the public purse of the move to ECH, with residents of the schemes being able to claim Housing Benefit. Mr Gibbens explained that the proposals were not about saving money, but were about giving opportunities to be able to live independently with the right level of support. Mr Weiss confirmed that residents would have tenancy agreements and be able to claim Housing Benefit, but that no comparison of the costs between residential care and ECH had been done.

(39) During a discussion about the private providers of ECH and the fact that they would be operating for profit, Mr Weiss explained that the two providers left in the bidding, Housing 21 and the West Kent Housing Association, were not-for-profit social housing providers. Responding to concerns that these providers would not deliver to the expected standard, Mr Weiss explained that the care would be obtained separately from the social housing providers, and there were strict performance standards for providers of care. The Chairman asked that a contract be shared with Members and Mr Weiss undertook to provide a copy of a previous ECH contract.

(40) On the subject of TUPE, where concerns were expressed that staff transferred from KCC were not offered overtime due to their greater cost, Mrs Howard said that she had not heard of this happening and reminded Members that two not-for-profit providers that had KCC staff transferred to them, previously had maintained their commitment to those staff. Mr Mills added that he was confident, given the experience of KASS over the previous 18 years of purchasing through private sector providers, that the changes would work.

(41) Mr Perry asked whether Wayfarers would continue to be run by KCC if it did not succeed in selling the unit as a going concern. Mrs Howard explained that it was not possible to give this commitment, since the Council would need to consider the four main drivers for the modernisation programme.

(42) Ms Tuck sought reassurances that the number of respite beds currently available at Blackburn Lodge would be maintained, along with a certain number of daycentre places. Mrs Howard explained that the service specification would depend on the needs of the people of Sheppey, which may include the services currently being provided. Regarding the question of whether all staff would be transferred under TUPE regulations to the new provider, Mrs Howard explained that this would depend on the types of services provided by the new partner.

(43) Responding to a question on the number of staff on duty at ECH units, Mrs Howard explained that there would be a core amount of care in place to deal with emergencies but staffing would depend on the support plans of each resident. On the changes happening at the Care Quality Commission (CQC) and whether officers had confidence that standards would be maintained by private and voluntary sector providers, Mr Mills explained that the CQC was moving to a more risk-based approach with a shift of emphasis to the provider, but that KCC also had a responsibility to ensure the contract was being monitored and to work with the CQC

as they regulated a service. Mrs Howard explained that there would be themed inspections, but the frequency of inspections would depend on self-assessment and the prevailing circumstances.

(44) There was a discussion about the need for en-suite facilities, with Mr Porter making the point that Bowles Lodge complied with all CQC regulations, and that many independent sector homes were not purpose-built either. Mrs Howard stated that in the future KCC would want more homes that met the aspiration for en-suite facilities, and although the independent sector had a variety of buildings, it was a changing market with new builds taking place in Tonbridge and elsewhere. Responding to a question about how Bowles Lodge residents that were not suitable for ECH would have their needs met, Mrs Howard explained that the needs and preferences of each individual would be assessed before they were placed with a new provider.

(45) During a discussion about the cost of purchasing rooms in the independent sector, and the fact that KCC could already purchase cheaper than private clients, a question was asked about how confident officers were that costs could be controlled, given that providers could decide to pass on higher costs to KCC in the future. Mr Mills explained that he was very confident that KCC could continue to purchase quality services at an affordable rate, working closely with trade associations and the Kent Care Home Association.

(46) There was also a discussion about the quality and volume of care in the independent sector compared to in KCC homes. Mr Hague asserted that KCC staff were paid more and consequently delivered a higher standard of care, and KCC residents received more hours of care. Mrs Howard explained that KCC and independent homes were both regulated by the CQC and in both cases were regularly assessed as good or excellent. She stated that she had not seen any evidence of less care hours being delivered in the independent sector, and that the hours of care delivered should be a reflection of need.

(47) On the subject of maintenance of KCC homes, and the question of why homes such as Ladesfield had fallen into disrepair, Mrs Howard explained that there was a capital programme to maintain buildings, but funds were limited and KASS had to consider how best to use its money both currently and in the future. Mr Gibbens added that Members had to make value judgements each year about how KCC's limited funding was spent.

(48) Responding to a further question about whether there was anything that consultees could have said which would have made the Cabinet Member change their mind, Mr Gibbens stated that:

- Officers had looked in detail at the ideas put forward.
- The interest in step-down facilities had been picked up from the consultation.
- There was significant interest in ECH in the Deal area, and he had asked officers to meet with Dover District Council to discuss the issue further.

(49) Ms Baldwin stated that the recent closure of Queen Mary Hospital had created a bed crisis at Darent Valley Hospital, and asked whether this had been taken into account as part of the consultation, in line with a local Member's request. Mr Gibbens responded that this issue and the impact it would have on residents was discussed in

detail. Mrs Howard added that KASS worked very closely with Health colleagues to address local need, and this was why there was a recommendation to provide up to 13 beds at Gravesham Place. Mrs Howard explained that the reduction in the number of beds from 16 to 13 at Gravesham Place was a result of KASS looking to re-provide the number of beds it needed to meet local demand.

(50) Responding to a question about whether those who used the respite facilities at Gravesham Place were consulted, and how this would be provided in the future, Mrs Howard stated that officers would speak with the 4 or 5 people who used Gravesham Place about alternatives, but they would be able to continue using these facilities in the short term.

(51) Mrs Howard responded to a question about whether Gravesham Place was suitable for enablement, given that the grounds were less picturesque than at the Limes, by stating that as part of Gravesend Hospital it had access to wider services, and that the grounds were not critical for individuals' recovery, especially since enablement only lasted six weeks.

(52) Regarding the timing of letters to staff about the changes, Mr Gibbens and Mrs Howard explained the reason they were sent on 30 December was because of the timing of Cabinet on 10 January, when Cabinet colleagues debated the decisions, and the need to ensure that staff heard from KCC rather than the media. Responding to a question about how the Cabinet Member felt about Gareth Johnson, MP for Dartford, raising the care home closures in Parliament, Mr Gibbens stated that he fully supported the work Mr Johnson did for his constituents.

(53) Responding to a suggestion that UNISON were not accepting of change, even if it meant an improvement to services, Mr Lloyd explained that UNISON were advocating on behalf of the people of Kent and had been campaigning nationally for services to remain in-house. He added that there had been concerns about Adult Protection with the privatisation of services, and that rather than being against change, UNISON felt that in-house services set the standard for wider provision, and there was an opportunity for KCC homes to specialise. Mr Lloyd also spoke of national examples of services returning in-house from the private sector. Later in the debate Mr Christie stated that the London Borough of Hackney had moved all of its services back in-house and that it was rated as one of the best councils in London.

(54) Mr Lloyd expressed further concerns that UNISON had about the changes:

- That the private sector could not charge much less than KCC
- That the KCC homes could stay in Council ownership and be developed
- There were instances in residential homes of the company changing the terms and conditions without going through consultation
- The low rates of pay in the private sector and the fact that staff would have to undertake NVQ training in their own time and at their own expense raised concerns about how to attract the right people to the service

(55) There was a discussion about the lower amounts paid to the providers for individuals placed by KCC than for private clients. A question was asked whether the price paid for KCC clients was enough to meet the cost of the care, and whether the price differential resulted in KCC service users being subsidised by private clients or different levels of service depending on how much a home was being paid. Mr Mills

explained that the amount paid to providers by KCC did cover the cost of provision. The issue of cross-subsidy and whether it was fair and reasonable had been raised before, and the Office of Fair Trading had conducted an inquiry on the subject.

(56) Responding to a query about whether KCC inspected private homes, Mrs Howard explained that there were mechanisms for monitoring the standard of care but it was the CQC that carried out inspections. On the subject of the higher cost of providing care in-house, Mr Christie made the point that this was due to pension costs, but that there was now new legislation requiring private sector employers also to make pension provisions. Mrs Howard stated that she was not aware of the new legislation.

(57) Mr Christie expressed a concern that the trade association could control prices if there was no alternative (i.e. in-house provision). Mrs Howard stated that this had not occurred in other councils that had no homes in-house.

(58) Mr Manning made a request for a number of clarifications relating to the report entitled 'Site investigation for Extra Care in Tunbridge Wells' which was dated 31 August 2010. These included:

- Evidence, and the date, of investigation of alternative sites
- Why Babies Castle could not be considered for development of Extra Care
- The basis for the statement that planning would be difficult at the Swattenden site, including evidence for the Covenant.
- Evidence of the risk that the village green application would mean the Long Field site would not be able to be considered in time.
- More detail on why the PFI Project Director considered a change of site from Bowles Lodge created a serious risk to the project, and how the timetable agreed with Government would be breached.
- Who the project's professional advisers were

(59) There was a discussion about if and how the public had been made aware of the situation regarding PFI and how it impacted on the choice of sites for ECH. Mrs Howard explained that the minutes of public meetings reflected the bearing of the PFI issue, which had only arisen in relation to Bowles Lodge. Responding to a question from the Chairman, Mr Weiss explained that the choice of another site in the area could potentially expose KCC to financial risk regarding the PFI funding. Mr Gibbens explained that he had been asked to look at the various sites in July 2010, and had concluded that Bowles Lodge was the only suitable site, but acknowledged that this could have been made clearer to the public.

(60) The external witnesses summed up their positions as follows:

- Mr Perry felt enlightened by the proceedings, but was sad because he put great trust in KCC as custodians of the old and frail and worried that those who had delivered excellent care at Wayfarers would no longer be responsible for the residents' care.
- Mr Porter embraced change, but felt that the Council was caught in a 'honey trap' with £75 million of PFI funding which was loaded with risk. He questioned why the very old should give up their homes for those who would need care in the future.

- Mr Hague said he would be going away rather saddened, and felt that their had been a lack of investment in KCC's care homes
- Ms Baldwin did not understand why The Limes was not fit for purpose, but was grateful for the opportunity submit a proposal. She said it would be a very sad day for staff and service users when The Limes closed.
- Mr Lloyd explained that UNISON had been approached by Members and the public to help perform an advocacy role. He explained that UNISON was not opposed to change if it was for the better, but that it had had to pick up the pieces of problems in the private and voluntary sector.
- Ms Tuck explained that she was proud to be a public sector worker, and represent public sector workers, and accepted that society changes but felt that once the KCC-run homes were lost, they would be lost forever.

(61) There was a discussion about the validity of the consultation process, and Members resolved that it should be referred to the Director of Governance and Law for his professional opinion.

(62) The Chairman expressed concerns about the quality of the consultation process and the need to retain quality of care through KCC ownership of homes. She proposed, and Mr Christie seconded, a motion that the implementation of all 11 decisions be postponed pending consideration of the matter by the County Council. Mr Christie requested that the vote be recorded, and the results were as follows:

For – 2

Mrs T Dean, Mr L Christie

Abstain – 1

Mrs J Law

Against – 7

Mr A Chell, Mr E Hotson, Mr R King, Mr R Long, Mr R Manning, Mr C Smith, Mr M Whiting

(63) Mr Long proposed, and Mr King seconded, a motion that the Committee vote on all 11 decisions relating to the Older Person's Modernisation programme together. Mr Christie requested that the vote be recorded, and the results of that vote were as follows:

For - 7

Mr A Chell, Mr E Hotson, Mr R King, Mr R Long, Mr R Manning, Mr C Smith, Mr M Whiting

Abstain – 1

Mrs J Law

Against – 2

Mrs T Dean, Mr L Christie

(64) Having resolved that all 11 decisions be voted on together, Members voted on the motion that the Committee should express comments but not require reconsideration of the decisions. Mr Christie requested that the vote be recorded, and the results of that vote were as follows:

For - 7

Mr A Chell, Mr E Hotson, Mr R King, Mr R Long, Mr R Manning, Mr C Smith, Mr M Whiting

Abstain – 1

Mrs J Law

Against – 2

Mrs T Dean, Mr L Christie

RESOLVED: that the Cabinet Scrutiny Committee:

(65) Thank Mr Gibbens, Mr Mills, Mrs Howard, Mr Weiss, Mr Lloyd, Mr Perry, Ms Tuck, Mr Porter, Mr Hague and Ms Baldwin for attending the meeting and answering Members' questions.

(66) Welcome the assurances given by the Managing Director, Kent Adult Social Services, about the appointment of an independent arbiter, who would be able to hear grievances from affected residents who felt their services were not equivalent or better in the future.

(67) Ask the Managing Director, Kent Adult Social Services, to provide an example of a typical care contract to the Committee, in relation to concerns about future costs of any care contract in respect of Extra Care Housing,

(68) Ask the Managing Director, Kent Adult Social Services, that additional information be provided about ongoing protection of terms and conditions for any staff transferred under Transfer of Undertakings (Protection of Employment) Regulations to new providers, and how long staff would enjoy this protection.

(69) Welcome the assurances given by the Managing Director, Kent Adult Social Services, that further information would be provided to the Committee about the frequency of future inspections by the Care Quality Commission (CQC) of new facilities, recognising the fact that CQC does not regulate Extra Care Housing.

(70) Welcome the continuing assurances given by the Managing Director, Kent Adult Social Services, that staff affected by the Older Person's Modernisation programme would be supported through the changes in the usual way by KCC.

(71) Welcome the commitment from the Managing Director, Kent Adult Social Services, that the Freedom of Information request from Ms Baldwin be responded to as quickly as possible.

(72) Request that the Managing Director, Kent Adult Social Services, provide a report on the details of new legislation relating to pension provision in the private sector, and how this will affect the comparative cost of private sector care provision.

(73) Request that the Director of Governance and Law be asked to give his professional opinion as to whether a possible lack of advice and information for the public about the fact that choices in the consultation were restricted, due to the

conditions of the Private Finance Initiative bid to Government, had invalidated the consultation process.

(74) Welcome the assurance from the Cabinet Member, Adult Social Services, that he would be as flexible as possible about the timeframe for closure of Sampson Court, if there was a reasonable bid from a social enterprise to take over its operation.

(75) Express regret that some local Members were not involved more fully in the process of considering the options relating to each site, and ask that the Group Managing Director urgently raise with the Corporate Management Team the issue of full, timely and ongoing involvement of local Members in the development stage of any decisions affecting their division.

(76) Welcome the assurance from the Managing Director, Kent Adult Social Services, that a list of what the Council expected to be included in any formal agreement about levels of service provided under alternative arrangements for residents be provided to the Committee.

93. Inspection of Safeguarding and Looked After Children Services - Recovery and Improvement Plan

(Item D1)

(1) This item was provisional on an improvement plan being made available. Since the improvement plan was still being developed at the time of the meeting, this item was not considered.

94. Provisional Local Government Grant Settlement 2011-13

(Item D2)

(1) Due to magnitude of the debate on the Older Person's Modernisation item, the Chairman asked that this be considered at the meeting of the Cabinet Scrutiny Committee on 24 January 2011, as part of the wider discussion on the Budget.