

## Report to Cabinet

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<b>Title:</b>	<b>Future of Thrift Farm</b>
<b>Date:</b>	9 September 2019
<b>Date can be implemented:</b>	17 September 2018
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<b>Local members affected:</b>	All
<b>Portfolio areas affected:</b>	Health and Wellbeing

*For press enquiries concerning this report, please contact the media office on 01296 382444*

### Summary

The purpose of this report is to provide Cabinet with: -

1. The findings from the consultation on the future options for Thrift Farm
2. The outcome of the evaluation of the business plans received from providers for future provision of the farm.

The details to support this paper are set out in Appendices 1-3 and as listed below:

- Appendix 1 – Consultation Findings Report
- Appendix 2 – Equality Impact Assessment
- Appendix 3 – **Confidential** Evaluation Report

### Recommendations

1. To note the findings of the consultation report as set out in Appendix 1.
2. To seek approval for the proposed business plan from Provider A and for Thrift Farm to be transitioned to Provider A for ongoing provision and operation. This includes:
  - a. Adult day care provision

- b. Use of the property as a farm park open to the public, café, retail shop, agricultural operations and the farmhouse**
- c. All associated land (on a full repair lease basis)**
- d. Additional proposals for use of the land (details of this are part of the confidential appendix)**

## **A. Narrative setting out the reasons for the decision**

### **Background**

1. Thrift Farm is a 52 acre farm owned and run by Buckinghamshire County Council (BCC). It sits close to the border of Milton Keynes in North Buckinghamshire.
2. Thrift Farm has been operating as a supported employment and day opportunities care farm for the past 40 years. It has predominantly supported adults with learning disabilities during this time.
3. Thrift Farm was transferred into Buckinghamshire Care Ltd (BCL) in 2013 along with various other BCC services e.g. day services; however, these were brought back in house in January 2017. The future direction and commissioning plans for these services, including Thrift Farm, were outlined in a Cabinet paper entitled 'Direct Care and Support Services' dated 23<sup>rd</sup> April 2018.
4. Like a number of existing County Council Adult Social Care services, Thrift Farm is a provision which is much cherished by those who attend it and the local community around it, however, there are a number of issues facing continued operation of the farm:
  - The current model of care does not always facilitate the level of move on to greater independence for people using the service
  - The farm requires considerable investment in order to meet ongoing health and safety requirements and to make it into a viable commercial venture
  - The service is operating in a difficult financial climate and is costing the Council more than it can afford
  - Most other local authorities have either closed this type of provision or transferred it out to be run by the voluntary/commercial sector that are better placed to provide the growth and investment to secure a strong future for the service.
5. Commissioners went to the market to identify a suitable alternative provider for the farm, including holding discussions with neighbouring authority Milton Keynes Council (MKC), on two previous occasions. Unfortunately, this did not result in any substantive alternative options for the farm. Following this a paper was presented to Cabinet in February 2019 outlining the following options:
  - Do nothing
  - Identify an alternative provider or providers to take over the adult social care operations and functions of the farm in a financially viable and sustainable way.
  - Decommission the adult social care service
6. Having considered all the options, officers asked Cabinet to agree to a six week consultation on the future of Thrift Farm, to include the options of decommissioning of the service and seeking views on any other viable and sustainable proposals.
7. This was approved by Cabinet with an amendment that the consultation is held for a minimum of eight weeks and final decision be brought back to Cabinet. Cabinet urged

officers to look at what other opportunities could be explored to ensure the farm was kept open whilst relieving the financial pressure on the County Council.

## **The Consultation Process**

8. Consultation took place between 13 February 2019 and 9 April 2019.
9. A series of pre-engagement events took place from 21 – 24 January 2019 to inform service users, parents and carers of the upcoming paper.
10. The purpose of the consultation was to give people the opportunity to:
  - Share their views on the options for the farm
  - Suggest other ways the farm could continue to operate that the Council may not have considered
  - Help the Council to better understand what any changes could mean to those who use services at the farm
11. There were 10,416 engagements as part of the consultation process. These included:
  - 10,111 signatures across three petitions (6,889; 2,677; 545)
  - 152 survey responses received from customers (85), service users and their families (50) and others (17)
  - 37 attendees at service user focus groups
  - 17 video diary responses from service users
  - 37 attendees at the engagement meetings
  - 57 additional written responses
  - 5 phone calls
12. As part of the consultation, six public engagement meetings were held at Thrift Farm in addition to service user focus groups delivered on our behalf by the learning disability charity Talkback.
13. Promotion of the consultation and survey included:
  - Direct mail – letters sent directly to parents and carers affected.
  - Six public meetings held at Thrift Farm.
  - Five service user focus group meetings held by Talkback
  - Video feedback session for service users
  - Dedicated web pages and url – [www.buckscouncil.gov.uk/thriftfarm](http://www.buckscouncil.gov.uk/thriftfarm) (with direct link from the home page)
  - Links from the Thrift Farm website to the consultation webpages
  - Posters in Thrift Farm café
  - Press releases – distribution included members, partners and Parish Councils
  - Social media – Facebook, Twitter (including posting on online communities and on 'Save Thrift Farm')
  - Communications to all internal Council staff via the Council's newsletter
  - MP and Member briefings

## **Consultation Findings and Council Response**

14. There was a constructive response to consultation, with many detailed comments and thoughts received. The Council has carefully considered all consultation feedback. Full detail can be found in the end of consultation report in Appendix 1. A summary of the key findings can be found below:

<b>Consultation Finding</b>	<b>Response</b>
<p>The majority of respondents would prefer Thrift Farm to continue under Buckinghamshire County Council.</p>	<p>The options appraisal identified that this is not a viable option for the Council to consider because of the costs to the council and therefore an alternative solution must be found.</p>
<p>Respondents were not opposed to an alternative provider if the option was between this and decommissioning the farm.</p>	<p>This is the Council's preferred position. A formal process was run between February and April 2019 to identify a provider simultaneously with the consultation. The business plan evaluation process analysed the submitted business plans against evaluation criteria of finance and quality. At the end of the business plan evaluation process, a preferred alternative provider was identified.</p>
<p>If Thrift Farm was to be run by a new provider, respondents were most concerned about:</p> <ul style="list-style-type: none"> <li>• The future (82%)</li> <li>• The farm changing or feeling different (81%)</li> <li>• Changes to types of activities or work experience available (80%)</li> <li>• Changes to routine (98% in the service user group)</li> </ul>	<p>The new provider will be required to deliver a service to support all current as well as future service users (there will be no reduction in numbers of places). The process of the business plan evaluation has been robust and is designed to ensure that an appointed provider will continue to deliver quality adult social care services at the farm, in a sustainable financial environment, as well as developing new commercial opportunities in order to secure its long term future. The implication of any change will be considered in the context of each Buckinghamshire service user and a plan will be agreed with the service user and carer to manage their concerns as far as is practicable.</p>
<p>If Thrift Farm was to close, respondents were most concerned about:</p> <ul style="list-style-type: none"> <li>• Having nowhere else to go/'running out' of places (81%)</li> <li>• Finding activities (work experience) like those at Thrift Farm (73%)</li> <li>• Feeling unsure about the future (72%).</li> </ul>	<p>Buckinghamshire County Council has undertaken a rigorous process to ensure that the alternative provider will be able to meet the eligible needs of service users for care and support. All clients will be reviewed to ensure that the provision continues to meet their eligible needs. Commissioners continue to work with the voluntary and community sector across Buckinghamshire to develop the market and create a wider scope of alternative provision for service users to choose from should they wish.</p> <p>Non County Council clients would be supported by their own council to be assessed and seek alternative provision.</p>

15. There were several key points that were made during the consultation. A summary can be found below:

<b>Point</b>	<b>Comment</b>
Wellbeing	Thrift Farm has a significant impact on the overall wellbeing of its users giving them a feeling of self-worth and sense of belonging that they may not have previously had. It is feared that there will be regression in skills should the farm close or there be no suitable alternative. The loss of Thrift Farm for service users was likened to the feeling of bereavement.
Alternative Provision	<p>There was a strong feeling that alternative services to Thrift Farm had not been properly investigated and a concern that alternative provision would mean 'going back' to traditional day centre services.</p> <p>During the course of the consultation Halton Borough Council was cited as an example of good practice. The small unitary authority with approximately 120,000 population is quite different to Buckinghamshire but does provide a range of interesting and exciting day opportunities. Officers have made contact to understand more about the model.</p>
Service Model	Service users and carers did not agree that Thrift Farm uses an outdated care model. The current service does not consider how it supports the service users to gain employability skills and integrate with wider community.
Moving on	It was highlighted that the limited moving on from the service was not a result of not wanting to but, of there being limited alternative opportunities or willingness from employers to take on people with learning disabilities.
Location and transport	Thrift Farm does not offer the opportunity for service users to travel independently due to its rural location. However, it was felt other suitable alternatives were too far away or also not on public transport routes, therefore closing the farm would have little impact on transport costs.
Sustainable future at Thrift Farm	A number of potential providers or experts relating to different areas of work relevant to the farm highlighted that they would be willing to explore the possibility of submitting business plans for future operation of the farm.

16. Service user video – as part of the consultation process service users were able to take part in a video feedback session. 17 service users took part. This feedback has been consolidated into a video shared with Cabinet Members.

## **Business Plan Invitation**

17. Alongside the consultation on the future of Thrift Farm an advert was placed on the Buckinghamshire Business Portal ([www.supplybucksbusiness.org.uk](http://www.supplybucksbusiness.org.uk)) inviting interested providers to submit a business plan for future operation of the farm. Any organisation that came forward with suggestions or proposals prior to the advert going live was directed to the Portal to formally register interest if they wished to.
18. There was a positive response to this invitation and a number of viable proposals were received. The business plans submitted went through a rigorous formal evaluation process by a multi-disciplinary panel and a preferred provider, Provider A was identified. The feedback from the consultation has been taken into consideration when making the final recommendation to Cabinet.

Transferring the current service to Provider A is the preferred option.

## **B. Other options available, and their pros and cons**

19. **Do nothing** – The consultation feedback highlights the strong preference for Buckinghamshire County Council to continue operation of Thrift Farm. The paper taken to Cabinet on 4 February highlighted this as an option but went on to explain the cost to the Council of continuing to operate the service and the lack of significant financial investment required to enable the service to generate sufficient income to make it a cost effective service. The feedback has been given careful consideration but, it remains the case that this would not be the recommended option for the future of Thrift Farm.
20. **Decommission adult social care services at Thrift Farm** – should the recommendation to transfer the operations at Thrift Farm to an alternative provider not be accepted by Cabinet, the remaining option is to decommission Thrift Farm. Feedback from the consultation clearly highlights the strong feeling against this option. Whilst this would cause disruption and considerable upset to service users, carers and the public, each service user would be entitled to a review or a comprehensive assessment of their needs, if these had changed and an alternative source of provision would be identified to meet their needs. This may not be in the same form as the provision currently received at Thrift Farm, but would have to meet their eligible care needs.

## **C. Resource implications**

21. The Council believes that TUPE will apply if Thrift Farm is transferred to another provider. If decommissioning is the agreed option, a redundancy consultation would take place and the Council may incur costs associated with redundancy.
22. The part year 2019/20 savings outlined in the 4 February Cabinet report were anticipated to be £141,000 based on five month operation of the current service and took account of the cost of alternative provision for the Thrift service users who are funded by the County Council. However there have been some delays in the commissioning process, including extending the consultation and allowing time for the business plan evaluation to take place. This has meant that if implementation progresses as anticipated, this saving is now estimated to be in the region of £40,000 based on costs of operating the current service for 10 months. If the implementation of next steps is completed before the end of 2019/20, an annual saving of £270K can be expected for future years.
23. There will continue to be a cost per client for their service provision, either at Thrift Farm or an alternative provider.

## D. Value for Money (VfM) Self-Assessment

24. Prior to the consultation the Council considered the value for money of the options as part of an options evaluation. There is a considerable operational cost to service delivery in addition to the cost of typical day care provision. The Thrift Farm offer represents an expensive day opportunity provision. Considering the comments raised in the consultation feedback, it is still considered to be the case that there are alternative services available for service users which offer better value for money.

## E. Legal implications

25. There are statutory duties and principles that are relevant to this decision and those relevant are highlighted below:

26. **Care Act 2014** – provision of community care services for adults is governed by the Care Act 2014 and its associated guidance. The Care Act creates a single, consistent route to establishing an entitlement to public care and support for all adults with needs for care and support. It focuses on the needs of people rather than who is responsible for providing particular services. The Care Act 2014 puts the person at the centre of care planning. This works for all groups of people in all circumstances. It means people are to be dealt with consistently, irrespective of the type of service they need or where they receive it.

The County Council has a legal duty to meet an adult's 'eligible needs', subject to their financial circumstances. Their eligible needs are those that are determined during the assessment.

The local authority must determine whether the person is eligible for care and support. This is set out in regulations that set the national minimum threshold for eligibility, which will be consistent across England. The person will have eligible needs if they meet all of the following:

- they have care and support needs as a result of a physical or a mental condition
- because of those needs, they cannot achieve two or more of the outcomes – these are set out in full in the regulations but include peoples day to day outcomes such as being able to dress or wash themselves or maintaining personal relationships,
- as a result, there is a significant impact on their wellbeing

Where eligible needs are identified, the necessary provision to meet those needs must be set out in a care and support plan. Care plans should be kept under review and changes to the plan should follow a review of needs in most cases, and ensure that the care plan meets current need. Any changes to services currently identified as provision to meet eligible need should be considered in a review of the supported person's needs and be reflected in a revised care plan.

27. **Gunning principles** – When considering consultation, the Council should be aware of the principles set out in relevant case law:

*R v Brent London Borough Council, ex parte Gunning*, (1985) 84 LGR 168 identified what are known as the Gunning principles; these are that:

- Consultation must be at a time when proposals are still at a formative stage;
- The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
- Adequate time must be given for consideration and response; and

- The product of consultation must be conscientiously taken into account in finalising any statutory proposals.

These were specifically endorsed by Lord Wilson in *R (Moseley) v London Borough of Haringey* [2014] UKSC 56 and noted as a 'prescription for fairness'.

### **Gunning 1 - Consultation must take place when the proposal is still at a formative stage**

The consultation posed three options are being considered for the future of Thrift Farm. These were;

- to continue under the council,
- to close
- to be run by another provider.

During the consultation consultees were asked a number of questions about the impact of proposals on them and the feedback has been reflected in the End of Consultation report which is an appendix to this paper.

No decisions have yet been made and the feedback from the consultation and feedback from the pre-consultation phase has been considered throughout. Indeed when Cabinet considered the paper on 4 February, they determined that Commissioners should run a consultation for a minimum of eight weeks, in the context of the level of public interest evident before the Cabinet had met on 4 February.

### **Gunning 2 - Sufficient information to allow for intelligent consideration and response must be provided**

Service users, their parents and carers were alerted to the publication of the Cabinet paper on 4 February. They were invited by letter to two pre-consultation events on 21 and 23 January 2019, to advise them that Cabinet was being asked to agree to a formal consultation on the future of the farm. Officers attended to answer questions about the process.

Following Cabinet approval to progress to consultation, five, two hour engagement meetings were held, the proposals were discussed and stakeholders were invited to share their views and raise concerns.

### **Gunning 3 - Adequate time must be given for consideration and response**

The consultation was run from 13 February to 9 April eight weeks. This was to ensure that enough time was given for the chosen methodology (survey) to be completed.

### **Gunning 4 - The product of consultation must be conscientiously taken into account**

This End of Consultation report has reflected back the messages obtained during the consultation and has been presented to Cabinet. During the course of the consultation, service users, supported by their families and carers, voiced anxiety that they may not be able to adequately reflect their views through the written word. This was addressed by making a film to capture their feedback with them, to ensure they could participate fully in the consultation process. This has been made to inform members who are making the decision and is not for publication.



The feedback from the pre-consultation and consultation has been carefully considered and has shaped the final recommendations captured within this paper.

**28. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) legislation** – As TUPE applies anyone who works at Thrift Farm, and whose sole or main purpose is to work on this service, they would be eligible to TUPE across to any new provider. The employees of the outgoing employer automatically become employees of the incoming employer at the point of transfer, carrying with them their continuous service from the outgoing employer, and should continue to enjoy the same terms and conditions of employment with the incoming employer. Neither provider can select who they TUPE across.

If an employee is dismissed either before or after a transfer and the sole or principal reason for the dismissal is the transfer, it will be automatically unfair. Employees who believe that their terms and conditions have been substantially changed to their detriment before or after a transfer have the right to terminate their employment and claim constructive unfair dismissal at a tribunal. TUPE classifies these types of resignations as dismissals.

The liabilities that lie with the Council (the Transferor) include:

- a) Disclosure of Employee Liability Information (referred to as ELI) and this includes:
  - the identity and age of the employees who will transfer
  - information contained in the written statement of those employees
  - details of any disciplinary action taken against an employee in the last two years
  - details of grievances raised by an employee in the last two years
  - instances of legal actions taken by employees against the outgoing employer in the last two years (any court or employment tribunal claims)
  - information regarding any collective agreements

This must be provided at least 28 days before the date of transfer.

- b) To consult with the employees, involving the trade unions, for a minimum of the five weeks, as agreed with UNISON.

The Transferee (whoever is successfully appointed) is obliged to advise the Transferor prior to the consultation meeting, of the measures they may be required to take in terms. These may be in terms of a change to payroll date for example.

The costs associated with any voluntary redundancy offers would usually fall to the County Council in this respect, unless this is otherwise negotiated with the supplier.

The County Council has a duty to divulge any legal action, disciplinarys or similar as part of the Employee Liability Information and as such the provider would want to indemnify themselves against any future costs on anything disclosed as part of this. However it would be very unusual to agree to any future liabilities post transfer that may be to do with the actions of the new provider.

29. A legal representative was present for the evaluation and modification of the business plans received to support a fair and legal process.

## **F. Property implications**

30. As Thrift Farm is a Council owned property, it has been imperative that we work closely with colleagues in Property Services to work through the details and implications of the potential outcome for Thrift Farm.
31. Carter Jonas is the property consultant providing specialist advice on land and assets belonging to Buckinghamshire County Council. Representatives from Carter Jonas have been present in the evaluation of business plans to ensure there are no obvious implications which would impact any proposals being put forward.
32. A paper will be taken to Property Board with the outcome of this decision highlighting any implications for the Thrift Farm site.

## **G. Unitary Council**

33. Thrift Farm sits within the geographical boundary of Aylesbury Vale District Council (AVDC). As AVDC does not provide Adult Social Care Services there was no option for joint working with the authority. AVDC would at present set the business rates for any future provider of Thrift Farm and/or provide any rate relief. They would also approve any future planning applications for use on the land.
34. Key personnel and Members with AVDC were notified of the intention to consult on the future of Thrift Farm.

## **H. Other implications/issues**

35. Due to its proximity with the border of Milton Keynes, a large proportion of Thrift Farm service users are funded by Milton Keynes Council (MKC) (36%). Several discussions have been held with MKC since late 2017 regarding future options for Thrift Farm, including the potential for MKC to work jointly with Buckinghamshire County Council to secure a sustainable future for the farm. These conversations did not lead to a proposal from MKC to take over the running of Thrift Farm. Regular communications continue with MKC to ensure they are fully briefed on the progress being made and any impact it may have on their service users.
36. A review of Direct Care and Support Services including Thrift Farm, approved on 23 April 2018, is part of the wider Transformation Programme for adult social care. One element of the programme is to focus on reducing the number of people who are living with long term support needs by remodelling our services to ensure service users are enabled to achieve the maximum independence possible for them. It is key then that any future provision at Thrift Farm facilitates this.
37. S149 of the Equality Act (2010) requires public authorities in the exercise of their functions to have due regard to the need to:
  - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
38. An Equality Impact Assessment has been completed and is set out in Appendix 2. Potential positive and negative impacts have been identified in regard to the protected characteristics. Key mitigations include ensuring the market is developed enough to

provide suitable alternative services to meet individual needs and to support service users to access other supported employment services. The needs of the carers supporting Thrift Farm service users must be considered as part of this.

39. Following a Cabinet decision, a staffing consultation will be required to take place with all staff affected.

#### **I. Feedback from consultation, Local Area Forums and Local Member views**

40. The feedback from the public consultation has been summarised earlier in this report.

41. Consideration has been given to three petitions relating to this decision:

- A petition signed by 6,889 residents, (at 15 May), entitled “*Save Thrift Farm*”
- A hardy copy version of the above petition signed by 545 residents entitled “*Thrift farm petition against closure: Thrift Farm at Whaddon needs your help*”
- A petition signed by 2,677 residents (at 15 May), entitled “*Save Thrift Farm - a vital community that helps so many people with additional needs*”

42. Members have been engaged and kept updated through briefings sent prior to and during the consultation. This includes a briefing sent to the Deputy Leader of MKC who is also the Cabinet member for Healthier and Stronger Communities and a letter sent to a local MP.

43. The Health and Social Care Select Committee has been kept informed.

44. As part of the consultation process all Members have had the opportunity to raise any issues directly with the Cabinet Member for Health and Wellbeing or officer team. This is in addition to the other engagement opportunities at Thrift Farm and through the opportunity to submit formal responses to the consultation survey.

45. Outside of Buckinghamshire County Council, responses were received from one Town Councillor and a local Parish Council.

46. In addition to the Member involvement to date, further involvement will follow a Cabinet decision and include:

- A written communication to all Members to inform them of the outcome of the Cabinet decision
- Ongoing updates to all Members about the service through the Cabinet Member’s Blue Book update to full Council.

#### **J. Communication issues**

47. As there are multiple services and stakeholders involved, communication will be tailored accordingly. A robust and thorough communications plan will be refreshed jointly with the Council’s communications team, commissioning team and Direct Care Services Operations Team.

#### **K. Progress Monitoring**

48. Depending on the Cabinet decision, the transition of Thrift Farm whether that be to another provider or for service decommissioning, will be monitored by Commissioners. The Cabinet Member for Health and Wellbeing will receive regular updates on progress the Health and Social Care Select Committee as required.

49. Regular progress reports will also be produced as part of the wider Adult Social Care Transformation Programme.

**L. Review**

N/A

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**Background Papers**

4 February 2019 – Decision taken to go out to consultation on the future of Thrift Farm  
<https://democracy.buckscc.gov.uk/ieDecisionDetails.aspx?ID=11208>

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***Your questions and views***

*If you have any questions about the matters contained in this paper please get in touch with the Contact Officer whose telephone number is given at the head of the paper.*

*If you have any views on this paper that you would like the Cabinet Member to consider, or if you wish to object to the proposed decision, please inform the Democratic Services Team by 5.00pm on 6 September 2019. This can be done by telephone (to 01296 382343), or e-mail to [democracy@buckscc.gov.uk](mailto:democracy@buckscc.gov.uk)*