

<b>Subject:</b>	Empty Homes project	<b>Status:</b>	Public
<b>Report to:</b>	Audit & Accounts Committee	<b>Date:</b>	28 <sup>th</sup> July 2021
<b>Report of:</b>	Chief Executive	<b>Portfolio Holder:</b>	Leader of the Council
<b>Key Decision:</b>	<input type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	<b>General Exception</b>	<input type="checkbox"/> <b>Special Urgency</b> <input type="checkbox"/>
<b>Equality Impact Assessment:</b>	Required:	No	Attached: No
<b>Biodiversity Impact Assessment</b>	Required:	No	Attached: No
<b>Contact Officer:</b>	Chief Executive	<b>Telephone:</b>	01706 252447
<b>Email:</b>	neilshaw@rossendalebc.gov.uk		

## 1. RECOMMENDATION

**That the Committee considers the update on the Empty Homes project and the actions to manage the project in the future.**

## 2. PURPOSE OF THE REPORT

To provide an update on the Empty Homes project and outline the future approach to managing the project.

## 3. BACKGROUND

- 3.1. On 14 November 2012 the council entered into a consortium agreement with the Homes & Communities Agency (HCA), to deliver a housing purchase and repair scheme. The scheme was to bring properties back into use across Pennine Lancashire. It was agreed with the HCA that the council would act as an accountable body for five East Lancashire councils: Rossendale, Pendle, Burnley, Blackburn and Hyndburn.
- 3.2. AAW were commissioned to act as the managing agent for the authorities. Owners of empty properties were assigned 5 or 10 year leases to AAW in return for guaranteed rent (70% of the LHA rates) and council tax. The 30% rent balance would then be retained by AAW to cover management costs and repairs. The nature of these leases has been fundamental to the costs incurred by the council for the duration of the project. Where the properties were not at the Decent Homes Standard, owners could either:
  - Commission AAW to undertake the necessary improvement works or
  - Undertake the works themselves and obtain re-imburement from AAW
- 3.3. January 2015 saw the demise of AAW following the council's refusal to provide financial assistance to the company. At the time of collapse, 357 properties remained on the scheme. The total HCA grant claimed by AAW at this point was circa £4.7m.
- 3.4. With the demise of AAW, the council became responsible for tenants. LCC undertook an internal audit to understand the failings of the scheme. The key failings confirmed in the LCC Internal Audit report were:
  - No assessment was made of the risks and appropriate controls in taking up the funding and operating the programme
  - The former Chief Executive did not obtain indemnities from other Pennine Lancashire councils
  - Normal controls, expected procedures and statutory requirements were over-ridden
  - Insufficient involvement of the council's legal and financial statutory officers

- 3.5. There was inadequate supervision of a single member of staff who was effectively made responsible for the management of the entire programme, and the scope to act in whatever way they felt was appropriate. Officers involved in working with AAW failed to inform members in a structured way on the operation of the programme. There was a failure to sufficiently involve the council's statutory officers in the decision-making process. In parallel, a police investigation commenced to explore evidence of illegality on AAW's behalf. Further details on the background to the project and progress up to 31 March 2020 were provided to the Audit & Accounts Committee in July 2020.

#### **4. THE LAST YEAR**

- 4.1. Managing the project continues to be complex and challenging. 69% of the properties have now been removed from the scheme. No leases were due for termination in 2020. There has therefore been no change in the number of properties remaining on the project in the last year.
- 4.2. 83% of the 113 remaining properties are currently tenanted, providing homes for local people in East Lancashire. In 2020/21, 65 properties were repaired. This shows good progress on putting properties in good condition to let (or to repair current tenant damage). The scale of repairs in the last year were unusually high but also illustrates the scale of repair works which are on-going through the life of the project.
- 4.3. Leases on 5 properties have expired but remain in the scheme. The impact of Covid has meant the council has not been able to obtain vacant possession for these properties despite significant negotiation with sitting tenants. The council is in negotiation with 3 tenants and in negotiation through Calico for owners to accept sitting tenants for 2 properties. The lease expiry for the next tranche of properties is not until March 2022 when leases on 5 properties will come to an end.
- 4.4. Calico continue to act as managing agents for the majority of the properties. The remainder are managed by a letting agent.
- 4.5. During the last twelve months there has been significant on-going legal activity responding to claims for repairs and other related housing costs. In December 2020, the council successfully defended a claim. A further significant claim relating to 51 properties pursuing property costs has been brought in Spring 2021 and is on-going.
- 4.6. In June 2021 the Police investigation into the collapse of AAW concluded. The Police determined there was insufficient evidence for a criminal prosecution.
- 4.7. The Cabinet have received quarterly updates on the progress of the project. Regular project team meetings take place and the Chief Executive remains as the Project Sponsor to oversee the project.
- 4.8. The council is keen to demonstrate it has learned the lessons of 2015. The council agreed an audit of the actions from the 2015 improvement plan to check these changes are still in place and processes have improved. The auditors provided 'moderate assurance' that the actions have been implemented, identifying that many actions had been implemented, but that there was a need for improvement in some areas, particularly training. The council's Constitution has been revised since 2015 to address issues arising from the collapse of AAW. The Scheme of Delegation now clearly sets out procurement responsibilities for staff and members, and project management arrangements are simply stated. Most importantly, robust project management principles had been established, with the formation of a Programme Board. However, some training on key changes has not been delivered in the last two years, for example, on fraud awareness and refresher on procurement procedures. The latter is planned in for Quarter 2 this year.

## 5. FINANCE

- 5.1. As at the 31 March 2021, the net costs for 2020/21 were £885k. £550k of the costs are capital expenditure. **The total net cost of the project to the end of 2020/21 was £6.995m.** This includes £1.02m of owner loans provided for as doubtful debts for accounting purposes. Whilst the council has provided for the owner loans there are land charges on the properties, therefore the council will ultimately seek to recover the £1.02m.
- 5.2. The table, below, outlines the annual costs of the project over the first seven financial years:

Empty Homes Recovery Scheme costs	Report as at 31/03/2021		
	Revenue £000	Capital £000	Total £000
2014/15 net operating costs	278		278
2015/16 net operating costs	896	312	1,208
2016/17 net operating costs	1,306	2,159	3,465
2017/18 net operating costs	461	27	488
2018/19 net operating costs	83	71	154
2019/20 net operating costs	613	110	723
2020/21 net operating costs	335	550	885
Total Recovery Costs to be funded	3,972	3,229	7,201
HCA Grant		-2,891	
Repay HCA grant on returned properties		1,410	
Repay HCA re Martin Proffitt Ltd		169	
Net HCA Grant			-1,312
Contributions from other Authorities			-330
Provision set aside for doubtful loans			1,023
Compensation on returned properties			413
<b>Total Net cost to RBC</b>			<b>6,995</b>

- 5.3. The 2020/21 costs are outlined in more detail, below:

	Revenue Actual	Capital Actual	
Building Renovation Costs <sup>1</sup>		£550,152	£550,152
General Repairs <sup>2</sup>	£23,786		£23,786
Leaseholder Payment	£144,694		£144,694
Council Tax	£70,485		£70,485
Professional Fees <sup>3</sup>	£50,712		£50,712
Door Security	£4,688		£4,688
Settlement Payments to Owners <sup>4</sup>	£50,526		£50,526
Legal Fees	£13,678		£13,678
Provision for Bad Debt	£12,628		£12,628
Repayment of Principal	£67,295		£67,295
Other Costs Recovered	-£67,766		-£67,766
Rental income <sup>5</sup>	-£35,642		-£35,642
			<b>£885,236</b>

<sup>1</sup> Capital repair costs associated with significant end of lease property improvements to ensure they meet the Decent Homes Standard

<sup>2</sup> Day to day repairs including tenant damage (beyond wear and tear)

<sup>3</sup> Primarily building surveyor costs

<sup>4</sup> Legal settlement with owners, primarily back rent previously withheld

<sup>5</sup> This does not include rental income received by Calico for the 87 properties they manage, as part of the agreement is to cover their tenant management costs

5.4. Properties are to be returned to owners at Decent Homes standard and therefore both renovation/repair costs (£550k capital & £23k revenue) and significant settlement payments to owners (£50k), have been incurred to enable the properties to be returned to owners in an appropriate condition. A number of these properties have been void (empty) for long periods of the duration of their lease. These properties have been void due to either their condition or an inability/lack of proactivity to let them.

5.5. The council has included a revenue budget of £300k and a capital budget of £600k in the Medium Term Financial Strategy (MTFS) for 2021/22 for the project. Where possible, for capital improvement works, the council will continue to capitalise this cost to reduce the impact on the council's revenue budget. The MTFS is reviewed annually and this review takes into account the projected future costs of the project, reviewed each year.

## **6. LEGAL**

6.1. The legal issues including the property leases are explored in the report. The council has a legal agreement with Calico Homes to manage 87 properties in the project.

6.2. The council is managing a live legal claim relating to 51 properties pursuing property costs and this is on-going. If the court finds in favour of the claimant the council carries the financial risk, the scale of which is unknown until settlement of the case.

## **7. THE FORTHCOMING YEAR**

7.1. The council continues to keep the project under close scrutiny. The following key issues have been identified.

### **7.2. Managing the implications of the leases**

Managing the project has been extremely challenging. The structure of the legal agreement in relation to the leases has placed the vast majority of the financial liability on the council. The nature of these leases has been fundamental to the costs incurred by the council for the duration of the project. Due to the nature of the leases it is not possible to significantly reduce the likely cost of future repairs and end of lease costs.

7.3. The profile of the termination of the leases is summarised in the table, overleaf:



7.4. At the end of March 2021 there are £331k owner loans outstanding. These are protected by local land charges on each individual property, being paid off monthly through the rental income and the council should expect to recoup this loan income. There are tenant arrears of £331k. The council will be seeking active recovery of these arrears but to be prudent has set aside a Doubtful Debt Provision of £288k, leaving a potential £43k outstanding.

7.5. Management and control of the project

Officers have aimed to manage the project throughout to the best of their ability. Issues have often emerged when works have not previously been undertaken to properties during the AAW management of the scheme. The scale of these works and the nature of the leases have made managing the project extremely challenging. There has been on-going tight control of the project. Officers continue to actively contract manage Calico and the other letting agent, challenge contractors cost estimates, ensure works are completed to an appropriate standard and properties proactively returned to owners at lease expiry. This has led to a reduction in a number of contractor estimates and a more productive relationship being built with Calico. A new project support officer was recruited in Q1 this year, which will help the project team's capacity. The project reports to the council's Programme Board and quarterly updates are provided to the Cabinet.

7.6. Handling on-going legal disputes with owners

The council aims to minimise legal claims in relation to repairs and other property related costs but the condition of the leases are extremely restrictive for the council. A significant claim relating to 51 properties pursuing property costs has been brought in Spring and is on-going. Claims are being actively managed and challenged but these are likely to have an on-going financial impact on the project and are being factored into the anticipated future cost projections (although estimating actual cost is very difficult).

7.7. Transparency

The project reports to the council's Programme Board, as outlined earlier, so robust monitoring can take place, particularly in relation to the financial progress of the project. Regular updates are provided for the Cabinet and this is the second of an annual update provided for the Audit & Accounts Committee, to enable information to be published in the public domain.

## 8. CONCLUSIONS

- 8.1. Since the start of the project in 2014/15 the number of properties in the scheme has reduced from 357 to 113. This has significantly reduced the council's liability on the project for the remainder of the leases – until December 2024. The net cost of the project to date has been £6.995m. Over 80% of the remaining properties are tenanted, providing a home for local people and those in need of housing.
- 8.2. The nature of the leases has been fundamental to the costs incurred by the council for the duration of the project. The structure of the leases continue to significantly limit the council's ability to reduce costs. The council is actively seeking to mitigate future cost through:
- Active pursuit of rent arrears
  - Removal of properties from the scheme at the earliest opportunity
  - Ensure leases are terminated at end date and properties returned to owners promptly
  - Legal claims are actively managed and challenged
  - Ensure repair costs are value for money
  - Owner loans are repaid
- 8.3. The council has included a revenue budget of £300k and a capital budget of £600k in the Medium Term Financial Strategy (MTFS) for 2021/22 for the project. The MTFS is reviewed annually and this will take into account the projected future costs of the project, reviewed each year. The council is working with the tenants of the 5 properties where leases have expired, with a view to returning the properties to owners and removing them from the scheme.

Background Papers	
Document	Place of Inspection
Management response to the Lancashire County Council Internal Audit report: "Bringing Empty Homes into Use"  (inc the LCC Internal Audit report)  Council, 9 December 2015	<a href="https://www.rossendale.gov.uk/meetings/meeting/874/council">https://www.rossendale.gov.uk/meetings/meeting/874/council</a>
Empty Homes project  Audit & Accounts Committee, 28 July 2020	<a href="https://www.rossendale.gov.uk/meetings/meeting/1208/audit_and_accounts_committee">https://www.rossendale.gov.uk/meetings/meeting/1208/audit_and_accounts_committee</a>