

Subject:	Management response to the Lancashire County Council Internal Audit report: "Bringing Empty Homes into Use"	Status:	For Publication
Report to:	Audit & Accounts	Date:	1 st December 2015
Report of:	Head of Finance	Portfolio Holder:	Resources and Performance
Key Decision:	Forward Plan	General Exception	Special Urgency
Equality Impact Assessment:	Required:	No	Attached: No
Biodiversity Impact Assessment	Required:	No	Attached: No
Contact Officer:	Philip Seddon	Telephone:	01706 252465
Email:	philseddon@rossendalebc.gov.uk		

1.	RECOMMENDATION(S)
1.1	For Members to formally receive the independent report of our Internal Audit Service, provided by Lancashire County Council, to note and comment on the action taken to date and endorse the Council's response set out in sections 5.6 to 5.9, with a quarterly monitoring report to the Council's Audit and Account Committee.

2. PURPOSE OF REPORT

2.1 The purpose of the report is for Members to formally receive Lancashire County Council's (LCC) independent report on "Bringing Empty Homes into Use" (the Empty Homes Project) commissioned by Chief Executive to seek a clear understanding of the failures of the project from February 2012 to January 2015.

3. CORPORATE PRIORITIES

3.1 The matters discussed in this report impact directly on the following corporate priorities:

- **Regenerating Rossendale:** This priority focuses on regeneration in its broadest sense, so it means supporting communities that get on well together, attracting sustainable investment, promoting Rossendale, as well as working as an enabler to promote the physical regeneration of Rossendale.
- **Responsive Value for Money Services:** This priority is about the Council working collaboratively, being a provider, procurer and a commissioner of services that are efficient and that meet the needs of local people.
- **Clean Green Rossendale:** This priority focuses on clean streets and town centres and well managed open spaces, whilst recognising that the Council has to work with communities and as a partner to deliver this ambition.

4. RISK ASSESSMENT IMPLICATIONS

4.1 All the issues raised and the recommendation(s) in this report involve corporate management of the authority and the financial and operational management of such a significant project as set out below:

- The report highlights a corporate failure of risk management and governance in the areas of:
 - Assessing grant funding opportunities
 - Programme design and implementation
 - Rossendale taking the lead role amongst other local authorities

- Commissioning and procurement
- Designing and operating systems necessary to work with a commercial partner
- Corporate oversight of a programme in achieving Council's objectives and responding to external concerns.
- The report comments that *"almost every management control that the council should have operated was overridden"* (para 4.4)
- The Council acknowledges that the potential risks associated with the project were not identified at the outset and made clear to elected members.
- It also recognises that changes to the scheme should have raised awareness of the greater potential for risk.

5. BACKGROUND AND OPTIONS

5.1 The background to the scheme is noted in sections 1 and 2 of the report.

5.2 The Council welcomes the review work undertaken by LCC and its findings. The Council recognises and accepts that there have been some serious failings in its management of control procedures in respect of the procuring, monitoring and control of the Homes and Communities Agency (HCA) Empty Homes Project which will result in financial losses to the organisation. These failings have arisen largely not from a lack of internal controls, but as a result of those controls being ignored or over-ridden by particular officers outlined in the Internal Audit report. Information in relation to the scheme was only reported by the former Chief Executive to PLACE (Pennine Lancashire Chief Executives), and changes in the way it was to operate was not made available to the council's statutory officers to provide a legal and financial understanding of the changes in advance of them taking place; and was not reported to elected members in order for decisions to have been made with the benefit of legal, financial and risk management advice, but instead decisions were made at officer level with little or no supervision, control or formal reporting.

5.3 The report's key points

The key failings and their consequences became clear to Officers following AAW Ltd ceasing to trade in January 2015, these failings have been confirmed in the report of LCC Internal Audit. The key failings and points arising from the report are therefore as follows:

- No assessment was made of the risks and appropriate controls in taking up the funding and operating the programme. The former Chief Executive didn't obtain indemnities from other Pennine Lancashire councils and partners.
- Normal controls, expected procedures and statutory requirements were over-ridden.
- Insufficient involvement was sought of the Council's legal and financial statutory officers.
- There was inadequate understanding of the funding programme and the way it was interpreted by the Council's contractor.
- The contractor's work was poorly directed and inadequately monitored by the Council.
- 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.
- The officer involved acted with good intentions but poor direction and inappropriate objectives that over-rode the council's other broader objectives.
- All the warning signs, external advice and expert guidance were ignored.
- Insufficient attention was given to the detail of financial and legal matters.

5.4 The consequences

The consequences of the above failings are as follows:

Version Number:	1	Page:	2 of 9
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- The appointment of the contractor was not done in accordance with the Council's procurement policy and procedures
- An inadequately skilled contractor was appointed who failed to deliver the Council's (unspecified) requirements, but who instead incurred considerable liabilities on the Council's behalf.
- At the end of January 2015 the Council found itself responsible for c.350 properties, many uninhabitable, despite profound confusion of the legal relationships between homeowners, tenants, contractor and the council.
- monies have been paid for work that has not been done, and in ways that were not agreed and not transparent.
- Tenants have been housed who were not previously resident in the district and who may be detrimental to the area in which they now reside, including Rossendale.

5.5 Recovery of the Empty Homes Programme

The Council has already taken a number of steps to complete the outputs and outcomes of the HCA programme and to ensure that the social aims of bringing empty properties back into use are fulfilled as follows:

- 5.5.1 Sought advice from the HCA and other social housing providers
- 5.5.2 Immediately informed the Police about allegations of fraud and other relevant agencies and partners
- 5.5.3 Completed individual tenant assessments, in order to understand the occupancy of each property.
- 5.5.4 Established procedures for tenant repair enquiries and requests
- 5.5.5 Secured all empty properties.
- 5.5.6 Commissioned a property survey for all properties followed by individual cost schedules in order to bring up to acceptable housing standards.
- 5.5.7 Commenced a procurement programme for individual property refurbishment.
- 5.5.8 Acted on any outstanding property enforcement notices.
- 5.5.9 Acted on those empty properties that required minimal work and has already brought a number of derelict homes back into use.
- 5.5.10 Identified at an early stage those properties where it was advantageous to return to property owners (c. 30).
- 5.5.11 Reviewed all legal arrangements to ensure that they were fit for purpose.
- 5.5.12 Identified resources to establish a new in-house projects team to manage the scheme going forward.

- 5.5.13 Served legal notices to bring tenancies breached to an end as part of good housing management.
- 5.5.14 Obtained Counsel's opinion on the Council's legal position and liability risks.
- 5.5.15 Established a series of all Member briefing sessions.
- 5.5.16 Sought Counsel's opinion to confirm senior officer's view that the actions of Council and officers, albeit wrong on some occasions, were not ultra vires and that in any event does not change the current legal position of the Council.

5.6 Actions taken to date as part of the recovery work.

The report identifies a fundamental breakdown of risk management and governance arrangements by the overriding of the Council's controls and procedures. The Council has therefore since AAW's collapse:

- 5.6.1 Increased awareness amongst staff and public of the Council's Whistleblowing Policy through team meetings and clearer publicity on our website.
- 5.6.2 Ensured the Council's newly introduced officer Programme Board monitors all material Council projects in accordance with the recently agreed Project Plan process.
- 5.6.3 Introduced an annual review to be undertaken by the Monitoring Officer and S151 Officer of all contract and procurement procedures.
- 5.6.4 Undertaken to review live Schemes of Delegations. This will be done annually by the Chief Executive in conjunction with the S151 and Monitoring Officers.
- 5.6.5 Initiated a fundamental review of its risk identification process.
- 5.6.6 Moved the monitoring of the risk monitoring procedures from the Overview & Scrutiny Committee to the Audit & Accounts Committee.
- 5.6.7 Undertaken training for members of risk awareness. All new members will receive this training as part of their induction.
- 5.6.8 Undertaken training to ensure that relevant members of staff are trained on risk awareness annually.
- 5.6.9 Agreed at Management Team that all new projects must follow a set process eg business case, Management Team sign off, Member approval and an end of project appraisal
- 5.6.10 Overview & Scrutiny or other relevant Committees to monitor the actions and performance management of all material Council projects.
- 5.6.11 as part of the recovery project employed a temporary Programme Officer, Senior Executive Officer and Legal Officer to monitor all Council projects, bring in additional management and legal capacity.
- 5.6.12 The Chief Executive and Leader of the Council has met the Local Government Association to scope out a corporate peer review to look at our decision making

processes, governance and oversight arrangements, leadership, organisational capacity, financial, planning, project management. A further update on this peer review will be provided to Members early in the New Year.

5.6.13 Recruited a Housing Team to manage the properties, deal with tenants and owners, and procure contractors to undertake the required repairs.

5.7 The review by LCC is just one of the investigations being undertaken in respect of the failing of the Empty Homes Project. In addition to internal disciplinary investigation into the conduct of officers, there are also a number of external agencies which will review the project and take action as appropriate, including:

5.7.1 Lancashire Police

5.7.2 The Homes and Communities Agency.

5.7.3 The Council's external Auditors (Grant Thornton)

5.8 **Council and Officers' specific response to the report itself:**

Based on the points and actions noted in this report, together with any additional matters noted by Members, a detailed Action Plan will be produced based on this high level response and this action plan will be monitored at future meetings of this Committee.

Para 5.2 – Assessing the opportunities.

The Council accepts in full the finding of the report and will take the following action:

5.8.1 All future material funding opportunities to include a business case assessed on, amongst other things: financial, legal, contribution to corporate priorities and reputation.

5.8.2 All material opportunities to be endorsed by the Council's 3 statutory officers, management team and members before any funding is sought.

Para 5.3/5.5 – Programme design and implementation

The Council accepts in full the finding of the report and will take the following action:

5.8.3 All material projects to be overseen by the Council's recently established officers Programme Board which will include a financial and legal assessment.

5.8.4 Sound project management principles to be adhered to including amongst others:

- Business case (including sensitivity analysis) / Project Initiation Documents / Definition of the outcome objectives / consideration of capacity (both internal and external).
- Project miles stones
- Outputs
- Change control
- Risk register
- Issues log
- Communications plan
- Governance – Programme Board, Project Sponsor, Project Lead, Council Members
- Project review at completion

- To ensure all projects consider the Council's wider corporate priorities, interaction with other service outcomes and the ability to cross promote one another.

Par 5.6 – Taking a lead role

The Council accepts the finding and will take the following action:

- In all future projects, a key element of the legal considerations and assessment in any future partnership working be it with other public, private or the voluntary sector will be the need for "due diligence" of partners' ability to manage project and deliver agreed outcomes and outputs, indemnities and the strength of partner covenants, together with a full risk appraisal process.

Para 5.7/5.8 – Commissioning and procuring external organisations

The Council accepts the finding and will take the following action:

- 5.8.5 We will ensure that any future procurement activity is fit for purpose by fully understanding the business case of the procurement, its risks, rewards and the legal obligations of Rossendale Borough Council.
- 5.8.6 All future contracts will have an explicit ultra vires references in the approval process.
- 5.8.7 The responsibilities and good practices for managing contracts and the supply of goods or services will be enshrined in the next update of the Council's constitution in with full training for officers and Members.

Para 5.9/12 – Designing and operating on-going systems

The Council accepts the finding and will take the following action:

- 5.8.8 The enforcement of sound and fit for purpose project management principles will ensure that no single officer will have sole control of any future material project (eg via a Project Lead and a Project Sponsor)
- 5.8.9 The additional controls necessary for the payment authorisation of goods and services as noted in 5.10 of the report, will be immediately enforced and made more specific and enshrined in the next update of the Council's constitution, scheduled for March 2016 (Governance working Group and Full Council) and officer training which will follow.
- 5.8.10 The Council procurement rules and the Council's trading terms will nullify netting off of costs in order to ensure transparency, unless netting off is to the advantage of the Council.
- 5.8.11 Future legal assessment of all material projects will give consideration to all legal relationships to ensure that they are robust and fit for purpose.
- 5.8.12 The Council's ICT policy will be amended to prohibit the use of Council email addresses to those individuals not employed directly or by way of agency or formal secondment.

Para 5.13/5.18 – Decision Making

The Council accepts the finding and will take the following action:

- 5.8.13 All material new projects will include Governance and authority levels required (ie Office or Member decision)
- 5.8.14 Future projects involving Member authority will also stipulate the frequency of future updates to Members
- 5.8.15 By ensuring robust project management due consideration can be given to any requirement for schemes of delegation to ensure that they are legitimate, fit for purpose and have been given due consideration.
- 5.8.16 Senior management override is a dangerous potential for any organisation. Any organisation needs to rely on the professionalism and competency of its most senior officers. Senior officers must communicate with other senior colleagues in an open and transparent manner. We will ensure that this is the case through the proposed changes to project management and the regular reporting to the Programme Board. Weekly management team meetings now take place with agreed action points.
- 5.8.17 Part of robust project management is the definition of outputs. Outputs include any reporting both internally (Members, etc.) and externally (Government agents, partners, etc). As part of good practice all such reports should be first endorsed by the Programme Board and highlighted as such (by reference to consultations) in the reports themselves in order that any such reports are robust, accurate and meaningful.
- 5.8.18 The Council will review its own constitution to secure that it is consistent with ‘The International Framework: Good Governance in the Public Sector’ in ensuring that it has effective arrangements in order to ensure that it acts in the public interest at all times.

Para 6.1 - Outcomes of the Programme

The current position of the programme is:

	No	HCA Grant £000	Loan write-off £000
Original number of HCA properties	357	2,815	n/a
Properties returned since February 2015	22	205	205
Estimated additional properties to be returned	5	35	41
Number of properties currently occupied	149	n/a	n/a
Number of properties yet to be let	181	n/a	n/a

5.9 Other actions as a result of the report

- 5.9.1 The Council will define what parameters and tests define a material project. This will be enshrined in the next update of the Council's constitution and is therefore planned for March 2016 (Governance working Group and Full Council)
- 5.9.2 The Council will ensure all relevant officers will receive relevant training in, amongst other things: risk management, project management, procurement, contract management, Council constitution, good governance, etc.
- 5.9.2 The Council will revise its risk register to make it much more detailed, establish a risk review panel to consider new projects from a risk perspective and establish a risk assessment process for Cabinet Members.
- 5.9.4 Future grant schemes in relation to property will always result in a local land charge where the law provides for this.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

- 6.1 The financial implications arising have been articulated in the Council's financial monitoring to Members via Cabinet. Most recent reports being October and November 2015.

7. MONITORING OFFICER

- 7.1 Comments included within the report

8. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT

- 8.1 Included within the report

9. CONCLUSION

- 9.1 The Internal Audit Service was amongst other agencies and partners immediately contacted by the current Chief Executive, following AAW ceasing to trade on 30th January 2015. The terms of reference for the report were finalised in May, once the full extent of the organisation's failure were understood. The ground work to understanding the failure was led by the Chief Executive. The internal auditors have been given complete access to all available information, contacts and officers in completing their report and arriving at their conclusion. Officers and the Council welcome the report and accept wholly its findings.
- 9.2 The Council and its officers, as detailed above have acted quickly to action a number of the areas of concern raised in the report and will complete any outstanding actions including constitutional updates by March 2016.
- 9.3 The circumstances surrounding the Empty Homes Scheme clearly do not paint a good picture of the Council nor its officers. The Council and officers believe that the report details the full extent of its failings and that there are no other material matters to put into the public domain in connection with this incident. It is clear that the reputation of the Council has been severely damaged. The Chief Executive, Officers and the Council are confident that the Council will quickly recover from a governance point of view and that it will emerge a stronger organisation, constitutionally, in the immediate future.

Background Papers	
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Document	Place of Inspection
LCC Internal Audit report: "Bringing Empty Homes into Use"	Committee papers