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| Subject: | Management response to the Lancashire County Council Internal Audit report: "Bringing Empty Homes into Use" | Status: | For Publication |
| Report to: | Council | Date: | 9 th 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 |
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| 1. | RECOMMENDATION(S) |
| 1.1 | That Members note the management response detailed in the report, and also note Lancashire County Council's Internal Audit report: "Bringing Empty Homes into Use," which is attached at Appendix 1. |

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 the 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:

- 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

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- 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.
- 8.2 The report went before the Audit and Accounts Committee on 1st December 2015, who agreed the following:
 - That the Audit and Accounts Committee Members 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 Accounts Committee.

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

Rossendale Borough Council

**Issues arising from the operation of the Homes and
Communities Agency's Affordable Homes programme:
'Bringing Empty Homes Into Use'**

Internal Audit Service

November 2015

1. Introduction

- 1.1. This work has been undertaken by Rossendale Borough Council's Internal Audit Service, provided by Lancashire County Council, at the Chief Executive's request. This was initiated by the failure of the council's commercial partner, AAAW Ltd, which ceased to trade at the end of January 2015 and, until then, managed the operation of the Empty Homes Programme on behalf of the council; and the realisation then that the financial and legal implications for the council arising from the way the programme had been designed and implemented would be significant.
- 1.2. We have sought to assist the council to understand the issues by setting out what its objectives might have been in seeking funding from the Homes and Communities Agency (HCA) and in operating this programme, the key risks to these objectives, and the internal controls that might have mitigated these. In appendix A we have created a series of tables addressing the objectives, risks and expected controls, and the action taken in practice by the council, associated with the following activities:
 - Assessing the opportunities provided by a potential source of external grant funding, and the risks arising from the funding conditions and acting as accountable body;
 - Designing and implementing a programme to achieve the council's objectives;
 - Taking a lead role, working with and on behalf of other local authorities;
 - Commissioning, procuring and working with an external organisation to implement the council's objectives;
 - Designing and operating the on-going systems and processes required within the council to operate a programme with a commercial partner; and
 - Decision-making and corporate oversight of a programme and its performance in achieving the council's objectives, and the council's response to external concerns.
- 1.3. In appointing us to undertake this review, the Chief Executive sought confirmation and a clear understanding of the failures that led to the current situation, but aimed to do so positively and in a way that would strengthen the council in its future work with funding partners, with external service providers and with other councils locally. The council has, since early 2015, aimed to understand the issues and has sought to address them transparently.

2. Background

- 2.1. There is a history of attempts to regenerate the housing market in East Lancashire, including the Housing Market Renewal Pathfinder project ('Elevate') that operated until 2011. As that project was closed and funding was withdrawn, the council drew up the Rossendale Vacant Property Strategy 2010-2015. Amongst other things this referred to the possibility of working with a partner registered as a provider of social housing, and set out an intention to consider a private sector leasing scheme.

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- 2.2. In 2012 the council bid for and was allocated funding of £4,837,100 by the Homes and Communities Agency (HCA) under its Affordable Homes Programme 'Bringing Empty Homes Into Use', to bring 474 properties back into use across Pennine Lancashire. Of these, 311 were to be leased and repaired and 163 were to be purchased and repaired by local housing associations. However during the course of 2012 the housing associations' interest in the programme waned. Over the same period one of the directors of AAW Ltd worked closely with the council's officers to cover an officer's sickness absence and, at the same time, developed proposals to operate a 'private sector revolving loan' scheme. In March 2013 the lease and repair element of the programme was reduced by agreement with the HCA to 191 properties, and a revolving loan scheme was separately established under which AAW Ltd, on behalf of the council, would lease and repair 120 properties, recycling the funding to additional properties as loans to homeowners were repaid.
- 2.3. As the programme progressed, the revolving loan scheme was repeatedly expanded to cover shortfalls in the other elements of the programme and ensure that the target number of properties was met. By the time AAW Ltd ceased trading at the end of January 2015 and work under the programme stopped, 89 properties had been purchased and repaired and 11 had been leased and repaired by local housing associations, and 359 had been leased and repaired by, or on behalf of, the council under the private sector revolving loan scheme. The council is therefore now the lessor of 359 properties for up to ten years hence, in its recently-reprieved role as a registered provider of social housing.

3. Key matters arising in brief

- 3.1. A longer narrative summary of the matters arising from our work follows below, but the key points are as follows:
- No assessment was made of the risks and appropriate controls in taking up the funding stream from the HCA and operating the programme within the council and across Pennine Lancashire.
 - Normal management controls, expected procedures and statutory requirements were over-looked or over-ridden almost entirely.
 - Other than the decision to act as accountable body for the funding, no decisions at all relating to this programme were made by elected members and no information was provided to them.
 - Insufficient input was sought from the council's legal and financial statutory officers who were therefore only tangentially involved in and aware of the programme, and insufficient attention was given to detailed financial and legal matters.
 - There was inadequate understanding of the funding programme and the way it was operated by the council's contractor.
 - The way the programme was implemented and its targets were achieved changed significantly over time.

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- The contractor was poorly commissioned and inadequately procured by the council. 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.
- The contractor's work was not directed effectively and was inadequately monitored by the council, and payments have been made in ways that were not agreed and not transparent, for work that does not appear to have been done, or completed to adequate standards.
- All the warning signs regarding the design of the funding stream and its operation in practice, including a number of external experts' advice and guidance, were ignored.
- There was inadequate supervision of a single council officer who was effectively made responsible for the management of the entire programme and given the scope to act in whatever way they felt was appropriate.
- The officer involved appears to have acted with good intentions, but with poor direction and inappropriate objectives that over-rode the council's other broader objectives.

4. Overall summary and conclusions

- 4.1. This report has inevitably been written with the benefit of hindsight but, of all the potential risks we have recognised to the council's objectives, the only ones that have not crystallised in some form have been the risks that a funding opportunity is not identified, that the funder is not explicit about its requirements, and that the council fails to claim the funds. It is clear that the key officer involved in driving this programme within the council was focused to the exclusion of any other consideration on accessing the available funding, ensuring that the HCA's targets were met and that funding was claimed to the fullest possible extent. That the programme may not have been working as anticipated or to the benefit of the council and its locality were not apparently considered. The council's internal financial and legal procedures were overlooked or overridden. The work of the external contractor was taken wholly on trust. Warning signs, including external whistleblowing, the opinions of senior officers of the local housing associations, and advice from the officers of other local authorities were ignored. Handing back some part of the funding unused appears to have been unthinkable.
- 4.2. The result has been the achievement almost completely of the HCA's target of spending its grant on 474 properties across Pennine Lancashire – 459 properties were included in the programme by January 2015 – but at a significant immediate and on-going cost to Rossendale Borough Council, and incurring liabilities that will continue for many years.
- 4.3. The operation of such a financially and operationally significant programme almost entirely by a single officer with the support, outside normal line management arrangements, only of the former Chief Executive has been fundamental to this result: almost every management control that the council

should have operated was overridden. Although the former Chief Executive apparently took a close interest in the programme, there was effectively minimal oversight and supervision by any other member of the senior management team. Neither of the council's other statutory officers or any other member of the management team, including the officer's line manager, was given the opportunity to be effectively involved in the programme until it was fully operational and its financial difficulties were becoming clear in 2014.

- 4.4. In this context, having identified a potentially valuable funding stream to support the need for local regeneration and the council's objectives for the area, the council then signally failed to identify or control the risks associated with designing and operating the related work programme, incurring costs on its partners' behalf, outsourcing its responsibilities to an external contractor, and working within the law and within its own financial and constitutional procedures.

5. Conclusions in respect of each area of risk

- 5.1. We have considered each of the areas of risk set out in paragraph 1.2 above and set out our conclusions in respect of each below.

Assessing the opportunities provided by a potential source of external grant funding, and the risks arising from the funding conditions and acting as accountable body

- 5.2. The Management Team's involvement was not sought in assessing the implications of the HCA's funding programme, its impact on the council's objectives, its financial implications or the council's own capacity to operate it. The former Chief Executive seems to have taken a close interest in the programme, working on it with the Health and Housing Manager, but the Head of Finance & Property Services (the statutory chief finance officer) was only peripherally involved, providing a short assessment of the implications for the council of acting as accountable body; the involvement of the Director of Business (the statutory monitoring officer) was not sought at all. There is little evidence that the Head of Health, Housing and Regeneration engaged with or understood the programme, although he took responsibility for the report to Cabinet seeking its approval for the council's role as accountable body for the funding. No cost-benefit analysis was undertaken of the funding opportunity and any normal procedures were overridden that would have ensured that individuals with the right expertise, as well as statutory responsibilities, assessed the proposal to access the HCA's funding.

Designing and implementing a programme to achieve the council's objectives

- 5.3. It is therefore unsurprising that fundamental issues that should have been considered by the council were missed, including any assessment of how the programme would be implemented in practice, what would be the council's relationships with homeowners, tenants, the contractor and its building sub-contractors, and how the council's legal and financial position would be protected.
- 5.4. No plan was ever developed setting out how the programme was to be operated and action appears instead to have evolved largely in response to

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the events and opportunities that presented themselves. These included the arrival in early 2012 of a director of AAWW Ltd as interim cover for staff sickness and, recognising that the council lacked internal capacity and would need external support, AAWW Ltd became the council's contractor. No assessment seems to have been made of local demand for the renovated properties or the viability of managing them, and the reasons for the local housing associations' reluctance to take on a significant number of them were not considered. It was implicit that some expertise in social housing would be necessary, but the need for any expertise in managing significant amounts of building work and a number of sub-contractors does not appear to have been identified by either the council or its contractor. References to running the programme initially as a pilot were no more than symbolic, as the programme was operated from the outset to achieve the HCA's targets in full, in whatever way was possible.

- 5.5. No detailed thought seems to have been given to the obvious and related objective of housing the district's homeless. AAWW Ltd had a variety of contacts across a number of organisations related to social housing, but appears to have given no priority to referrals from the council's own Housing Options Team. As a result, of 97 referrals made by that team only 8 were housed in properties managed by AAWW Ltd and, instead, we understand that difficult individuals with complex needs were brought into Pennine Lancashire from other areas.

Taking a lead role, working with and on behalf of other local authorities

- 5.6. Relationships between the five Pennine Lancashire districts are strong and the leaders and chief executives as well as working groups of less senior officers meet regularly. However it is still unclear whether Rossendale Borough Council can properly bind the other local authorities of Pennine Lancashire to the financial implications of the actions it has taken on their behalf. No indemnities were sought or received by the then Chief Executive for its work reinstating empty homes in any other district, but counsel's advice is being sought regarding the other districts' liability for a share of the costs incurred and negotiations are ongoing.

Commissioning, procuring and working with an external organisation to implement the council's objectives

- 5.7. Whilst it was clear that the council was not resourced to run this programme internally, no consideration appears to have been given to the options available, or even explicitly to what service was required. Whilst it was clear that some expertise in social lettings would be necessary since these properties were to be let at affordable rents, the need for the service provided by AAWW Ltd generally, and specifically the commitment to guarantee a rental income to homeowners, was not made clear and has not been demonstrated. Nor has this commitment by the company, or any other aspect of its service, been adequately articulated and documented. This rental guarantee is now a considerable liability to the council and, since the company had no effective expertise in property renovation and management, the council is also liable for the considerable costs of completing the renovation works purportedly undertaken by the company to ensure that all of

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the properties are habitable. Whatever specialism the company offered, it does not appear to have been to the council's advantage.

- 5.8. The council has awarded a contract through which the supplier has been paid £3.3 million without undertaking any procurement process, but instead by the decision of a single officer under the council's Officer Delegation Scheme. Other officers and the Portfolio Holder for Housing & Health were consulted, as required, but only once the decision had been taken. The contract setting out the service is inadequate, being unclear in every respect regarding the service to be provided and its cost. To the extent that it includes any specifications – the amount to be paid per property, the way payment will be made, and a review after 12 months – these have been disregarded. It establishes no service standards of any kind, and sets out no facility for monitoring the contractor's performance.

Designing and operating the on-going systems and processes required within the council to operate a programme with a commercial partner

- 5.9. Because only one officer was effectively involved in designing and operating this programme on behalf of the council, and they were exclusively focussed on processing sufficient homes through the programme to meet the HCA's target, no attention was given to the need to monitor any other aspect of the programme or the contractor's work.
- 5.10. No action was taken to gain any assurance that the renovation work being invoiced by AAW Ltd was actually being done, had been completed, and met even basic environmental health standards. It is clear that in a number of cases the work was not properly done and at this point some properties remain uninhabitable. Payments were made to the company on the basis of nothing more than the invoices it submitted, and these were authorised for payment by a single officer acting, in most instances, within their delegated authority. The items for which payments were made were not apparently examined, although some were clearly questionable. Further, the financial relationships between the contractor, the council and homeowners were obscured by the way the contractor chose to operate the arrangements, requiring the council to invoice the company for its rental income net of the company's management charges.
- 5.11. The relationship of the company to homeowners and tenants has been legally confused and inconsistent over time. The contract with AAW Ltd sets out that it will lease the properties but, as it was not a registered provider of social housing, this was not allowed by the agreement with the HCA. The first 47 leases with homeowners were therefore made in the company's name, but later ones were made in the council's name and on its behalf by AAW Ltd. None included a reference to the interest the council had in the property until the loan to the homeowner for renovation work had been repaid. Since, except in the early cases, AAW Ltd had no legal interest in the properties, it was unable to let them to tenants and tenancy agreements could only legitimately be made in the council's name. However with the exception of 86 tenancies on which the company charged additional tenancy service charges, all tenancy agreements were made in AAW Ltd's name.

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5.12. The company's position relative to the council has also been subject to some confusion as a company employee was given a council email address and located in the council's offices. It is likely that a misleading impression was given to homeowners and tenants, and this is supported by the finding that at least 17 leases were made in the council's name but not included on the HCA's programme, possibly as otherwise private arrangements between AAW Ltd and the homeowners.

Decision-making and corporate oversight of a programme and its performance in achieving the council's objectives, and the council's response to external concerns

5.13. The council's constitution has effectively been disregarded. Decisions that should have been taken by elected members, supported by the advice of professional and suitably qualified statutory officers, have instead been taken by a single officer. Other than the Cabinet's decision that the council would act as accountable body for the funding (made after the funding bid had been submitted), no decision has been taken by any elected member on the operation of the programme.

5.14. Given the financial significance of the funding programme and the arguably novel and contentious manner in which the programme was operated across Pennine Lancashire and not just the whole of Rossendale, a decision to operate the programme should clearly have been taken, and should have been treated as a 'key' decision. Key developments in the programme should also have been taken to members for their information if not their decision, and information should have routinely been provided to enable members to monitor the programme's progress.

5.15. Potential opportunities were missed to rehabilitate the programme within constitutional procedures at a number of points, although its importance to the council was not then clear to the officers involved. Questions could have been asked for example when the decision not to market test the service but to contract directly with AAW Ltd was effectively endorsed by each of the statutory officers and the line manager of the officer managing the scheme. There was an opportunity to question the contract with AAW Ltd at the point it was signed, although it was then ostensibly just a pilot and, later, at least two payments were processed that breached (albeit one by only a marginal amount) the authorising officer's delegated authority.

5.16. Senior officers of the local housing associations raised concerns throughout that the programme was not financially or operationally viable. In particular, in response to their criticism of his organisation, the former Group Director of Property of a local housing association met the council's former Chief Executive and the officer managing the programme in June 2013. He addressed the issues they raised about his organisation's performance and explained his concerns about the programme to them, but in September 2013 a colleague was still reporting open criticism of the housing association by the council's officer. The housing associations' underlying concerns had apparently been disregarded by the former Chief Executive and her officer.

5.17. Reference was made at various points – in the decision taken by Cabinet, in the outline provided by AAW Ltd to the council and by the council to the

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HCA of the revolving loan scheme, and in reports to the Pennine Lancashire authorities – to the risks associated with the programme, but the risk to the council was repeatedly assessed as nil. Even whilst the programme was operating this assessment could have been different had sufficient thought been given to it, in a full understanding of the arrangements.

5.18. The council has already recognised the need to better identify and manage the risks to its objectives. In light of the findings set out in this report and the considerable work the council has already done to deal with these issues, it is likely that the council will find it helpful to refer to the guidance published in July 2014 by the International Federation of Accountants and The Chartered Institute of Public Finance and Accountancy, 'The International Framework: Good Governance in the Public Sector'. This states that "Governance comprises the arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved. The fundamental function of good governance in the public sector is to ensure that entities achieve their intended outcomes while acting in the public interest at all times." The introduction to this document is set out in appendix B to this report.

6. Outputs of the programme

6.1. The HCA's funding supported the renovation of unoccupied properties, but gave no consideration to the demand side of the housing market. The HCA set no requirement or performance measure regarding the actual letting of the properties, other than that they be let at affordable rents. We understand that in September 2015 just 152 of the 359 properties ostensibly renovated by AAW Ltd were occupied. Of these renovated properties, the council estimated that 90% still require further work to bring them up to an appropriate standard, although work was still going on to fully survey all the properties.

7. Time-line of key events

7.1. The key events in the operation of the programme are set out below.

| Date | Event |
|-----------------|--|
| April 2011 | The HCA publishes the availability of funding under its Affordable Homes Programme 'Bringing Empty Homes Into Use'. |
| April 2011 | AAAW Ltd is incorporated. |
| 3 May 2011 | The council submits an expression of interest in the funding to the HCA. |
| November 2011 | The HCA opens the bidding process for funding. |
| 9 January 2012 | The Pennine Lancashire leaders and chief executives endorse the council as accountable body and that it submits a bid for funding on their behalf. |
| 23 January 2012 | The council submits a bid for funding to the HCA on behalf of Pennine Lancashire. |

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| Date | Event |
|----------------------|--|
| 15 February 2012 | Cabinet approves that the council will act as accountable body for the funding. |
| 2 March 2012 | The HCA agrees funding subject to contract. |
| May/ June 2012 | AAAW Ltd's director is engaged to cover sickness absence for a member of the council's staff. |
| 15 October 2012 | A presentation on the scheme is made to the council's Policy Overview and Scrutiny Committee. |
| 14 November 2012 | The funding agreement with the HCA is signed. |
| 14 November 2012 | The decision is made under the council's scheme of delegation to appoint AAW Ltd. |
| November 2012 | Payment is made to AAW Ltd for the first three properties completed and a fourth start-on-site. |
| 3 & 19 December 2012 | The contract between the council and AAW Ltd is signed, but dated 14 November 2012. |
| 11 February 2013 | The director of AAW Ltd sends an email to the council explaining how the revolving loan scheme works, and this is forwarded to the HCA. |
| 18 March 2013 | An additional funding agreement with the HCA is signed, recognising the revolving loan scheme. |
| 24 June 2013 | The former Chief Executive and another officer meet the then Group Director of Property of a local group of housing associations, who explains his concerns. |
| 8 August 2013 | A council officer presents an update to the Pennine Lancashire chief executives group. |
| November 2013 | An employee of AAW Ltd is located in the council's offices and using a council email address when contacting homeowners and potential tenants. |
| February/ March 2014 | A finance officer begins to model the potential financial outturn of the programme as it was then understood. |
| June 2014 | The finance officer raises concerns that, having paid invoices on completion of properties, rental income is now due from AAW Ltd. The company's cashflow and balance of payments with the council are questioned. |
| 22 July 2014 | The HCA awards £1.85 million of funding to the council for a further Empty Homes Project. |
| 9 September 2014 | Management Team receives a paper informing it that the additional funding has been awarded and referring to the current programme as a pilot. |

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| Date | Event |
|------------------|--|
| October 2014 | The finance officer again raises concerns regarding AAW Ltd's cashflow; questions are asked internally about the financial operation of the scheme. Wider concerns are raised across Pennine Lancashire and within the council regarding the quality of the renovation work being undertaken by AAW Ltd. |
| 11 January 2015 | An external whistleblower contacts the council's former Chief Executive and on 28 January meets the then Interim Chief Executive and other officers. |
| 30 January 2015 | AAW Ltd ceases trading. |
| 30 January 2015 | The former Chief Executive leaves the council and the former Director of Business is appointed as Interim Chief Executive. |
| 2 February 2015 | The Interim Chief Executive informs all elected members that AAW Ltd would cease trading and was likely to go into administration. |
| 11 February 2015 | A creditors' meeting appoints an administrator for AAW Ltd. |
| 9 March 2015 | AAW Ltd resolves to wind itself up and appoint a liquidator. |
| 18 March 2015 | The Interim Chief Executive is appointed as Chief Executive. |
| 24 June 2015 | The new Chief Executive briefs all elected members on matters relating to the Empty Homes programme and AAW Ltd. |

8. Scope of our work

- 8.1. As set out in our engagement letter of 15 May 2015 our work has been to establish, with the benefit of hindsight, what the key risks associated with the Empty Homes Programme were and what key controls should have been in place, or were in place but were breached. Our focus has therefore been on the risks to, and controls operated, within the council.
- 8.2. We have not pursued the lines of enquiry that would be opened up by considering the ways in which it appears likely that funds have been misused by the company and its sub-contractors, whether intentionally or not. Nor have we investigated the detailed operation of the programme within the council. So, for example, we have been informed that some of the leases with homeowners have been signed on behalf of the council by individuals not authorised to do so, or using a photocopied signature, but we have not made any further enquiries about this.
- 8.3. We have not discussed this work with the council's former Chief Executive or any current director of AAW Ltd and have not therefore confirmed our understanding of their actions with them.

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- 8.4. This report has been prepared solely for the use of Rossendale Borough Council and we do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as it was not prepared for, nor intended for, any other purpose.

A: Assessing the opportunities provided by a potential source of external grant funding, and the risks arising from the funding conditions and acting as accountable body.

Objectives

- Maximise funding for the benefit of the council and its citizens in accordance with the council's priorities as identified and agreed by its elected representatives on the council.
- Deploy the available funding effectively.
- Pursue the council's objectives within the area(s) subject to additional funding without destabilising or jeopardising other higher priorities.
- Deliver the outputs and outcomes that are being funded in accordance with the council's obligations.

| Risks | Expected controls | Actual controls and action taken by the council |
|--|---|--|
| <p>A:1 Funding opportunities are available but not identified, or the council does not respond, because officers lack the time or expertise to identify opportunities or to consider how they may effectively support the council's objectives.</p> | <p>A:1:1 Senior members of staff with the time, knowledge and interest regularly assess developments in their professional areas and consider how the council may respond effectively.</p> | <p>The funding opportunity was identified at an early stage; the former Chief Executive and the Health and Housing Manager were aware of the HCA's proposed funding stream very quickly after it was announced in April 2011. As a scheme to support the development and re-use of housing in the borough, the council was justifiably interested in responding to it. However it would not have been eligible had it not already achieved investment partner status as a registered provider of social housing. On this basis it may be questionable whether this funding programme was appropriate for a local authority with no housing stock (other than one property in multiple occupation). However it built on the thinking that had already gone into addressing vacant property across Pennine Lancashire.</p> <p>We have not made any enquiries to understand why this funding opportunity from the HCA was taken up but not the Clusters funding from the DCLG that was accessed by each of the other four Pennine Lancashire districts.</p> |
| <p>A:2 The implications of the potential funding stream on the council's other priorities are not identified because sufficient time and resources at the right level are not available. The council's resources are therefore redirected into work it would not otherwise have prioritised and other objectives are destabilised.</p> | <p>A:2:1 The right individuals are involved at the outset and at key decision points to analyse the nature of the programme, and its potential impact on the council's agreed objectives.</p> | <p>We understand that the former Chief Executive took a close interest in the programme and strongly supported it. However we have been told that she often worked directly with the Health and Housing Manager and bypassed the Head of Health, Housing and Regeneration. Nor does she appear to have involved or informed the Management Team.</p> <p>As a member of the Management Team and line manager of the Health and Housing Manager, the Head of Health, Housing and Regeneration ought to have been closely involved: he should have acted as a check on the action being taken as well as providing guidance as funding was sought and the programme was developed and designed, but he did not. The Health and Housing Manager therefore developed the council's approach to this funding without any effective input from the Head of Health, Housing and Regeneration. Whatever the former Chief Executive's involvement, nor did she did act effectively to check the action being taken. No other senior managers were involved and the funding opportunity was not discussed by Management Team or brought to their attention so that its impact and the associated work could be properly considered.</p> <p>The Head of Finance & Property Services was only peripherally involved, providing a short assessment of the financial responsibilities associated with becoming an accountable body that was included in the report to Cabinet on 15 February 2012. The Director of Business, as a member of the senior management team, should also have been involved at an early stage to consider the potential implications for the council and its priorities, as well as its legal position, but he was not.</p> <p>The manager of the Housing Benefits Team and the Housing Options Team (working to the Health and Housing Manager) ought arguably also to have been consulted and involved at an early stage, because it was foreseeable that the programme would have a significant impact on the work of their teams and on their objectives. They were not.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
|---|--|--|
| | <p>A:2:2 A critical analysis is prepared of the potential programme against the council's key objectives by the council's senior officers, on the basis of a full understanding of its implications and the council's capacity to deliver its intended outputs and outcomes.</p> | <p>The programme appears to be very closely aligned with the Rossendale Vacant Property Strategy 2010-2015 whose action plan even included consideration of a private sector leasing scheme with a registered provider partner either within Rossendale or across Pennine Lancashire. However the programme funded by the HCA was directed solely at renovating properties to a standard to enable them to be let subsequently at affordable rents: the HCA set no requirement or performance measure regarding the actual letting of the properties, other than that they be let at affordable rents.</p> <p>Clearly though, the need to find tenants for the properties was central to the programme's objectives for the council, and to the viability of a programme eventually based on loans to homeowners. In light of the obvious need to find tenants for these properties and the HCA's stipulation that they would serve as affordable housing, there was a need to consider likely tenants' socio-economic profile. The need to seek external support to manage tenancies, as well as to manage the reinstatement of the properties was therefore clear, although this assessment and the decision to seek that support were not explicit.</p> <p>That these tenants could include individuals with complex needs, possibly affecting the profile of the local community, was anticipated in seeking external support but no adequate connections with the council's Housing Options Team and Housing Benefit Team were made either by the Regeneration Team or by the council's contractor. The council's Vacant Properties Task Group established in 2008 and referred to in the Rossendale Vacant Property Strategy 2010-2015 appears not to have operated by 2011.</p> |
| | <p>A:2:3 Sufficient time is allocated to consider the operational and financial risks, and officers make considered rather than rushed assessments.</p> | <p>If the programme had not been built on earlier work to address vacant homes in the district the council would arguably have had too little time within the timescales set by the HCA to develop a considered bid, supported by any really substantial planning. The HCA called for expressions of interest in late April 2011 but the bidding process, including guidance, opened only in late November 2011 and the bid was submitted in late January 2012.</p> <p>However in early May 2011 both the Head of Health, Housing and Regeneration and the Health and Housing Manager described the key elements, albeit very broadly, of a programme very similar to that which was eventually operated and which had already been considered in the context of an earlier programme relating to vacant properties.</p> |
| <p>A:3 The financial risks and potential liabilities associated with the funding are not assessed because sufficient time and resources at the right level are not available or involved at a sufficiently early stage.</p> | <p>A:3:1 The right individuals are involved at the outset, including senior finance officers, to assess the likely overall financial impact on the council: its costs and benefits, opportunities and risks.</p> | <p>The Health and Housing Manager was the only individual closely involved at the outset and no cost-benefit analysis or any other assessment of the business case was done to consider the potential impact on the council. On the contrary, it appears anecdotally that there were indications from an early stage that there would be difficulties with the financial model adopted.</p> |
| <p>A:4 The funder is insufficiently explicit about its requirements, resulting in differing expectations of what will be provided and the requirements that must be met.</p> | <p>A:4:1 There is a clear assessment of the funding scheme within the council, and explicit, formal, agreement between the council and funder before significant financial liabilities are incurred.</p> | <p>The council was formally offered £4,840,860 by the HCA in March 2012, subject to contract, to bring 474 properties back into use and no significant financial liabilities were incurred before this point. Funding of £4,837,100 for 474 homes was subsequently incorporated in the HCA's funding agreement dated 14 November 2012 (to purchase and repair 163 properties; lease and repair 311), and the further agreement of 18 March 2013 which reduced lease and repair to 191 properties and separately established a revolving loan scheme for 120 properties.</p> <p>AAAW Ltd had incurred over £32,000 of costs in completing three properties and starting a fourth before the end of November 2012 but we understand that this was at the company's own risk as it was not then a contractor to the council. These costs were reimbursed in November 2012 and the properties were taken onto the programme.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
|---|--|---|
| | A:4:2 The objectives of the programme are clearly set out and included in the council's planning. | The primary objective relating to bringing empty homes into use was addressed, but the secondary objective of employing additional apprentices that was included in the council's expression of interest and funding bid was overlooked almost entirely as the agreement with the HCA was negotiated and was not met. |
| A:5 The funder's priorities, deadlines and/ or delays drive the council to act precipitately, without due process or consideration. | A:5:1 The council's officers are sufficiently aware of the council's procedures and the need to act in a considered manner that they are not unduly pressured by any external organisation. | It is clear that not all of the council's officers are sufficiently aware of the council's procedures or the need to comply with them. The former Chief Executive specifically advised the Health and Housing Manager that a report to Cabinet would be required before the council became an accountable body, but there is little evidence that procedures have otherwise been followed. |
| | A:5:2 Officers are realistic about what can be properly achieved in the available time and are prepared to renegotiate what can be delivered, even at the expense of reduced funding, if necessary. | The original funding agreement was not finally agreed until November 2012 although it had been agreed subject to contract in March 2012. Officers have stated that they felt unable to begin work on the programme until the funding agreement was received, but nevertheless felt pressurised by the HCA to achieve the programme's targets. There was a clear drive to ensure that the programme's targets were met and this persisted throughout the operation of the programme, but officers have not been afraid to renegotiate with the HCA. Amendments were made to the funding agreement, the grant rate payable and the planned outputs after further negotiations in 2012 and 2013, and indeed a new funding agreement was made between the council and HCA to reflect the withdrawal of the housing associations as consortium members and the inclusion of the revolving loans scheme in March 2013. However very little consideration ever appears to have been given to the possibility that funding could be returned unused. |
| | A:5:3 Senior officers are committed to supporting both good governance and the council's more junior officers, and accept that proper process must be followed, even in the face of external pressure. | It is not clear that the HCA exerted undue pressure on any officer, but nonetheless proper processes have not been followed to ensure that the council fully considered its options and the implications of this funding programme. The Health and Housing Manager's focus appears consistently to have been to drive progress and meet whatever targets and deadlines have been set, largely by the HCA. However neither the former Chief Executive nor the Head of Health, Housing and Regeneration appear to have provided any effective support or guidance to her and no effective restraint to ensure that she acted within the council's constitution and procedures, or in alignment with the council's other objectives, taking into account her colleagues' legitimate concerns. The former Chief Executive acted early in January 2012 to ensure that proper process was followed in obtaining Cabinet approval for the council's role as accountable body, but she does not appear otherwise to have intervened to ensure effective governance over this programme. |
| A:6 The council fails to claim the funds that are due in full because it lacks understanding of the funds available, or because it is unable to demonstrate its compliance with funding requirements. | A:6:1 Officers assess and understand the funder's requirements, in particular its grant funding claim process, and establish effective arrangements to meet them. | The Health and Housing Manager in particular worked closely with the HCA and understood its requirements in claiming its funds. In due course the Management Accountant also operated the HCA's information management system, and they ensured that the grant funding was claimed as it was due. |
| A:7 The costs incurred on the programme are not covered by the funding because that the council operates beyond the limits of its own geographical area, and this is not agreed by the funding body. | A:7:1 In negotiating the funding with the external funder, the council's senior officers make it clear which organisations and which geographical area they represent. | The council's expression of interest advised the HCA of the other local authorities that would be involved, as well as the local housing associations. The funding agreement of November 2012 included the local housing associations as consortium members, and during the process to finalise the additional funding agreement of March 2013 the HCA raised explicitly with the council its need to be able to manage properties beyond its own district boundaries. |
| | A:7:2 The funding agreement clearly acknowledges the scope of the work being funded. | |

B: Designing and implementing a programme to achieve the council's objectives.

Objectives

- Align any proposed new programme with the council's current objectives and programmes so that these are not jeopardised and to achieve overall economy, efficiency and effectiveness in the use of the council's resources.
- Design a programme that uses the council's own resources and accesses specialist expertise if necessary most economically and effectively, balancing all the costs and benefits.

| Risks | Expected controls | Actual controls and action taken by the council |
|--|--|---|
| <p>B:1 The council cannot initially adequately identify the scale of the programme or how to operate it either because officers have insufficient information or lack experience in the relevant area.</p> | <p>B:1:1 Senior officers are informed of the potential to develop the programme and oversee the work undertaken by the council's officers as they design the initial programme.</p> | <p>Senior officers were not informed about the development of the programme and were not closely involved in it. The Management Team's Programme Board did not meet regularly, if at all, during the early development and operation of the programme and, although the Management Team met regularly, the development of this programme was not brought to it by either the former Chief Executive or the Head of Health, Housing and Regeneration. There was therefore no formal opportunity for individual members of the Management Team to consider the potential programme either as senior managers of the council as a whole or in relation to their own specialist areas of expertise. The council's agreed procedure would have been to create a project mandate and then a project initiation document, and then to seek approval; this was not followed.</p> |
| | <p>B:1:2 The experience and resources already available to the council are taken into account and appropriately deployed.</p> | <p>There is no evidence that the experience and resources required to operate the programme were ever formally considered, although the decision was clearly made that the council did not have the operational capacity and skills to implement the programme itself and required external support.</p> |
| | <p>B:1:3 Senior officers consider the proposed programme, and assess whether it should be designed initially as a pilot and operated on a small scale with the potential for expansion as its viability is demonstrated, or as a full programme immediately.</p> | <p>Since no formal consideration was given by the council's senior officers to the development of the programme, its development on a small scale before it became a significant project was likewise not considered. Although there are some written references to the programme being operated as a pilot, this was not the way the programme was operated in practice. Even in September 2014 when the programme had already completed 290 properties and spent £2.4 million, it was referred to as a pilot in the paper taken to the Management Team about a second three-year tranche of £1.85 million of funding.</p> |
| | <p>B:1:4 The targets for outputs and outcomes negotiated with the funding body and accepted by officers are assessed as realistic, reflecting officers' best estimates of what is achievable over time.</p> | <p>Following work to develop the Rossendale Vacant Property Strategy 2010-2015, as well as the earlier Housing Market Renewal scheme, the council already had a prioritised assessment of the empty properties across the district supported by detailed data. It was less able to assess the local housing market and particularly the housing associations' interest in the proposed programme, although there were early indications that the local associations did not find the programme attractive. To the extent that the original targets outputs were agreed on an assessment of the numbers of empty properties in Pennine Lancashire they reflected officers' best estimates, but they cannot have taken into account any assessment of the rental market for the properties (even at affordable rents), or the viability of managing them – no assessment seems to have been made of local demand for renovated properties. The housing associations' reluctance to either purchase or lease the properties reflects their assessment of the properties' letting potential and the costs involved in managing them, and was evident from the outset.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
|---|--|--|
| | <p>B:1:5 A clear plan is developed, and endorsed by suitably senior officers, to operate the programme at an appropriate scale and with adequate flexibility to develop it further.</p> | <p>No clear plan was ever developed – documented or otherwise – to operate the programme either in the way originally envisaged, with or without a pilot scheme or in the way it had developed by late 2014. The Head of Housing, Health and Regeneration appears to have had little understanding or awareness of the Health and Housing Manager's intentions or activity, and she developed the programme largely in response to the events and opportunities that presented themselves.</p> |
| | <p>B:1:6 The potential to expand the programme if appropriate, and particularly if it is initiated as a pilot scheme, is acknowledged and planned from its inception; staffing and financial resource plans, commissioning and any legal contracts entered into are designed to facilitate expansion once the viability and operation of the programme are clearly understood.</p> | <p>As already noted, there is no evidence that the programme was developed in any methodical way. The only officers closely involved in the development of the programme appear to be the Health and Housing Manager and possibly the former Chief Executive, who recognised from an early stage that additional external resources would be required. The contract with AAW Ltd did not set a performance level or expected range for the number of homes to be reinstated and tenanted and did not therefore reflect the scale of work that might have been anticipated either under a pilot scheme or the full programme. The contract made provision for a review after 12 months, but no such review took place. Instead, the way the programme was operated to achieve the funder's target for empty homes reinstated was altered in an ad hoc manner over time.</p> |
| | <p>B:1:7 If the programme is operated initially as a pilot, its operation is assessed at the end of the pilot period, and appropriately senior officers approve either its escalation into a full scale programme or its closure.</p> | <p>A paper taken to Management Team on 9 September 2014 incorporated no reflection of the experience of the previous three years and no assessment of the success of the first tranche of funding. Instead, after an additional £1.85 million of funding from the HCA had been secured for the three years to 2018, the paper proposed to extend the arrangement with AAW Ltd for a year whilst re-tendering or possibly an OJEU procedure was completed. It also requested that a dedicated officer be appointed, proposed to recover the scheme's management costs, and asked Management Team to consider how the income should be used: there were no financial or legal risks associated with these decisions.</p> |
| | <p>B:1:8 The projected financial outturn of the programme to its anticipated end date is regularly assessed by the council's senior managers, who make the explicit decision periodically either to continue or cease.</p> | <p>There was no clear understanding of the programme's finances whilst it was operating, and no projections were made of the financial impact on the council because it was believed by the officers involved that there was no cost to the council. No finance officers were involved in the initial assessment of this although early in 2014 the Management Accountant began to model the likely eventual outturn once remedial works were complete and generating a stream of rental income.</p> |
| <p>B:2 The full implications of a proposed course of action are not fully identified and understood before action is taken and the council's position is not fully protected.</p> | <p>B:2:1 Appropriately senior and experienced officers are alerted by staff, or are informed when routinely supervising staff, and provide advice when novel solutions are proposed. Officers are sufficiently aware of the council's normal business that they are able to identify when solutions are novel or contentious.</p> | <p>The implications of the earlier decision to register the council as a provider of social housing, and then to capitalise on this status by embarking on this programme were not identified. That registration, and then status as an investment partner to the HCA, were required to operate this programme should have suggested that the council was becoming involved in work beyond its normal scope and that this could have significant consequences. No concerns appear to have been successfully raised with the Management Team, and its advice was not sought. The Housing Benefit and Housing Options teams were not consulted on the implications of the programme for their normal work, nor on the potential benefits that the programme could offer in achieving the objectives they had already been set. The Finance team was not asked either to provide advice to the programme or to establish any procedures to operate the programme's finances within the council.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
|-------|--|---|
| | <p>B:2:2 Appropriately senior and experienced officers are alerted by staff, or are informed when routinely supervising staff, and provide advice when action should be identified as necessary to protect the council's position.</p> | <p>The risks to the council were not adequately identified at any stage. The council's financial position has clearly been badly impacted by the failure of AAWW Ltd, but other aspects of the programme have also placed the council at risk and have placed it under additional burdens during its normal operation. These were not identified either through effective supervision of the Health and Housing Manager, or oversight by her of the contractor.</p> |
| | <p>B:2:3 Senior officers consider the proposed action and make a conscious decision to pursue it, and the decision is formally made by members having taken officers' advice into consideration.</p> | <p>The programme developed in an ad hoc manner and, as problems were encountered that endangered the achievement of the targets agreed with the HCA, decisions were taken to amend it in whatever way necessary and were made solely by the Health and Housing Manager in conjunction with the director of the council's contractor. The detailed operation of the programme was substantially left with the contractor's director and staff.</p> |
| | <p>B:2:4 Where appropriate – in particular where third parties are involved – the council's position is clear, consistent and is protected by legally enforceable agreements.</p> | <p>HCA: The council correctly entered into a carefully worded agreement with the HCA that was later supplemented by an additional agreement specifically covering the revolving loan arrangement.</p> <p>AAWW Ltd: Clearly, in obtaining the services of an external contractor to operate the programme an effective contract should have been put in place, but the contract with AAWW Ltd was extremely loosely worded, and was not adhered to in practice.</p> <p>No formal contract other than the 'service level agreement' signed during December 2012 and commencing on 14 November 2012 was put in place between the council and AAWW Ltd. This contract does not give any formal authorisation to AAWW Ltd to enter into either leases or tenancy agreements on the council's behalf. On the contrary, it wrongly states that property owners will enter into leases with AAWW Ltd. Nor does it set out the details of the private sector leasing arrangements it purports to address.</p> <p>The only document we have found setting out the private sector leasing/ revolving loan arrangements is a brief note headed 'Pennine Lancashire Empty Homes Project: Private Sector Option (Option 4)' emailed to the Head of Health, Housing and Regeneration by the director of AAWW Ltd on 11 February 2013 at the request of the Health and Housing Manager. He forwarded this to the HCA on the Health and Housing Manager's behalf on the same date.</p> <p>Homeowners: At the point AAWW Ltd ceased to trade, 316 leases had been entered into by AAWW Ltd in the council's name, and 47 had been made in the company's own name. None had been authorised by the council's Monitoring Officer.</p> <p>The council did not seek to place legal charges on properties to prevent them being sold by their owners before the costs of refurbishment work were fully reimbursed to the council. Officers across PLACE, including the Health and Housing Manager and the former Chief Executive, became aware in 2013 that this was a concern, and we understand that it proved difficult nationally to obtain legal charges because many properties were mortgaged and the mortgage providers were unwilling to allow charges on the properties they held as security. However this was not pursued and no other protection for the council's position was sought. We understand that this is now being addressed as homeowners are being asked to enter into new, more robust leases with the council and a local land charge will be registered to protect the council's interests.</p> <p>Tenants: Since the council is required by the HCA to take a legal interest in the properties for which it is receiving grant, tenancy agreements could only legitimately be made in the</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | | <p>council's name: AAWW Ltd had no legal interest in the properties to enable it to let them to tenants. However with the exception of 86 tenancies, all tenancy agreements were made in AAWW Ltd's name.</p> <p>85 of these tenancies incorporated enhanced levels of support to the tenants which attracted additional income for AAWW Ltd by providing support as well as housing, but also required them to be assessed by the council's Housing Benefit Team. We understand that a significant number of these claims for enhanced support were subsequently restricted by that team and that in some cases tenants were deemed to have been inappropriately housed; for example single people placed in properties with two bedrooms on the basis that the additional bedroom was required for a care worker.</p> |
| <p>B:3 The overall cost of the programme outweighs its benefits to the district.</p> | <p>B:3:1 A cost-benefit analysis is undertaken by appropriately skilled and experienced officers on the basis of the information available at the outset.</p> | <p>No cost-benefit analysis was undertaken at any point. On the contrary, a number of individuals have stated that they had, and expressed at various points, concerns about the financial viability of the programme and in particular AAWW Ltd's business model.</p> |
| | <p>B:3:2 The council's officers make a well-informed appraisal of the expertise available internally and assess whether external support is required to operate the programme.</p> | <p>There was no appraisal in any formal manner of the resources and expertise available to the council, but a decision was taken to engage AAWW Ltd to supplement the council's own resources. However that company's involvement developed from its director's work with the council during 2012 as a consultant, following his redundancy from a neighbouring council, rather than from any approach by the council.</p> |
| | <p>B:3:3 The affordability of the external expertise required is assessed and considered as part of the cost-benefit analysis of the programme's viability.</p> | <p>There is no evidence of any assessment either formally or informally of the impact of the cost of external support on the viability of the programme. The contract with AAWW Ltd loosely set out the basis on which payment would be made, but the charge per property appears unrealistically low with hindsight.</p> |
| | <p>B:3:4 The benefits of the programme are considered in light of related areas of the council's objectives; the potential to house the district's homeless is considered at the same time as the opportunity to bring empty homes in the district into use.</p> | <p>The HCA's funding was granted on the basis that an agreed number of vacant homes would be reinstated ready for occupation at affordable rents. The grant was paid in full on practical completion of the remedial works, not when a tenant was found or had remained in the property for a given period. However the underlying benefit of improving the properties was clearly to enable them to be occupied.</p> <p>Once the properties were tenanted it was intended that the rental income would, before generating an income for the homeowner, repay the costs of the renovation work effectively loaned to the homeowner: the funds could then be used to undertake work on additional properties as well as paying for management overheads, any further repairs and maintenance and a rental guarantee to the homeowner. It was therefore important, not only in principle but also to the business model operated by the council's contractor, that the reinstated properties be occupied.</p> <p>It has already been noted that adequate connections were not made with the council's Housing Options Team and Housing Benefit Team either by the Regeneration Team or by the council's contractor. Over the course of the programme it seems that 97 referrals were made by the Housing Options Team, but only 8 were housed in properties managed by AAWW Ltd. In practice, AAWW Ltd sought tenants from a number of other sources but these brought difficult individuals with complex needs and, in some cases we understand, from outside Pennine Lancashire.</p> <p>A local property agent raised their concerns with the Leader that the programme would destabilise the local housing market but the view was taken that it was sufficient that the programme, lease and tenancies being offered had been agreed by the HCA.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | B:3:5 The cost-benefit analysis is regularly reviewed and updated until the programme has been fully developed and assessed as viable, and has been formally approved as such by senior officers and the decision take to progress it by members. | As already noted, there was neither any assessment of the costs and benefits, nor any assessment of the programme by any senior officers other than possibly the former Chief Executive as it developed. |
| | B:3:6 The financial outturn of the programme, as well as its performance in delivering the intended outputs and outcomes, is regularly assessed by the council's senior managers. | The Head of Finance & Property Services was aware that the programme was being considered in February 2012 as the report was taken to Cabinet and a decision was made to act as accountable body for the funding, but he had no further engagement with the programme until the Management Accountant became involved in late 2012, when the first transactions associated with the programme were being processed and cost codes set up on the accounting system. No assessment was made of the financial implications or outturn of the programme until early 2014 as indications began to emerge that AAW Ltd was experiencing cash flow problems, through to 30 January 2015 when AAW Ltd ceased trading. In July 2014 the balance of payments to and from AAW Ltd was questioned by the Finance Manager and the Head of Finance & Property Services approved the payment to AAW Ltd for that month. |
| B:4 The programme is pursued although it is apparent that it is unworkable in its original conception, or at all, because officers are unwilling or unable to consider stopping it. | B:4:1 The business case for the program is considered by senior officers after any material amendments have been made to its operation, and the decision to continue it in its revised form is made by members. | Once the original decision had been made to undertake the programme, no further consideration appears to have been given to whether it was appropriate or workable, and the targets agreed with by the HCA were pursued in any way possible. The officers involved did not appear either to question its continuation or recognise the need to obtain members' approval at any stage. |
| B:5 The programme is intended to achieve more than one objective, but the secondary objectives are overlooked and no plans are made to achieve them. | B:5:1 The planning controls set out above are implemented in respect of each objective. | As noted above, the primary objective relating to bringing empty homes into use was addressed but the secondary objective of employing additional apprentices was overlooked entirely once the agreements with the HCA had been negotiated. No plans were made to achieve this objective, other than setting it out in a draft agreement with Together Housing Group and Calico Housing Association that was not finalised or signed. |
| | B:5:2 The decision-making and performance monitoring controls set out below are implemented in respect of each objective. | Neither the decision-making nor the performance monitoring controls operated to ensure that this secondary objective was achieved. |

C: Taking a lead role, working with and on behalf of other local authorities.

Objectives

- Achieve the objectives of each local authority involved, including the council's, more economically, efficiently and effectively together than could be achieved individually.
- Operate within each local authority's constitution and the constitution of any formal partnership.

| Risks | Expected controls | Actual controls and action taken by the council |
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| <p>C:1 The council acts within a partnership but has no authority to do so under its constitution because the decision to enter into the partnership has not been properly made.</p> | <p>C:1:1 Senior officers are made aware through routine supervision of their staff of any partnerships the council may be invited to join.</p> <p>C:1:2 Appropriately senior officers with the relevant expertise consider the risks and potential rewards of the council's entry into any partnerships.</p> <p>C:1:3 The council enters into any partnership in full knowledge and understanding of the partnership's constitutional arrangements.</p> <p>C:1:4 The decision to enter into a binding partnership is properly made under the council's own constitution.</p> <p>C:1:5 With the officers of the partner organisations, the council's senior officers ensure that the partnership is supported by a robust agreement.</p> <p>C:1:6 The implications of the decision to enter into a binding partnership is made clear to members by senior officers as the partnership is entered into and are regularly reviewed by both officers and members.</p> | <p>Relationships between the five Pennine Lancashire districts are strong, and the chief executives meet regularly (as PLACE), as well as working groups of less senior officers. The leaders and chief executives also meet, albeit less frequently, as Pennine Lancashire Leaders and Chief Executives (also known as PLACE). For a short period in 2009 and 2010 the relationship was formalised through a joint committee of the districts, which had powers to take decisions binding on the constituent local authorities and was known as PLLACE, but that committee has not met since 2010.</p> <p>None of the working groups has any formally constituted authority to bind the council and it has not therefore acted through any formal partnership in relation to the HCA programme. Rossendale, like any other council, may choose to implement locally the decisions made by PLACE, but must do so under its own constitution. However counsel's opinion is currently being sought on whether or not the districts acted in concert.</p> |
| <p>C:2 The council takes on the responsibilities and effectively also accepts the costs and/or liabilities associated with a work programme on behalf of its partners without understanding the implications for the council.</p> | <p>C:2:1 Appropriately senior officers with the relevant expertise are involved and consider the risks, costs and potential rewards of the council's involvement in any specific projects on behalf of the partnership.</p> | <p>As noted above, there was no effective consideration of the council's involvement in the programme by any senior officer other than possibly the former Chief Executive, and the implications of acting as accountable body for the funding were not properly considered. The de facto decision to operate the programme on behalf of the districts in Pennine Lancashire was similarly not adequately assessed and was unsupported by any formal arrangements.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| <p>C:3 The council takes on the responsibilities and effectively also accepts the costs and/or liabilities associated with a work programme on behalf of its partners without making this explicit within the council or the partnership, or obtaining a decision to that effect because the need to do so is overlooked. The council's officers do not appreciate that an apparent decision to act is invalid or unconstitutional, but act on it nonetheless.</p> | <p>C:3:1 Appropriately senior officers with the relevant expertise fully engage with the partnership, attending its meetings regularly, being properly informed of its activity and advising the council about what work it may choose, or be obliged, to support.</p> | <p>The council's leader is a member of PLACE, supported by the current and former Chief Executives, and other officers regularly engage with their peers in the other Pennine Lancashire districts. The meeting of PLACE leaders and chief executives on 9 January 2012, attended by the council's own leader and chief executive, endorsed the report (presented by the Health and Housing Manager) and its recommendation that the council act as accountable body and submit a proposal to the Empty Homes Fund on behalf of PLACE.</p> |
| | <p>C:3:2 Either the council obtains indemnities from its partners for the costs of the action it takes under specific programmes on behalf of the partnership, or it explicitly recognises that it may incur costs for work that does not directly benefit the council or its citizens. In either case a formal decision is taken under the council's constitution.</p> | <p>The programme was discussed at PLACE meetings in late 2011, early 2012 and August 2013, but no formal agreement was reached that the council would act on any other's behalf. No indemnities were sought or received by the council for its work reinstating empty homes in any other district, and nor did the council explicitly make any formal decision to incur costs on work being undertaken outside its own district boundaries. We understand that the council is exploring the possibility that other Pennine Lancashire councils may be liable for some of the costs it has incurred.</p> |
| <p>C:4 The council is in dispute with its partners because the terms of the partnership, and particularly its financial implications, are not clearly set out. The council later looks to the partnership to share any financial burden of its action for the partnership but its claim is unsupported by any formal agreement to that effect.</p> | <p>C:4:1 A partnership agreement establishes the role of the partnership and each of the organisations within it, and how it will operate including the resources to be provided by each partner, and the mechanism by which conflicts will be resolved.</p> | <p>There was no formal agreement with any of the districts individually or collectively that the council's activity on this programme would be financially supported by them.</p> |
| <p>C:5 The council's reputation is damaged because the partnership receives no feedback regarding the progress of the programme it has agreed that the council will implement.</p> | <p>C:5:1 The council's senior officers provide regular reports to the partnership addressing progress (planned and actual) towards the programme's outputs and outcomes, through agreed key performance indicators.</p> | <p>Once the funding programme had begun, feedback was provided to PLACE in August 2013 but, although they decided then to receive quarterly updates, we are not aware that any further information was provided. Housing officers from each of the Pennine Lancashire districts also meet regularly as the Empty Homes Group, and they discussed the performance of the programme in more detail, as they were not always fully aware of the progress being made or changes to the programme within their districts. The Group discussed the programme in some detail, but seems to have been concerned at the lack of coherent information available.</p> |
| <p>C:6 The grant funding conditions place obligations on the other local authorities but these are not met because they are unaware of them.</p> | <p>C:6:1 The council's officers ensure that they fully understand the grant funding obligations of all the partners and communicate these in sufficient time for the partners to respond.</p> | <p>The information for funding claims was chiefly provided from AAW Ltd and the registered providers, and was closely managed by the Health and Housing Manager. The processes by which this information was collected continued to develop throughout the programme and appear to have been problematic, being regularly discussed by the Empty Homes Group.</p> |
| | <p>C:6:2 Officers diarise the dates of any information required from partner organisations and ensure that it is requested in sufficient time to ensure it is delivered in time to meet any obligations of the funding agreement.</p> | |

D: Commissioning, procuring and working with an external organisation to implement the council's objectives.

Objectives

- Establish the council's operational requirements within its financial constraints, the constraints of the grant funding and funder's requirements, and the need for flexibility where service needs are uncertain.
- Identify the most effective options to meet the council's operational requirements, recognising that there may be limited suppliers in the market.
- Comply with statutory requirements and the council's own policies and procedures to procure the service required most economically, efficiently and effectively from an external organisation.
- Obtain a legally enforceable contract, in accordance with the procurement process, that sets out the services that will be provided and the standards that will be met, the price that will be paid and the payment terms.
- Obtain a contract that covers the full period over which services are required, or undertake a further procurement exercise in due course if services are required over an extended period.
- Monitor the external organisation's performance against the contract, using robust, trustworthy data.
- Make payments to the external organisation due under the contract as service performance is verifiably delivered, or subject to claw-back if service delivery is contingent on later conditions being met.

| Risks | Expected controls | Actual controls and action taken by the council |
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| <p>D:1 The council's requirements of any external provider and any constraints on the service are not adequately identified because there is insufficient understanding of the programme and the way it will operate.</p> | <p>D:1:1 Officers with detailed knowledge of the programme critically assess the nature of the programme and the operational services the council needs to commission externally.</p> | <p>It has already been noted that no overview of the programme appears to have been taken and no clear plan was ever formulated to implement it. Nor was the argument explicitly made that an external support would be required, although a decision was made under the council's scheme of delegation in November 2012 to appoint AAW Ltd without any procurement process.</p> |
| | <p>D:1:2 Senior officers take an overview of the programme and its needs and assure themselves that the proposal to commission external services is appropriate.</p> | |
| | <p>D:1:3 The options developed are appropriately flexible where the operation of the programme – its scale and the assumptions that have been made – is uncertain.</p> | <p>As the programme's work progressed the Health and Housing Manager worked closely with AAW Ltd, and both the company and the council operated very flexibly to achieve the targets for the programme agreed with the HCA. As it became clear that the original targets were not being achieved, the balance between different options under the programme was adjusted to deliver the programme's overall targets. However this flexibility was not built into the contract with AAW Ltd, which was drafted to cover only the 12 months from 14 November 2012, with extension and variation as necessary after that.</p> <p>The options eventually developed and pursued were not developed in advance of the programme's operation, or even explicitly during the first 12 months, but on an ad hoc basis whilst the programme was in progress. There was no effective consideration in advance of what services were required and which should be provided externally.</p> |
| | <p>D:1:4 The support envisaged is obtained firstly through a pilot scheme and later, explicitly, through a full programme whose operation has been determined during the operation of the pilot scheme.</p> | <p>Although the leases entered into with home owners were for between three and ten years, a pilot would nonetheless have been appropriate and could have been undertaken by working initially with a limited number of properties. Instead, although the contract with AAW Ltd referred to a pilot, there does not appear to have been any clear intention to operate at a small experimental scale before as many properties as possible were taken into the programme. The end of the pilot period defined in the contract with AAW Ltd was not recognised, no review was undertaken, and the arrangements continued unchecked.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | <p>D:1:5 Senior officers provide specialist legal and financial advice regarding the proposed operational arrangements.</p> | <p>There is no evidence that any senior officer provided any detailed specialist legal or financial advice, either in 2011, 2012, or whilst the programme was operating although the contract with AAW Ltd was signed on the council's behalf by its then Director of Business.</p> <p>Legal advice and due diligence would have been helpful to clarify in particular the appropriate party to the leases with homeowners. The contract with AAW Ltd sets out a service to individual homeowners, offering them the opportunity to enter into a lease with AAW Ltd for a period dependent on the amount of work required on their property, and a commitment to repay the cost of the remedial work as rental income is received. In fact the council itself, as a registered provider, was required to be party to these leases by the terms of the HCA's funding and, having taken an interest in the properties, was also required to be party to the tenancy agreements. In the event, AAW Ltd was party to the first 47 leases. It is not clear what event triggered the change to leases in the council's name.</p> <p>Further, we understand that none of the leases with homeowners adequately limited the homeowners' ability to sell their property before the costs of refurbishment work have been repaid, although work is now under way to rectify this.</p> <p>We have not undertaken any detailed work on the company's position in respect of VAT, but specialist advice should have been taken in this area, and still should. The company does not appear to have been VAT-registered until late 2013/ early 2014, although its turnover is likely to have been above the threshold: no VAT was charged on invoices we have inspected prior to November 2013 but it was charged by February 2014, when in at least one case it was charged on both council tax (for three months) and 'contingency'. VAT has been charged on the final invoices for some completed properties, but not on the initial estimated invoices for the same properties as work started on site. The council will have claimed the VAT back on these items, and is therefore likely to owe a refund to HMRC.</p> |
| <p>D:2 The full range of viable options for commissioned services is not considered because officers are insufficiently aware of what could be available, or are unduly influenced by the options they are familiar with.</p> | <p>D:2:1 Senior officers review proposals for the services being commissioned and critically assess the options that have been considered, and those that may not have been considered by the staff involved, before any procurement process begins.</p> <p>D:2:2 Senior officers consider what they know of any (formal or informal) relationships between staff involved in developing the programme and any potential suppliers, and consider whether such relationships may have limited the options considered.</p> | <p>There does not appear to have been any consideration of the options that might have been available to the council or any explicit decision to procure any external contractor other than, by default, AAW Ltd. The exact services to be provided by AAW Ltd were not at all clear but focussed solely on tenanting the properties. The need for expertise in property renovation and sub-contracting to construction trades was not addressed in any way.</p> <p>Finding tenants was clearly a key objective of the programme, though not one addressed directly by the HCA and, since tenancies were to be at affordable rents, it was foreseeable that lettings would require some expertise in social housing. However this was the sole focus of the council's requirement for external support, and it does not seem coincidental that this was AAW Ltd's director's specialism.</p> <p>The need for the particular schemes operated by AAW Ltd, including guaranteed rental income (albeit at discounted rates) for homeowners, has not been demonstrated.</p> <p>Although we understand that the previous working relationship at Pendle Borough Council between the Health and Housing Manager and the director of AAW Ltd was relatively limited, there is no evidence that any consideration was given to this or to the fact that the director had already been working in a consultancy role for the council on 'Safe Space' and providing support during the absence on sick leave of the Strategic Housing and Partnerships Manager (who reported to the Health and Housing Manager). The Head of Health, Housing and Regeneration and the director of AAW Ltd had also worked together on local working groups such as that which developed the 'B-with-us' scheme across the East Lancashire districts in September 2009. It is not clear what direct influence these relationships had on the council's decision to enter into a service contract with AAW Ltd,</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | | but it seems highly likely that the fact that AAW Ltd's director was already working within the council during 2012 strongly shaped the nature of the work commissioned from AAW Ltd and the lack of any procurement exercise. |
| D:3 Only one supplier is both willing and able to provide the service the council requires and it is therefore unclear whether the council is obtaining value for money. | D:3:1 The market is tested through publication of a procurement exercise, even if it is believed that there are few willing and capable suppliers, to demonstrate whether or not that is the case. | No procurement exercise of any kind was undertaken and the market was not therefore tested to ascertain the number of potential external organisations willing and able to operate the programme on behalf of the council. No further exploration was made of the type of service the council could have accessed to support the programme. |
| | D:3:2 The adequacy of the process by which the lack of alternative suppliers has been confirmed is considered by senior officers, and this is demonstrated in their approval of a decision to negotiate only with a single supplier. | A decision was made under the Officer Delegation Scheme on 14 November 2012 "to appoint AAW Ltd as the Council's Private Sector Leasing option as part of the LinkedUp empty homes scheme across Pennine Lancashire for a pilot period in line with the Homes and Community Agency contract". The report states that "a Private Leasing Scheme is a specialised service in comparison to normal private rented letting agent service – the scheme underwrites voids, repairs and maintenance and supports tenants to maintain a successful tenancy while agreeing a fixed income to the owner". No other documentation has been located that sets out why this specialist service was necessary to implement the programme. Nor has any documentation been found to demonstrate that AAW Ltd, and no other organisation, was able to provide such a service (although it is now clear that no other organisation would have been willing to expose itself or the council to the financial risks involved in providing this service). |
| | D:3:3 The council negotiates with the single supplier to ensure that it is capable of providing the services required, and is willing to do so at what is considered to be a reasonable price. | The Health and Housing Manager worked with the director of AAW Ltd to establish the service that the company would provide and the contract price per property. However there were some indications with hindsight that the company's business model was inadequate, and the initial maximum charge of £500 per property set in the contract with AAW Ltd appears to have been far too low. For example in April 2013 the company requested an advance of £18,000 to employ a technical officer for 12 months, cover their ICT costs, and pay for advertising. |
| D:4 Statutory requirements or the council's own policies and procedures relating to procurement are breached because officers are unaware of their stipulations. | D:4:1 Officers in posts that may require them to comply with relevant statutory requirement or the council's own policies and procedures are informed and regularly reminded of them. | We have been informed that the council's officers are generally clear regarding the need to comply with policy and proper procedures. However the council's policy is that a procurement process should be undertaken seeking written tenders for any contract value in excess of £60,000, and instead, a decision was formally taken under the Officer Delegation Scheme to proceed with a contract with AAW Ltd as a specialist provider. The decision was taken by the Health and Housing Manager on 14 November 2012, who then, between 15 and 18 November, consulted the Chief Executive, Director of Business, Head of Finance and Portfolio Holder for Housing & Health. |
| D:5 Statutory requirements or the council's own policies and procedures relating to procurement are breached because officers believe they are under pressure to act more quickly than formal timescales allow. | D:5:1 Senior officers clearly direct the commissioning and procurement processes, taking responsibility for the way these processes are conducted, and for their timescales. They ensure that due process is followed, particularly where any action is taken to waive stipulated timescales. | As has already been noted, no senior officer was closely involved in any aspect of this programme, no one seems to have questioned the decision not to test the market or required more robust support for this decision, and no one questioned the nature of the services commissioned. |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | D:5:2 The suppliers' viability and credentials in providing the service as specified are checked. | AAAW Ltd was incorporated in April 2011. Although its director had previous experience in housing services, the service commissioned by the council effectively included the specification and supervision of sub-contractors' repair works, as well as acting as managing agent for a large number of tenancies. His company's performance in these areas cannot have been known by the council before AAW Ltd was appointed and the council's knowledge of his own experience should not have led anyone to believe that he would be skilled in property renovation and management. |
| D:6 No legally enforceable contract is put in place with the supplier because officers are unaware that it is necessary or important. | D:6:1 Senior officers are aware of the development of the programme and its progression through the commissioning and procurement stages, and expect to see an enforceable contract before the programme begins to operate. | Although no senior officers, other than perhaps the former Chief Executive, were aware of the development of the programme and the need to commission an external service provider, the contract with AAW Ltd was signed in December 2012, before the programme began to operate on a significant scale in early 2013. However payments had been made to AAW Ltd before the end of November 2012 of £32,468 for three completed properties and one on which work had started on site; all before the contract with the company was signed. |
| D:7 No legally enforceable contract is put in place with the supplier because uncertainty about the services to be provided and then changes to these over time mean that its terms are never finalised. | D:7:1 A proper procurement process is conducted in accordance with statutory requirements and the council's own policies and procedures, and the terms agreed as a result of that process are set into a formal contract. | No proper procurement process was conducted, and therefore the terms of the contract are the result only of informal negotiations between the Health and Housing Manager and Director of AAW Ltd. |
| | D:7:2 Senior officers review the contract during the procurement process, before it is signed, and before services commence to ensure that its terms are satisfactory to the council and legally enforceable. | As noted above, the contract with AAW Ltd was signed on the council's behalf by its then Director of Business. |
| | D:7:3 The contract terms include scope for flexibility where the operation of the services – their scale, timing or cost – is uncertain but are certain at any given point in time. | In providing few details regarding the service that will be provided, the contract allows for substantial flexibility and reflects the ostensible status of the programme in December 2012 as a pilot. However both the actual service(s) to be provided and the payment terms are extremely unclear. The payment per property is "on a percentage basis per property and will be no more than £500 per property" but the point at which this indefinite payment becomes payable is not stated, other than that it will be "upon receipt of an invoice supported by a monitoring report". The service that will be provided per property is not specified in any detail. For example it is not clear that AAW Ltd will survey the properties and commission and oversee any necessary remedial works on them, or to what standard any work will be done. There is no statement of the standards of routine repairs and maintenance, or any maintenance schedule. What action will be undertaken by the company to "support tenants to maintain a successful tenancy" is not made clear. In practice, the company charged 5% of the costs of renovation work (including in some cases 'contingency' amounts of £500, £700, 5% or 7.5%) as well as apparently 30% of the rent on the property once tenanted, although that amount is incapable of verification. |

| Risks | Expected controls | Actual controls and action taken by the council |
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| <p>D:8 A contract with terms reflecting any negotiations during the procurement process is agreed but over time its terms no longer address the council's needs, because the situation changes or does not unfold as anticipated.</p> | <p>D:8:1 Officers with expertise in procurement advise whether the service required has changed so substantially that a new procurement process is necessary.</p> | <p>The contract with AAWW Ltd is loosely worded, so that it may be read to cover any later incremental shifts in the way the programme was operated. However as has already been noted, there was no original procurement process, and no specialist expertise was called upon other than that of the Health and Housing Manager.</p> |
| | <p>D:8:2 The revised service, its standards and price, are negotiated with the supplier and documented in a variation to the contract.</p> | <p>The original contract was not reviewed as intended after 12 months and no further legal input was sought or given.</p> |
| <p>D:9 In the absence of a sufficiently robust contract setting out the services to be provided and the standards to be met, the provider directs the work and its performance standards itself, possibly to its own objectives and financial benefit, rather than the council's.</p> | <p>D:9:1 The officers involved in overseeing and managing the programme negotiate to ensure that the council's own objectives are met by the provider.</p> | <p>As already noted, the contract does not clearly set out the arrangements between the council and AAWW Ltd, and in particular what the legal and financial arrangements will be on the revolving loan scheme.</p> |
| <p>D:10 The financial and operational performance of the programme and its operator are not clearly understood because officers do not seek this understanding; or ask and are not provided with it by its external service provider.</p> | <p>D:10:1 The provision of performance monitoring data is established in the service provider's contract, and its format is set out to meet the contractor's agreed key performance objectives.</p> | <p>No performance indicators are specified in the contract. It strongly appears that the only performance target to which the council and contractor were working was to take 474 properties onto the programme: to start renovation work, however minimal, on them.</p> |
| | <p>D:10:2 Regular – say monthly, quarterly and annual – monitoring data is provided in an agreed, consistent format and is critically assessed by officers.</p> | <p>There is no evidence that any performance information was ever sought by officers or provided by AAWW Ltd over the life of the contract other than that to monitor the number of properties being taken onto the programme. We have been informed that the Health and Housing Manager was made aware of her colleagues' and other district officers' concerns regarding the operation of the programme, but we have been told that she was personally and professionally challenging in her responses. The success and overall performance of the programme and specifically of AAWW Ltd do not appear to have been assessed in any way until AAWW Ltd ceased trading and then went into administration early in 2015.</p> |
| <p>D:11 The contract term ends before the programme it supports, and is not renewed in accordance with the council's procedures; milestones for review within the contract pass and are not marked; or the contract is not enforced, because it is regarded as peripheral to the actual arrangements being operated and therefore unimportant.</p> | <p>D:11:1 Senior officers oversee the arrangements being operated and assess these periodically against the contract in place to ensure that the contract is being adhered to in full by both parties, or else to identify that it requires amendment after formal re-negotiation. This oversight is both in accordance with the council's performance monitoring of the programme and in accordance with the contract's milestones, and these key dates are diarised and adhered to.</p> | <p>It appears that the contract with AAWW Ltd was regarded as unimportant, and secondary to the achievement of the targets established with the HCA. There was no effective oversight either of the work of the contractor or of the programme as a whole. In particular it went unnoticed that the contract with AAWW Ltd was inadequately specified, or that its review point passed without review.</p> |
| | <p>D:11:2 Where services are not being provided as stipulated or to the standards agreed, or the contract term has ended, appropriate action is taken by officers under senior management's direction.</p> | <p>It is likely that the contract was insufficiently clearly specified to be enforceable should any officer have determined that the services provided were inadequate.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| <p>D:12 Basic contractual requirements are not built into the contract because officers with the right expertise are not involved.</p> | <p>D:12:1 Officers with appropriate legal expertise are required to approve any contract the council enters into; other officers do not have the delegated powers to enter into contracts.</p> | <p>Leases and tenancy agreements were made in the council's name that were not approved in any way by the council's Monitoring Officer as required by the council's constitution. The contract with AAW Ltd was appropriately signed by the then Director of Business.</p> |
| | <p>D:12:2 All contracts are checked against a standard template of necessary terms and conditions to ensure that all are included if appropriate. These may include matters to resolve breakdowns in the operational relationship, termination of the contract and action in the event that the contractor ceases to trade, and a requirement to disclose any relationships or conflicts of interest between any officers and employees of the contractor.</p> | <p>The contract with AAW Ltd includes standard terms that would be expected in any normal contract, but very few terms and little information specific to the actual service to be provided.</p> <p>We understand that the lease and tenancy agreements, including those in the council's name, were drawn up by the director of AAW Ltd.</p> |

E: Designing and operating the on-going systems and processes required within the council to operate a programme with a commercial partner.

Objectives

- Direct the partner's activity to achieve the council's operational objectives with a full understanding of the programme's progress and performance.
- Obtain services from the commercial contractor to the specification and standards agreed in the contract.
- Limit the contractor's activity only to what is contractually agreed and satisfactory to the council.
- Achieve economy, efficiency and effectiveness in the design of the council's and its contractor's operating procedures.
- The contractor's status and that of its employees is clear, and cannot be confused with that of the council or its officers.

| Risks | Expected controls | Actual controls and action taken by the council |
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| <p>E:1 The contractor directs its own activity to meet its own objectives or understanding of the programme rather than the council's.</p> | <p>E:1:1 The council obtains sufficient timely, accurate and complete information on the contractor's service provision and performance against the agreed specification and service standards.</p> | <p>No information was sought or received by the council's officers regarding the service provided by AAW Ltd beyond lists of properties on which work had begun and the estimated cost of work, lists of properties practically completed, and rental receipts/ loan repayments. We have been informed that officers outside the Regeneration Team struggled to obtain information from AAW Ltd when requested, and officers on the Empty Homes Group repeatedly requested information about the properties on the programme.</p> <p>No information was received on the gross rent charged and collected by AAW Ltd and the amount deducted from this by AAW Ltd as its 30% management fee on revolving loan properties. The 5% fee charged by AAW Ltd on the renovation work undertaken is very clear on this company's invoices, although this was not set out anywhere as having been agreed.</p> |
| | <p>E:1:2 Information provided by the contractor is critically considered and verified by the council's officers. Inconsistencies, omissions and misstatements are questioned thoroughly and explanations obtained.</p> | <p>The information provided was inadequate to properly assess what the related rental income was and what was effectively being charged in management fees by AAW Ltd.</p> <p>On a weekly basis the Health and Housing Manager received details of properties on which work had started on site and the start date, estimated costs, and then practical completion dates with corresponding invoices. She received no further information on whether the property was then let. The Regeneration Administration Officer received a quarterly schedule of the amounts payable to the council as loans were repaid, and she used this to generate an invoice to AAW Ltd. The schedule did not include any reference to how these amounts had been calculated.</p> <p>There was effectively no consideration within the council of the data provided beyond what was required to log which properties were being included in the programme by receiving remedial work, and to process the net rental income to be invoiced from AAW Ltd. No comparison was undertaken before June 2014 of the list of properties completed and on which the estimated costs were reimbursed, and the list of properties on which rents were being received and loans being repaid, which would have indicated that properties had been refurbished but not tenanted.</p> <p>The invoices based on estimates and submitted as work started on site regularly include 'contingency', as well as amounts for council tax which does not appear to have been questioned. Some of the final invoices we have inspected also include 'contingency' although clearly there should no longer be any uncertainty about the costs incurred; and neither these items themselves, nor the VAT charged on them, appears to have been questioned.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | <p>E:1:3 The council's officers maintain their own understanding of the progress of the programme and periodically verify the information provided by the contractor against this.</p> | <p>The council established no means to obtain an overview of the programme's progress other than that provided by AAWW Ltd to the Health and Housing Manager and the Pennine Lancashire officers meeting on which properties were in the pipeline.</p> |
| | <p>E:1:4 The direction of the contractor's work is discussed, agreed and documented at regular meetings of the senior officers of both the council and its contractor, supported by sufficiently detailed information about the progress of the programme and the contractor's performance.</p> | <p>AAWW Ltd's work was overseen within the council solely by the Health and Housing Manager, who was in regular contact with the company's director to assess achievement of the programme's targets, but not apparently in any formal manner.</p> <p>The contractor's performance appears to have been assessed entirely on the number of properties taken on. Despite the ostensible need to appoint a contractor with specialist housing expertise to ensure that the properties were appropriately tenanted, the success of the programme and the contractor's performance were not assessed in any way related to tenancies. For example no assessment appears to have been made that the rents were affordable (a requirement of the HCA funding) or of void rates and tenant turnover.</p> <p>The standard to which the properties were renovated was clearly not a performance measure and was not assessed although there were some very obvious indications, by late 2014 at least, that standards were inadequate and in a number of cases did not meet the standard required by the HCA's funding agreement.</p> |
| <p>E:2 The council is unaware of action being taken by the contractor on its behalf or the contractor takes action that is outside the scope of its contract.</p> | <p>E:2:1 Through regular monitoring and discussion of the work the council's officers ensure that the contractor is clear regarding the scope of its work and its boundaries.</p> | <p>The programme was developed in a very ad hoc manner, and the contractor's scope of work and responsibilities are not clearly documented. Although the Health and Housing Manager worked closely with the contractor, no one else within the council was properly aware of the scope and nature of the work it was undertaking. AAWW Ltd's director effectively set his own scope of work, establishing the nature of the revolving loan scheme and how it was operated.</p> |
| | <p>E:2:2 If action is required that is outside the terms of the contract, the officers involved obtain advice from relevant colleagues including housing, finance and legal experts, and the relevant senior officers negotiate a variation to the contract.</p> | <p>As noted above, the original contract with AAWW Ltd is extremely loosely worded so that it may be read to cover any later incremental shifts in the way the programme was operated. No advice was effectively sought from any relevant colleagues, and that which was given appears to have been, at best, disregarded.</p> |
| <p>E:3 The contractor takes actions on behalf of the council that serve to bind the council in ways it would not have agreed to.</p> | <p>E:3:1 Regular monitoring of the contractor's activity and performance identifies the nature of the action being taken by the contractor, and officers clearly instruct the contractor to cease and rectify any action that is unacceptable.</p> | <p>It is not clear that any officers were aware of the contractor's action in any detail, other than which properties were included in the programme and the outstanding loans on them. If the Health and Housing Manager was aware that AAWW Ltd was taking action that could potentially damage the council's interests then the implications of this for the council's financial and legal position were not appreciated or not communicated by her. There are instances where AAWW Ltd may have taken on properties that were effectively beyond remedial work at a reasonable and recoverable cost. There are extreme examples of the housing associations estimating the cost of work required as around £18,000 but AAWW Ltd undertaking work costing around £6,000, albeit that the work would have been undertaken to a different standard and with different objectives.</p> |
| | <p>E:3:2 The council acts promptly to rectify any action taken inappropriately on its behalf with any third parties involved.</p> | <p>The council's senior officers were not aware of any action being taken inappropriately by AAWW Ltd on the council's behalf until after AAWW Ltd ceased trading. Some action has since been taken to ensure that, for example, where loans were being made to homeowners without any form of charge on the property the lease agreements and/ or local land records are being amended to reflect the council's interest in the property.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| E:4 The implications of actions taken by the contractor are not effectively understood by the council because it is not adequately engaged with the programme or its contractor. | E:4:1 The officers involved in day-to-day work with the contractor are regularly supervised by more senior and experienced officers who ensure that they obtain sufficient relevant information regarding the conduct of the contractor's work, and assess its implications for the council and the programme. | The Health and Housing Manager's work appears not to have been strongly overseen by the Head of Health, Housing and Regeneration, who seems to have little understanding of the contractor's work or the programme overall. It is possible that the former Chief Executive supervised her work more closely, but we have no information about this. There was therefore no means for the council to understand what was being done or to assess its implications. |
| E:5 The legal and financial liabilities to the council arising from the contractor's work are not identified and addressed by the council because it is not adequately engaged with the programme or its contractor. | E:5:1 The contractor provides sufficient timely information to the council regarding the work it does on the council's behalf. | As already noted the information provided to the council was arguably insufficient to enable its officers fully to understand the work being undertaken: minimal financial information was provided to the Regeneration Administration Officer only quarterly. |
| | E:5:2 Information is passed within the council to the relevant officers. | The information received was passed to the Health and Housing Manager and the Management Accountant but both dealt with the information separately. |
| | E:5:3 The implications of this information are considered by sufficiently skilled and experienced officers, who respond appropriately, in particular in recording the liabilities and assessing them in relation to the council's overall financial and legal position. | As already noted above, finance officers were not closely engaged in this programme until after it had begun to operate. The finance team became aware of the programme as they established cost codes to record payment of the invoices that began to arrive in November 2012, but the invoices were approved for payment by the Health and Housing Manager. We have found two instances in which she breached her approval limit (one by just £122, the other by £2,625) and these payments should have been counter-signed by the Head of Health, Housing and Regeneration, but this was not identified at the time. |
| E:6 Action taken by the contractor is not supported by corresponding action within the council because the council's officers are not adequately engaged with the programme or its contractor. | E:6:1 The officers involved in overseeing the programme ensure that their colleagues across the council are involved as appropriate: as a minimum, officers with financial and legal expertise are invited to engage with the programme. | The programme was managed almost entirely by the Health and Housing Manager and no other officers were engaged by her, the former Chief Executive or the Head of Health, Housing and Regeneration to support it. |
| | E:6:2 Processes are designed and implemented that allow the council to record and monitor actual and expected financial transactions on a timely basis. | Once the Management Accountant became aware of the programme he recognised that he should expect to receive rental income once remedial works had been completed and invoiced, and ensured that he therefore chased this income. However we are not aware that any other expectations were established by any officer. The costs of remedial work on the properties were estimated, and the first 50% of the estimate was invoiced to the council and paid when work started on site. The second half of the estimated costs was paid once AAW Ltd informed the Health and Housing Manager that work was complete. No check was made that the estimated costs had actually been incurred and we have been informed that in only one case was any request made for more funding than was initially estimated; it therefore seems likely that actual costs were less than estimated in a number of cases, and the council has overpaid for the work undertaken. The argument was made by AAW Ltd's director to the Empty Homes Group that, since work was being undertaken by the owners themselves, there was no incentive for them to overstate its value as this would only increase their loan. However such loans were interest free and therefore beneficial. We understand that the rent was also guaranteed by AAW Ltd and would have been paid to the council whether or not the property was occupied: the loan would therefore have eventually been repaid by AAW Ltd if not by a tenant. (However we have not located any written reference to this rent guarantee in relation to the revolving loan scheme, and the AAW Ltd gave the council a variety of reasons why rent was not |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | | <p>payable on a number of empty properties once they had been renovated under the programme.) Further, much of the work was undertaken by sub-contractors rather than owners, who would certainly have benefited if payment was made on the basis of an inflated estimate rather than actual costs.</p> <p>It is highly likely that invoices have been submitted by at least one owner of multiple properties, who has also acted separately as a sub-contractor on other properties, where inadequate (or possibly no) work has been done and this possibility should be raised with the police as soon as possible. Officers in the Housing Options and Environmental Health teams have detailed notes and information about a number of properties that should be of concern.</p> |
| | E:6:3 Processes are designed and implemented that allow the council to record and monitor actual and expected contractual liabilities on a timely basis. | <p>No process was effectively designed to record and monitor the council's liabilities or assets. Further, we understand that, if the estimated costs of the remedial work on a property was less than £20,000 and the estimated repayment period was less than 5/ 6 years, then AAW Ltd commenced with the work with no further discussion.</p> |
| | E:6:4 Processes are designed and implemented that allow the council to record and monitor actual and expected changes in its asset portfolio on a timely basis. | |
| E:7 The contractor's work under the programme is not aligned with the council's own related work in other areas: the team responsible for housing the district's homeless is not practically engaged with the work to bring empty properties back into use. | <p>E:7:1 The relevant teams within the council are identified and involved at the outset as the programme is designed to ensure that all the council's objectives are aligned.</p> <p>E:7:2 The work of all the relevant teams within the council is considered when the programme is designed and as services are commissioned from an external contractor: working with the relevant teams is designed into the contract.</p> <p>E:7:3 Processes are designed and implemented that allow all of the council's teams to support and benefit from the programme.</p> | <p>The programme was primarily developed within the Regeneration Team, and other teams were not involved to any great extent. No coherent procedures were designed to ensure that the different teams' work was coordinated, or to ensure that AAW Ltd interacted effectively and consistently with any of the council's services.</p> |
| E:8 The contractor requests and is paid for work it has not undertaken, or has not completed to the agreed service specification and standards, because the council is unaware of the contract's specifications or of the work that has actually been done, or of the contract's terms regarding payment. | E:8:1 The council's officers are able to confirm by regular and routine monitoring including its own spot checks on the work that the contractor has satisfactorily completed the work it claims payment for, to the standard required before claims are processed. | <p>No monitoring was undertaken of the contractor's work, other than whether sufficient properties had been taken onto the programme to access the grant according to the targets agreed with the HCA.</p> <p>The quality of the work, or even its completion, was not routinely checked either by site visits to a sample of properties, or by checking that AAW Ltd had adequate supporting documentation for the costs incurred. It was clear to the council's Environmental Health Team that work was not being undertaken properly and that not all the work claimed for had been completed. The team visited ostensibly completed properties that were still boarded up, for which window blinds had been claimed and paid, but were informed that blinds would be fitted only when the property was let.</p> <p>When a team from Pendle Borough Council inspected 120 properties they found issues with</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | <p>E:8:2 The council's finance team obtains confirmation from the officers overseeing the contractor's work that the work for which payment is claimed has been completed before payment is processed.</p> | <p>10% of them. The council's own Environmental Health Team holds a substantial file of outstanding enforcement notices brought by the other Pennine Lancashire districts requiring that work be undertaken to make the properties habitable, some of which is classed as 'category 1' – in effect, categorising the properties as extremely hazardous.</p> <p>The only information made available to the finance team before payments were processed was the invoices from AAW Ltd and the forms approving their payment.</p> |
| <p>E:9 The contractor disregards agreed procedures; it takes payment for its work directly from funds that are due to the council and hands over only the net amount.</p> | <p>E:9:1 Officers recognise that this is unacceptable immediately and insist that the contractor complies with agreed procedures or else it is in default of its contract.</p> | <p>Instead of raising an invoice for its services, AAW Ltd sent a schedule of net rents received and the council invoiced AAW Ltd for them. The loan repayments due to the council were not capable of being verified, and no officer questioned this.</p> <p>Having been alerted to the operation of the contract in July 2014, and when cash flow again became a concern in October 2014 at the end of the next quarter, the Head of Finance & Property Services inspected a sample of AAW Ltd's invoices. He questioned a number of aspects of them: whether there was an independent surveyors report to agree what work was necessary; whether there was an independent inspection that work had been satisfactorily completed; and why round sum amounts, contingency and administration fees were being charged. Each of the answers provided by the Head of Health, Housing and Regeneration, who went on to recommend that payment was made to AAW Ltd, were inadequate and incorrect.</p> |
| <p>E:10 Performance data is unavailable to the council because its contractor will not provide it.</p> | <p>E:10:1 The provision of appropriate data to the council is included in the contract terms, having been considered and agreed during the procurement process.</p> <p>E:10:2 Senior individuals in the contractor organisation commit to obtaining this data.</p> | <p>There was effectively no performance data available to monitor the contractor's work in any meaningful way, and the minimal data provided to the council was not independently verified in any way.</p> <p>There were clear indications that to the limited extent that standards had been set – the design and quality standards in particular – they were not being met. Moreover, the contractor had been selected solely on its purported expertise in social housing management, but it was apparent in feedback from the Empty Homes Group that its performance even in this was inadequate. Training in basic environmental health requirements for housing was offered to AAW Ltd's staff by Pendle Borough Council in December 2014.</p> |
| <p>E:11 Performance data is inadequately designed because there is a lack of understanding of the programme and its objectives.</p> | <p>E:11:1 Individuals with the seniority and the right expertise within the council work with its contractor to assess the data required to support the programme's key performance indicators and agree that this will be provided.</p> | |
| <p>E:12 Performance data is unavailable or inaccurate because the contractor's IT or manual systems that should generate it lack the functionality.</p> | <p>E:12:1 Individuals with both the seniority and the right expertise ensure that the data required to support the programme's key performance indicators is capable of being generated by the contractor's IT and manual systems. If not, the performance indicators and available data are jointly reassessed until adequate performance information is capable of being generated.</p> | |

| Risks | Expected controls | Actual controls and action taken by the council |
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| E:13 Performance data on the work undertaken by the contractor is input inaccurately, leading to incorrect outputs. | E:13:1 The contract includes provision for the council to periodically to check the accuracy of the data provided by its contractor. | See above. |
| | E:13:2 The council takes up this option and periodically tests the data provided by its contractor. | |
| E:14 Performance data on the work undertaken by the council is input inaccurately, leading to incorrect outputs. | E:14:1 The officers involved in the day-to-day operation of the programme understand the importance of accurate and timely data and are committed to ensuring this through accurate input. | |
| | E:14:2 Data input is regularly checked for accuracy and corrected by manual intervention (although this is inefficient). | |
| E:15 Performance data is inadequately interpreted due to a lack of time or understanding by the individuals accountable for the programme's performance. | E:15:1 Individuals with both the seniority and the right expertise critically review the programme's key performance indicators. | |
| E:16 The contractor's employees hold themselves out to be officers of the council, thereby achieving a different status with the council's funders and other contractors, facilitated by the council's officers. | E:16:1 The council's officers are aware of the distinction between a contractor and the council itself, and of the importance of this distinction to other external organisations. | The Health and Housing Manager does not appear to have been sufficiently aware of the distinction between the contractor and the council, or the need to distinguish between the company director's role and his role in covering the Housing Strategy and Partnerships Manager's post whilst she was absent on long-term sick leave. This is likely to have been exacerbated by the fact that he undertook this role at the same time as the council was developing the programme under the HCA's funding during 2012, and it is no coincidence that the programme was developed in the way it was at that time or that his company was appointed to operate it at the end of that year. We have not pursued the possibility that, where a number of leases (at least 17) have been found to have been agreed in the council's name but not included in the HCA's programme, they have been wholly private arrangements with AAW Ltd but made using the council's name, in which homeowners may have more confidence. |
| | E:16:2 Individuals are given council email addresses and phone extensions only if they are verified as being council officers. | By November 2013 one of AAW Ltd's employees had been given a council email address and was located in the council's offices, which may have been a practical arrangement to enable her to work with the Health and Housing Manager but it is not clear why this should have been necessary, and other council employees have expressed their concerns about it. This is a clear confusion of the council and its contractor as two separate organisations, and one likely to result in a misleading impression being given to homeowners and tenants that the individual was employed by the council rather than the company. |

| Risks | Expected controls | Actual controls and action taken by the council |
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| E:17 The council's own officers act beyond their authority because they do not understand the substance of the council's scheme of delegation and do not properly alert more senior officers to the need for approval. | E:17:1 Officers are aware of the council's scheme of delegation and are regularly reminded of the limits to the action they may take under delegated powers. | We have been told that that the council's officers are generally highly aware of the limits to their powers and the need to operate under the constitution. However the Health and Housing Manager was clearly insufficiently aware, and this was not brought to her attention in any way by her manager. |
| | E:17:2 Regular supervision of all officers provides the forum for any proposed action to be considered and appropriately approved. | The Head of Health, Housing and Regeneration clearly failed to supervise effectively the Health and Housing Manager, who was allowed to operate effectively unchecked and oblivious to the council's constitution, policies, normal procedures and general good practice. |

F: Decision-making and corporate oversight of a programme and its performance in achieving the council's objectives, and the council's response to external concerns.

Objectives

- Make decisions and act in accordance with the council's appetite for risk, on the basis of the information which is, or ought to be, available.
- Comply with the council's constitution, in particular with respect to decision-making powers.
- Implement effectively the decisions made throughout the lifespan of the programme.
- Monitor the progress and performance of the programme, the achievement or otherwise of its outputs and intended outcomes, and the development of any further opportunities, in sufficient time to effect changes if necessary.
- Report transparently to stakeholders on the progress and performance of the programme to support effective decision making.
- Respond appropriately and effectively to any whistleblowing, complaints or other concerns from whatever source and safeguard the council's reputation against actual or alleged wrong-doing.

| Risks | Expected controls | Actual controls and action taken by the council |
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| <p>F:1 Members make a decision that is outside their powers under the constitution, that should be made by the council in partnership with others, or that should be treated as 'key' under the terms of the constitution, but the decision is not identified as such because its implications are not fully assessed or because officers overlook the council's or its partnership's constitution in preparing reports for members.</p> | <p>F:1:1 Appropriately senior officers with the relevant expertise assess whether decisions should be made by individual members, Cabinet, full Council, and/ or a formal partnership including the council and assess the adequacy of the report supporting the proposed decision in terms of the council's constitution.</p> | <p>The only relevant decision that has been made by elected members was that taken by Cabinet in February 2012 that the council would take on the role of accountable body. It was also decided that all future minor amendments to the project would be delegated to the Head of Health, Housing and Regeneration in consultation with the Portfolio Holder, but none were. No decision was taken by any elected member regarding the operation of the programme, although it is financially significant and the manner in which the programme was operated is arguably novel and contentious, and affect the whole district as well as the other districts of Pennine Lancashire.</p> <p>A decision by the council to operate the programme both across Rossendale and a number of other districts, through a private sector provider, should clearly have been taken, and should also have been treated as a 'key' decision and publicised appropriately.</p> |
| <p>F:2 A decision is made by the council in partnership with other bodies that should be ratified by the council, but it is not because members and/ or officers are unaware that it has been made and needs to be ratified under the council's constitution.</p> | <p>F:2:1 Appropriately senior officers with the relevant expertise are engaged with and support the council's partnerships and ensure that decisions made by such bodies are appropriately ratified by the council.</p> | <p>Although the council is seeking advice on this, it is possible that, once the recommendation had been endorsed that the council would act as accountable body and submit a proposal to the Empty Homes Fund on behalf of PLACE, no further decision was made by any formal partnership including PLACE in respect of this programme. However progress on the programme was shared with the Empty Homes Group and Pennine Lancashire Housing Partnership Board, and these groups were influential to the programme.</p> <p>The HCA has extended its offer of funding under this programme by a further £1.85 million but, although the decision was taken by the Management Team to seek this funding, it has been taken no further at this point.</p> |
| <p>F:3 Members make a decision to operate the programme on the basis of inadequate information and advice regarding the nature of the programme, and the results are not therefore what members expected.</p> | <p>F:3:1 The right resources are involved at the outset and at key decision points to analyse the nature of the scheme, the council's own capacity to deliver it, and its intended outputs and outcomes; they ensure that members are informed and in a position to make effective decisions.</p> | <p>Members did not effectively make any decision to operate the programme, other than the decision in principle that the council act as accountable body for the HCA funding.</p> <p>The officers involved overlooked the need to ensure that members made appropriate decisions to support the action being taken by them.</p> |
| | <p>F:3:2 The officers involved in assessing and developing the proposed programme obtain sufficient relevant and reliable information to support robust advice to members.</p> | <p>As noted above, sufficient relevant and reliable information was not obtained to support the development and operation of the programme: no clear information was available for members to support any decision by them to initiate or endorse this programme.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | <p>F:3:3 The proposal to operate the programme is set out in a report to members made in the context of a well-informed risk assessment that is within the council's appetite for risk.</p> | <p>There is very little planning documentation supporting the programme, and nothing to suggest that any officer attempted to identify or assess the risks involved, or that any consideration was given to whether they were acceptable to the council.</p> |
| | <p>F:3:4 Appropriately senior officers with the relevant expertise assess the financial, legal and operational implications of the proposed decision.</p> | <p>The report supporting the Cabinet decision on 15 February 2012 stated that there were no financial, legal or other risks, although it includes comments from the Section 151 Officer setting out some of the responsibilities the council should consider as accountable body. A paper presented to the PLACE chief executives reported that there was a reputational risk "for all partners with the HCA if we continually fail to deliver on the forecasted programme".</p> |
| <p>F:4 A decision is made only after officers have already begun to take the action authorised by it, or a decision is not made at all, because officers overlook the requirement for members to do so under the council's constitution.</p> | <p>F:4:1 Appropriately senior officers with the relevant expertise assess the action being proposed and consider whether a decision is required or whether the action is already authorised by an existing decision.</p> | <p>The decision to become an accountable body for the HCA funding was made 23 days after the bid was submitted on the basis that the council would be the accountable body. Had there been any broader awareness of the need for good governance procedures, it may have been appropriate to invoke the council's urgency procedure, but there is no evidence that this was considered.</p> |
| | <p>F:4:2 Once identified as required, the urgency procedure is invoked to make a decision as soon as possible even if action has already begun by officers and the option is given to members to decide to cease the activity.</p> | |
| <p>F:5 Officers take actions that are outside their authority because the reports supporting the decisions made by elected members are unclear or not sufficiently specific.</p> | <p>F:5:1 Decisions taken by elected members are supported by clear reports that have been reviewed by appropriately senior officers fully addressing the implications and the scope of action supported by them.</p> | <p>In operating the programme, officers clearly took action that was not covered by any decisions by members.</p> |
| <p>F:6 The council does not assess the success or otherwise of the project in achieving its objectives and does not take it into consideration when deciding what other objectives to pursue or how.</p> | <p>F:6:1 Officers regularly assess the programme's overall direction and success (not just the contractor's performance) using robust information.</p> | <p>The Health and Housing Manager closely assessed the programme's achievement of remedial works on properties. However any other output or outcome does not appear to have been considered.</p> |
| <p>F:7 No further information is provided to members once the decision has been taken because the need to do so is overlooked by officers.</p> | <p>F:7:1 The council has a robust performance monitoring process to report the progress being made on each of the council's work programmes periodically to elected members. The process followed and frequency of reporting for each programme is dependent upon its scale and significance.</p> | <p>No adequate reports on the progress of this programme were made to elected members. The Policy Overview and Scrutiny Committee heard a presentation from the Health and Housing Manager on 15 October 2012 about the programme, and the Rossendale Vacant Property Strategy 2010-2015 was taken back to the Corporate Scrutiny Committee on 14 July 2014 for information, but that is all.</p> |

| Risks | Expected controls | Actual controls and action taken by the council |
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| | F:7:2 This performance monitoring process encompasses work undertaken in accordance with a decision made by the council in partnership with others, and senior officers also report progress to that partnership body. | In the event, the council operated alone rather than under any formal partnership arrangement. |
| F:8 No further information is provided to members once the decision has been taken because officers do not have the information required. | F:8:1 Officers design and implement a performance monitoring and management process addressing both the work undertaken by the contractor and the outputs and outcomes of the programme as a whole for the council. | No performance monitoring framework was established or operated for this programme. |
| F:9 No further information is provided to members on a significant work programme once the decision has been taken because members overlook it once the initial decision has been made. | F:9:1 Members of the council retain an interest in a significant work programme, having been alerted to it and made a decision to implement it. If information is not provided by officers, members request it. | Like the senior officers on its Management Team, members appear to have received too little information to have stimulated any requests by them for any further information from officers. |
| F:10 The situation changes, events do not develop as anticipated, or the assumptions made prove to be incorrect and the programme is effectively unworkable in the form originally decided by elected members. | F:10:1 Regular performance monitoring and reporting to senior officers and elected members ensures that problems are identified, the reasons for variations from expected performance are assessed, and appropriate remedial action is determined. | As already noted above, there was no effective oversight of the programme by officers and, as the programme developed, its performance was not assessed: remedial action was determined only by the Health and Housing Manager in conjunction with the director of AAW Ltd. |
| | F:10:2 The council operates a culture that allows challenge and the facility to propose changes to decisions that have already been made, or enables a course of action to be discontinued if it is no longer appropriate. | Most of the individuals we have spoken to have told us they would be content to raise any concerns about their work with their line managers. However officers working to the Head of Health, Housing and Regeneration and the Health and Housing Manager have told us that they attempted to raise their concerns but do not believe they were taken seriously and, instead, felt they met with opposition and the accusation that they were being obstructive. |
| | F:10:3 A revised decision, supported by a report addressing the reasons for the new decision and the basis on which it is proposed, is made by members, promptly. | No operational plan was discussed with or reported to elected members and it was simply noted in the Cabinet report of 15 February 2012 that the bid fell in line with the council's existing Vacant Property Strategy. No further reports were taken to members for any decision as officers' original intentions for the programme changed. |
| | F:10:4 The new decision is subject to the same controls as the original decision regarding its constitutional validity and the information on which it is made: see above. | |

| Risks | Expected controls | Actual controls and action taken by the council |
|--|--|--|
| <p>F:11 Concerns are raised by individuals outside the council that are overlooked or not pursued effectively either because they are not taken seriously, or because there are insufficient available resources at the appropriate level.</p> | <p>F:11:1 The council operates an effective whistleblowing line that is publicised both within the council and externally.</p> | <p>The council has a whistleblowing policy that has been approved by members and is publicised to officers regularly. However it is less well publicised externally, not being easily found on the council's web-site.</p> |
| | <p>F:11:2 Both formally designated whistleblowing concerns and concerns raised through other channels are taken seriously and considered by an appropriately senior officer.</p> | <p>Senior officers of the local housing associations raised concerns throughout its development and operation that the programme was not viable. In particular, the former Group Director of Property of a local housing association met the council's former Chief Executive and the Health and Housing Manager in June 2013 to address their concerns about his organisation's performance and, at the same time, we understand that he explained his concerns about the programme to them. In September 2013 his colleague again reported open criticism of the housing association by the Health and Housing Manager, telling him that she had been "quite critical of THG and how inflexible we are in our attitude to the programme and why we constantly stick to standards, legals and Board approvals. Whereas they are quite happy to overlook all of this and let to anyone."</p> |
| | <p>F:11:3 Such concerns are given priority and investigated until they are appropriately addressed (whether dismissed or found to have merit).</p> | |
| | <p>F:11:4 The information required to assess the concerns raised is identified and obtained.</p> | <p>Conversely, the concerns addressed to the council's former Chief Executive in January 2015 were taken very seriously and passed to the then Director of Business. With the Head of Health, Housing and Regeneration and the Health and Housing Manager, he met the whistleblower later that month but, before any further action could be considered in direct response to this, AAAW Ltd ceased trading and went into administration.</p> <p>However correspondence from this person indicates that he had previously made contact with the Health and Housing Manager and had assumed that his letter then had been disregarded.</p> |

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The International Framework: Good Governance in the Public Sector

The International Framework: Good Governance in the Public Sector, published in July 2014 by the International Federation of Accountants and The Chartered Institute of Public Finance and Accountancy states the following:

Governance comprises the arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved. The fundamental function of good governance in the public sector is to ensure that entities achieve their intended outcomes while acting in the public interest at all times. Acting in the public interest requires:

- A. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law.
- B. Ensuring openness and comprehensive stakeholder engagement.

In addition to the overarching requirements for acting in the public interest in principles A and B, achieving good governance in the public sector also requires effective arrangements for:

- C. Defining outcomes in terms of sustainable economic, social, and environmental benefits.
- D. Determining the interventions necessary to optimize the achievement of the intended outcomes.
- E. Developing the entity's capacity, including the capability of its leadership and the individuals within it.
- F. Managing risks and performance through robust internal control and strong public financial management.
- G. Implementing good practices in transparency, reporting, and audit, to deliver effective accountability.

Figure 1 illustrates how the various principles for good governance in the public sector relate to each other. Principles A and B permeate implementation of principles C to G. Figure 1 also illustrates that good governance is dynamic, and that an entity as a whole should be committed to improving governance on a continuing basis through a process of evaluation and review. The core, high-level principles characterizing good governance in the public sector set out above bring together a number of interrelated concepts. Principles C to G are linked to each other via the so called "plan-do-check-act" cycle.

Figure 1: Relationships between the Principles for Good Governance in the Public Sector

