Rossendale
BOROUGH COUNCIL

ITEM NO. D3

Subject:	Empty Homes project		**Status:**	Public	
Report to:	Audit & Accounts Committee		**Date:**	28th July 2020	
Report of:	Chief Executive		**Portfolio Holder:**	Leader of the Council	
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

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

2. PURPOSE OF THE REPORT

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

3. BACKGROUND

3.1. On 14 November 2012 the council entered into a consortium agreement with the HCA, to deliver a housing purchase and repair scheme. The scheme was to bring 474 properties back into use across Pennine Lancashire. It was agreed with the HCA that the council would act as accountable body for five East Lancashire councils: Rossendale, Pendle, Burnley, Blackburn and Hyndburn, to deliver a lease and repair project via a revolving loan scheme. The agreement was signed on 18 March 2013 and is the focus of the Empty Homes Scheme as we know it today.

3.2. AAAW were commissioned to act as the managing agent for the authorities. The key components of the scheme being that owners of empty properties assigned 5 or 10 year leases to AAAW in return for guaranteed rent (70% of the LHA rates) and council tax. The 30% rent balance would be retained by AAAW to cover management costs and repairs. The nature of these leases has been fundamental to the costs incurred by the council for the duration of the project. Where the properties were not at the Decent Homes Standard, owners could either:

- Commission AAAW to undertake the necessary improvement works or
- Undertake the works themselves and obtain re-imbursement from AAAW

3.3. The cost of the works would then create a loan to be repaid by the owner. Owners were guaranteed vacant possession at the end of the lease. 30 January 2015 saw the demise of AAAW following the council's refusal to provide financial assistance to the company. 459 properties had been registered with the Lease and Repair scheme but at the time of recovery the actual number of properties on the scheme was 357. The council had at this point paid circa £3.3m to AAAW. AAAW had claimed completion monies of £1.4m in respect of 117 properties which were recorded as not ready for let according to their income schedule. AAAW had drawn down 50% funding for a further 28 properties. The total grant under the scheme was circa £4.7m.

3.4. With the demise of AAAW, the council became responsible for tenants. LCC undertook an internal audit to understand the failings of the scheme soon after the demise of AAAW. This was completed in November 2015 and presented to Full Council on 9 December 2015. The key failings and their consequences became clear to Officers following AAAW Ltd ceasing to trade in January 2015, confirmed in an LCC Internal Audit report:

- No assessment was made of the risks and appropriate controls in taking up the funding and operating the programme
- The former Chief Executive did not obtain indemnities from other Pennine Lancashire councils
- Normal controls, expected procedures and statutory requirements were over-ridden
- Insufficient involvement of the council's legal and financial statutory officers

3.5. There was inadequate supervision of a single member of staff who was effectively made responsible for the management of the entire programme, and the scope to act in whatever way they felt was appropriate. AAAW misled the council and is subject to the police investigation. Officers involved in working with AAAW failed to inform members in a structured way on the operation of the programme. There was a failure to sufficiently involve the council's statutory officers in the decision-making process. In parallel a police investigation commenced to explore evidence of illegality on AAAW's behalf.

4. MANAGEMENT OF THE PROJECT TO DATE

4.1. Managing the project has been complex and challenging, particularly in the early years. Considerable time has been dedicated to the management of the project and this has resulted in 69% of the properties now being removed from the scheme. This has reduced the council's liability significantly for the remaining duration of the project. These 245 properties have all been returned to owners in liveable condition, which is a considerable improvement from their condition at the start of the scheme.

4.2. Two thirds of the remaining properties are currently tenanted, providing homes for local people in East Lancashire. In 2019/20 alone, 75 properties were returned to owners.

4.3. In 2015 the council commissioned a stock condition survey for all 357 properties. On completion of the surveys it was evident that little or no works had been carried out on a high number of properties. This work was valued at £677k. The council managed the properties in-house for a period but then sought an agent to manage the properties. In August 2016 Calico were appointed as the managing agents for the majority of the properties. The remainder are managed by a letting agent. The contract was to manage the properties under the existing model i.e. a 70/30 split in terms of the rent, rental and council tax guarantees and taking on the responsibilities under the terms of the leases that the council was responsible for.

4.4. Although the project was proposed on the basis of either a 5 or 10 year lease, in practice a number of properties were agreed for different lease durations. This has meant the number of properties managed under the scheme has gradually declined, leaving currently 112 properties in the scheme. The leases on 11 properties have expired but remain in the scheme.

5. FINANCE

5.1. An audit has been undertaken to assess the repayment of HCA (Homes England) grant. As a result of the audit the council agreed to pay back £1.4m of the initial £2.8m.

5.2. As at the 31 March 2020, total costs on the project to date are £7.73m, this includes £1.01m of owner loans provided for as doubtful debts. Whilst the council has provided for the owner loans there are land charges on the properties, therefore the council will ultimately recover the £1.01m. The council also received income of £1.64m, being net HCA grant of £1.31m and contributions from other local authorities of £330k. **The net cost of the project to date is currently £6.099m.**

5.3. The table, below, outlines the annual costs of the project over the first six financial years:

	Report as at 31/03/2020		
Empty Homes Recovery Scheme costs	**Revenue £000**	**Capital £000**	**Total £000**
2014/15 net operating costs	278		278
2015/16 net operating costs	896	312	1,208
2016/17 net operating costs	1,306	2,159	3,465
2017/18 net operating costs	461	27	488
2018/19 net operating costs	83	71	154
2019/20 net operating costs	613	110	723
Total Recovery Costs to be funded	3,638	2,679	6,317
HCA Grant		-2,891	
Repay HCA grant on returned properties		1,410	
Repay HCA re Martin Proffitt Ltd		169	
Net HCA Grant			-1,312
Contributions from other Authorities			-330
Provision set aside for doubtful loans			1,011
Compensation on returned properties			413
Total Net cost to RBC			**6,099**

5.4. The annual costs of the project have varied significantly. This is accounted for by the number of properties in the scheme, where leases expire and particularly in 2019/20 the legal settlement on a number of properties. Years 2 and 3 experienced a high number of properties which were taken out of the scheme (resulting in financial settlement for outstanding repairs and lease termination). Over the first six years of the scheme the total number of properties have reduced from 357 to 112.

5.5. The received £328k in from the other East Lancashire councils involved in the scheme, which it has offset against costs.

5.6. The 2019/20 costs are outlined in more detail, below:

Empty Homes Operations	**2019/20 £000s**
Revenue Costs	
Legal Fees	£115
Compensation Payments	£177
Proffessional Fees	£10
Back Rent Payments to Owners	£179
2019/20 Rent Payments to Owners	£97
Council Tax Payments on Void Properties	£134
General Repairs	£89
Repayment of Loan	£184
Rent Income received for Loan Repayment	-£184
Misc Income	-£54
Total before applying Provision	**£747**
Less Contribution from Compensation Provision	-£134
Total Revenue cost	**£613**
Capital Expenditure*	**£110**
Total 2019/20 Empty Homes Expenditure	**£723**

*The capital expenditure of £110k has been funded by capital receipts.

5.7. 2019/20 is the terminating year for 75 properties on a five-year lease. On hand back for a significant number of these properties there has been a dispute in relation to their condition. For a number of these it is clear works scheduled to have been undertaken by AAAW were either not undertaken or not completed. Properties are to be returned to owners at Decent Homes standard and therefore both renovation/repair costs (£110k capital & £89k revenue) and significant legal (£115k) and compensation costs (£177k) have been incurred to enable the properties to be returned to owners in an appropriate condition. A number of these properties have been void (empty) for long periods of the duration of their lease. These properties have been void due to either their condition or an inability/lack of proactivity to let them and the project has accumulated both the 70% rent guarantee to owners for these properties when they are not let, accounting for £97k in rent and £179k in back rent (as well as significant rent non-payment accumulated since the start of the scheme, accounted here under 'legal costs'). For these properties significantly reduced rent income has been received exacerbating the financial position. However, this has enabled the number of properties on the project to reduce significantly.

5.8. The council has made a provision of £300k in the Medium Term Financial Strategy (MTFS) for 2020/21 for the project. The MTFS is reviewed annually and this review will take into account the projected future costs of the project, reviewed each year.

6. LEGAL

The legal issues including the property leases and the agreement with Calico Homes are explored in the report.

7. MANAGING THE PROJECT IN THE FUTURE

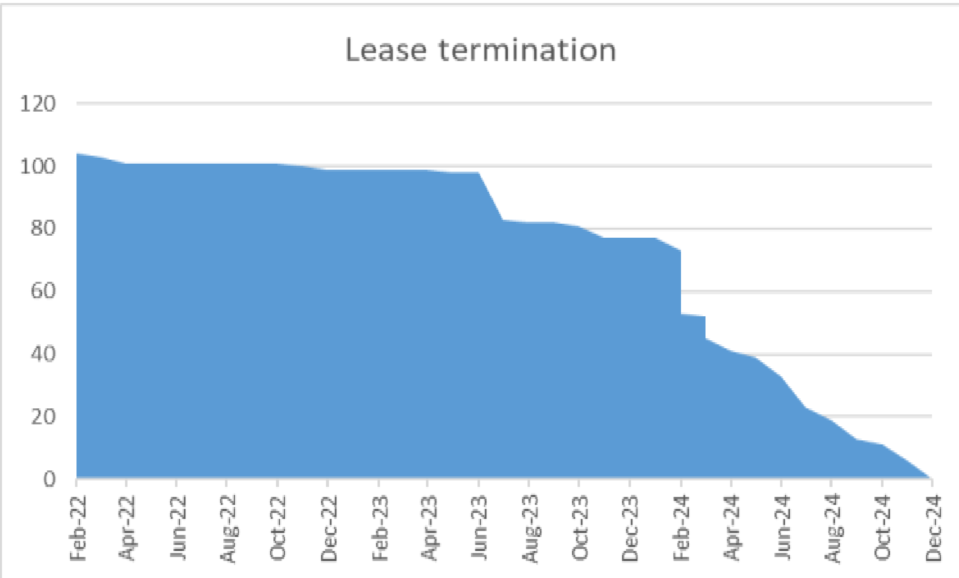
7.1. In 2020 the council has re-examined the project. The following key issues have been identified.

7.2. Reviewing the operating model

Managing the project has been extremely challenging. The structure of the legal agreement in relation to the leases has placed the vast majority of the financial liability on the council. The nature of these leases has been fundamental to the costs incurred by the council for the duration of the project. Options have been examined to limit the council's future financial liability. Due to the nature of the leases it is not possible to significantly reduce the likely cost of future repairs and end of lease costs. However, the council is actively considering options for terminating leases if this is financially advantageous to the council.

7.3. The review has identified 11 properties where leases have expired but the property has not yet been returned to owners. This has largely been as a result of lease terminations not being issued with the required six months notice and difficulty in contacting property owners (some of which reside outside the borough and have little contact with their properties/tenants). As a matter of urgency each of these cases is being investigated to return the property and remove them from the scheme.

7.4. If the council were to continue to manage the project as it has been doing to date the profile of the termination of the leases is summarised in the table, below:



7.5. The annual review of the Medium Term Financial Strategy will take into account the projected future costs of the project, reviewed each year.

7.6. At the end of March 2020 there are £368k owner loans outstanding. These are protected by local land charges on each individual property and the council should expect to recoup this loan income. There are tenant arrears of £324k. The council will be seeking active recovery of these arrears but to be prudent has set aside a Doubtful Debt Provision of £288k, leaving a potential £36k outstanding.

7.7. Future management and control of the project

Officers have aimed to manage the project throughout to the best of their ability. Issues have often emerged when works have not previously been undertaken to properties during the AAAW management of the scheme. The scale of these works and the nature of the leases have made managing the project extremely challenging. There is a need for on-going tight control of the project. The internal management of the project has recently changed to actively contract manage Calico and the other letting agent, challenge contractors cost estimates, ensure works are completed to an appropriate standard and leases ended. A new project team has been established, with a designated project officer. The Chief Executive has been designated as the lead senior officer for the remainder of the project. The project will report to the council's Programme Board and provide regular updates for members.

7.8. Relationship with Calico

The new Chief Executive has met with the Calico Chief Executive. There are number of issues to work through to improve the relationship, which the council is keen to maintain. The appointment of a new dedicated officer for the project is focused on improving the contractual relationship with Calico. The new postholder will look at meet with Calico as a priority and rebuild the relationship.

7.9. Resolving on-going legal disputes with owners

The council has experienced considerable pressures from a number of legal firms representing owners. £150k of back rent has been paid in 19/20 to settle one of these claims and the council have commissioned a surveyor to attend to cost these works to bring those properties back into use, although this is proving slow.

7.10. The council aims to minimise legal claims in relation to back rent, repairs etc but the conditions of the lease are extremely restrictive for the council. Claims are brought by owners particularly as a result of Calico not returning properties in a lettable condition. Claims are being actively managed and challenged but these are likely to have an on-going financial impact on the project and have been factored into the anticipated future cost projections.

7.11. Transparency in financial monitoring and reporting

The project will report to the council's Programme Board, as outlined earlier, so tighter monitoring can take place, particularly in relation to the financial progress of the project. Regular updates will be provided for Portfolio Holders and an annual update will be provided for the Audit & Accounts Committee to enable information to be published in the public domain.

7.12. Resolution of the police investigation

The police investigation commenced in 2015 and is still on-going. The council receives periodic updates and is pressing for the investigation to be concluded and a determination made in relation to prosecutions. The police have interviewed individuals involved in or connected with the scheme and further interviews are scheduled to take place. There is a limit to the detail of information which can be released to avoid prejudicing the impact on any potential prosecution.

8. CONCLUSIONS

8.1. Since the start of the project in 2014/15 the number of properties in the scheme has reduced from 357 to 112. This has significantly reduced the council's liability on the project for the remainder of the leases – until December 2024. The net cost of the project to date has been £6.099m. Two thirds of the remaining properties are tenanted, providing a home for local people.

8.2. The nature of the leases has been fundamental to the costs incurred by the council for the duration of the project. The structure of the leases has significantly limited the council's ability to reduce costs. The council is actively seeking to mitigate future cost through:

- Active pursuit of rent arrears
- Removal of properties from the scheme at the earliest opportunity
- Ensure leases are terminated at end date and properties returned to owners promptly
- Legal claims are actively managed and challenged
- Ensure repair costs are value for money
- Owner loans are repaid

8.3. The council has made a provision of £300k in the Medium Term Financial Strategy (MTFS) for 2020/21 for the project. The MTFS is reviewed annually and this will take into account the projected future costs of the project, reviewed each year. The council is investigating the 11 properties where leases have expired, with a view to returning the properties to owners and removing them from the scheme as an urgent matter.

8.4. This report welcomes feedback from the Committee on how members can receive assurance on the effective monitoring of major projects in the future. It is proposed an annual update on this project is provided for the Audit & Accounts Committee.

8.5. In recent weeks the council has strengthened the role of the Programme Board in order to tightly manage its eleven on-going major corporate projects, ensuring regular updates are provided and project budgets are monitored regularly. As part of the 2020/21 internal audit programme the actions from the 2015 internal audit will be rechecked to provide reassurance that these controls and processes are still in place.

Background Paper	
Document	**Place of Inspection**
Management response to the Lancashire County Council Internal Audit report: "Bringing Empty Homes into Use" (inc the LCC Internal Audit report) Council, 9 December 2015	https://www.rossendale.gov.uk/meetings/meeting/874/council