

COMMITTEE REPORT

CORPORATE AFFAIRS AND AUDIT COMMITTEE

DATE – 28 SEPTEMBER 2017

INTERNAL AUDIT REPORT: WHISTLEBLOWER CONCERNS

**JAMES BROMILEY – STRATEGIC DIRECTOR OF FINANCE, GOVERNANCE &
SUPPORT**

BRYN ROBERTS – MONITORING OFFICER / HEAD OF LEGAL SERVICES

PURPOSE OF THE REPORT

1. To present members with Internal Audit's report in relation to Whistleblower Concerns regarding Land and Property Disposals.

BACKGROUND

2. Members will recall that, over the past two years, Internal Audit have carried out a number of audits in relation to the Council's previous land and property disposals. Those audits resulted in a number of recommendations in relation to how the process to be followed in property disposals could be improved from a transparency and record-keeping perspective.
3. Those recommendations were incorporated into the Council Improvement Plan ("CIP"), the implementation of which was overseen by the Performance and Partnerships team, and supported by Deloitte (the Council's former External Auditors), and which has now been embedded.
4. In September 2016, however, further concerns relating to the disposal of Acklam Hall, the TAD Centre, and Gilkes Street properties were raised with Internal Audit. Following receipt of these concerns, Internal Audit agreed with the Strategic Director of Finance, Governance and Support, and the Monitoring Officer, that they would consider the concerns and report back to the Council once that consideration was concluded. The concerns received, and the associated findings, are summarised below.

SUMMARY OF CONCERNS AND FINDINGS

5. Internal Audit's overall conclusion is:

"... Taking all three of the disposals together, the overall opinion from the additional work carried out would be a cause for concern bordering on significant concern. No evidence of criminal activity has been identified." (Paragraph 4.1)

GENERAL COMMENT

6. Members will note that all of the allegations relate to historic land disposals, the most recent of which was concluded in April 2016. This report is, therefore, a commentary on the 'state of play' at the time those transactions were conducted, rather than an assessment of current practice.
7. Members will also appreciate that, as a consequence of the retrospective nature of this exercise, it would be unreasonable to expect Internal Audit to come to a more positive conclusion in this report, when the overwhelming majority of information has previously been considered by Internal Audit. It is, therefore, unsurprising that their overall conclusion is unchanged.
8. Members will note that many of the concerns raised are familiar in their terms, in that they have previously been raised both in Council, and on social media. It is, therefore, helpful to have these matters investigated by Internal Audit.
9. As the concerns were treated as whistleblowing, the content of this report has been considered by the Monitoring Officer and then by the Strategic Director of Finance, Governance and Support to determine whether there are any specific actions which are required to either investigate deliberate malpractice or fraudulent activity. While the conclusion stops short of an absolute guarantee, as might be expected, the conclusion is that there is no evidence of such practice. It was therefore not considered necessary to take these matters further; rather, that issues of systemic weakness have already been addressed through the CIP.
10. The Monitoring Officer and the Strategic Director of Finance, Governance and Support fully support the recommendation that internal audit should continue to have a focus on land and property disposals in their annual audit plan.
11. As there are no whistleblowing implications from the concerns raised, this matter is now presented to Members as an Internal Audit investigation report, for their information. The Internal Audit report is attached as an Appendix to this report.

RECOMMENDATIONS

12. It is recommended that the Committee notes the contents of this report and the Appendix.

BACKGROUND PAPERS

13. There are no background papers to this report.

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Private & Confidential Internal Audit Findings Summary – FINAL

Land & Property Disposal – Whistleblower Concerns

To: Bryn Roberts, Monitoring Officer;
CC: James Bromiley, Strategic Director Finance
Governance & Support
From: Helen Fowler, Audit and Assurance Manager
Andy Ingram, Principal Auditor
Date: 22 June 2017
Ref:

1.0 Purpose

1.1 To present, for the Monitoring Officer's consideration, the findings arising from concerns raised directly with Tees Valley Audit and Assurance Service in relation to a number of land and property transactions.

2.0 Background

2.1 The concerns were first raised confidentially with the Audit and Assurance Manager on 29 Sept. 2016 and related to the Council's openness and transparency and value for money arrangements in relation to asset disposals. The Complainant also suggested that there were gaps in internal audit report findings on the report on Acklam Hall CCS040/15, and questioned whether all requisite information and explanations had been provided to the internal auditors. The Complainant stated that they wished to raise the concerns under the relevant whistleblowing procedures. Since that date, a number of additional concerns from more than one source but relating to the same transactions have also been raised with TVAAS. This report covers the various different concerns raised.

3.0 Remit

3.1 It was agreed with the Council's Strategic Director of Finance and Governance and Support and the Monitoring Officer that the remit of this work would be to consider whether there was any additional evidence or explanations that had not been available or examined at the time of the original audit that would have affected the overall conclusion and level of assurance given by the internal auditors.

3.2 The assignment has taken longer than originally estimated due to a number of relevant documents being under the review of other agencies. Those files have recently been provided to the auditors for their review. It should also be noted that, as some of the activities and decisions (particularly in relation to Acklam Hall) took place some years ago, that a number of officers involved at the time are no longer employed by the Council and therefore could not provide input.

3.3 Additional concerns were raised by the whistleblower(s) that were not considered to be within the remit of this investigation. These included concerns regarding the length of time taken by the Council to implement robust processes to meet the requirements of the external auditors and concerns regarding senior officer competence and overall governance arrangements that had allowed the alleged problems to have occurred in the

first place. A concern was raised in relation to the disposal of Crown House but as this was not a Council asset, this could not be considered within this report.

4.0 Overall Conclusion

4.1 In summary, the findings of this audit have confirmed a number of the concerns raised with the auditors (some of which were raised in the original audit reports) with each being considered below. Most of the findings relate to the overall lack of effective governance and control; openness and transparency in place at the time of the transactions. These principles were raised in the original audit work undertaken where the reported conclusion was that: *'Whilst there was no evidence of impropriety identified during the audit, it is the view of the Auditors that the inadequate controls have left the Council exposed to challenge and criticism in the areas of project management and property disposals'*. The findings of this extra work confirm the original opinion of cause for concern and would not cause the auditors (based on the scope of the original audit work) to materially change that opinion. Taking all three of the disposals together, the overall opinion from the additional work carried out would be a cause for concern bordering on significant concern. No evidence of criminal activity has been identified. That does not provide a guarantee that such activity did not or could not have happened given the weaknesses in the control and governance environment at the time of the transactions under consideration.

4.2 Internal audit work carried out during 2014/15 and 2015/16 recommended various actions to improve the control environments for project management and land and property disposals. Those actions were incorporated into the Council's Improvement Plan which has since received assurance from Deloitte. Progress against the Council's Improvement Plan has been reported to the Corporate Affairs and Audit Committee. Therefore the control and governance weaknesses that resulted in the issues discussed in this and earlier audit reports should be addressed by compliance with the new governance frameworks since implemented. As a result, the only additional actions recommended are included at section 7.

4.3 Whilst the auditors have viewed additional information during this work (for example 6.11.6) that was not examined at the time of the original audit, this is most likely attributable to:

- The agreed scope of the original audits being limited to specific aspects of a development or scheme and therefore the information not being requested by the auditors at that time;
- The previous project management framework in place at the time of the specific transactions meaning that information was not held centrally but perhaps in a variety of different places including email inboxes meaning that the full extent of all relevant information may not have been known to all Council officers involved in the process.

Although the auditors cannot conclude with certainty that they have seen every document, record or email that may have some relevance to the transactions under review, there is no evidence to suggest that there has been any deliberate attempt to withhold information or documentation. Improvements have been made to the project management control environment as part of the Council's Improvement Plan.

4.4 More detail on the audit findings in relation to the specific concerns raised is provided in section 6 below.

5.0 Original Audit Work

5.1 The original two internal reports that discussed the control and governance issues regarding land and property disposals are: CCS040/15 Acklam Hall Disposal Value for Money issued in final 09 Sept. 2015 (overall assurance opinion – moderate) and Project

Governance and Property Disposals CCS039/15 (overall assurance opinion - cause for concern) issued in final 26 Jan 2016.

5.2 The scope of the Acklam Hall audit was to focus solely on the value for money associated with the scheme i.e. assessed against economy, efficiency and effectiveness as the then Assistant Director Organisation and Governance had been tasked with carrying out a separate review of the decision making and governance process followed for the Acklam Hall development. At the time that the audit was carried out, the scheme was still ongoing in that Acklam hall as a venue had not yet opened and all of the objectives as set out in the development brief of 2007 had still to be fully achieved.

6.0 Concerns Raised and Audit Findings

6.1 Concern raised - that a proper and robust assessment process was not carried out for the selection of the successful bidder in relation to the disposal of the land and hall at Acklam Hall and the subsequent renovation of the Hall itself including a lack of adequate due diligence on the successful bidder.

6.1.1 Findings – from the documentation available to the auditors, it is clear that a detailed and lengthy marketing and clarification exercise had been followed in order to assess the interested parties. The marketing and selection process included:

- An open marketing campaign;
- Submission and assessment of detailed proposals;
- Interviews and clarification;
- Interview panel comprising 13 representatives from the Council, Middlesbrough College and Drivers Jonas;
- Scoring of submissions by the project team;
- Advice and guidance from Drivers Jonas including reasons for recommended course of action.

6.1.2 There is however less evidence available to confirm that a robust financial due diligence exercise was carried out on the successful bidder. The only evidence of a financial check carried out was on Ettrick Holdings by Dun & Bradstreet (D&B) on the 4 December 2007. However, reference to Ettrick Holdings' subsidiary companies would suggest the lack of an obvious link to the preferred bidder Ettrick Health/GFive Ltd and therefore it appears that the financial check was carried out on the wrong company. There is evidence available to demonstrate that further checks had been considered (due to subsequent name changes not the error), but there was no further audit trail to confirm any subsequent management decisions in relation to this. Confirmation has been received from Bond Dickinson to confirm that no further financial checks took place. In mitigation, a report to the Executive Property Sub Committee 24 August 2010 (paragraph 42) records that the '*the vendors are to obtain legal opinion from a qualified lawyer in Jersey, in relation to the capacity of the purchaser to enter into the document and fulfil its obligations*'. It is not clear from the report what nature of checks this entailed.

6.1.3 Council officers have explained that it is commonplace for businesses to create a special project vehicle company as a mechanism for delivering a scheme. In the case of Ettrick Health Ltd setting up Acklam Hall Ltd, a Council officer has stated that the view was taken that the individual directors, company structure and access to finance had not materially changed between Ettrick Health and Acklam Hall Limited and therefore as there were no concerns, no further financial checks were carried out. However, if the only financial check carried out was on the Ettrick Holdings as outlined in 6.1.2 then the financial assurance appears to have been carried out on the wrong company. In this instance, financial assurance was important for two primary reasons: 1) the capital receipt was to be received in stages rather than a one off whole sum 2) if the overriding objective of the scheme was the renovation of the Town's only Grade 1 asset; a project requiring such considerable investment would entail thorough financial checks to be

carried out on the successful developer to ensure that they could deliver this objective. Although a S106 Agreement in 2012 required the developer to deposit £1m with their solicitors as a hall works deposit, this was part of the planning process and did not negate the need for thorough financial due diligence at the outset of the scheme.

- 6.1.4 In conclusion**, although there was evidence of a detailed marketing and clarification process, there is limited evidence that thorough financial due diligence was carried out on the buyer with the only financial check evidenced seemingly being made on a company not linked to the Acklam Hall development. Whilst this created a risk, the Hall is operating as a venue and payments agreed have been paid to date.
- 6.2 Concern raised - that the fact that the name of the preferred developer changed from Etrick to Acklam Hall Ltd was not adequately communicated to Members.**
- 6.2.1** The name change was referred to in a report to Members via the Executive Property Sub Committee on 24 August 2010. In a report to the Executive Property Sub Committee (Executive Members for Resources and Regeneration – Cllrs N Walker and C Rooney on 24 August 2010, paragraph 42 sets out the fact that Etrick Health Ltd had set up a separate company called Acklam Hall Ltd to carry out the scheme. The minutes record that seven Members were present at this meeting.
- 6.2.2** Some confusion appears to have arisen in terms of the name of the preferred developer and subsequent changes. Further investigation into this would suggest that the only names relevant to the Acklam Hall scheme are Etrick Health Ltd who worked with GFive Ltd. Etrick Health Ltd then established a special project vehicle to deliver the Acklam Hall scheme – Acklam Hall Limited. It is concluded that all references to Etrick throughout the disposal process were a shortened version of referring to Etrick Health Ltd. Etrick Holdings Ltd and Etrick Ltd would appear to have no obvious links to a bid for Acklam Hall.
- 6.2.3 In conclusion** – reference to Acklam Hall Ltd was included in a report to Members.
- 6.3 Concern raised - that Middlesbrough College was not sufficiently aware of the procurement process regarding the disposal**
- 6.3.1** The Memorandum of Understanding defined the process for the joint disposal of Acklam Hall land and buildings and was signed by both the College's Principal on 30 October 2007 and the Council on 19 October 2007. The decision to dispose was jointly conducted by the Council and the College, as co-owners of the site. All decisions were presented to both respective governance committees and had to be countersigned, meaning no party had unilateral authority to make decisions without agreement with the other party. Information made available to the auditors verifies that the College was kept informed of developments.
- 6.3.2 In conclusion** – There is clear evidence that Middlesbrough College was aware of the process being followed.
- 6.4 Concern raised - that the Council did not consider state aid implications regarding the disposal process**
- 6.4.1** It is noted that State-Aid did not apply to land disposals as long as best consideration could be proven (please see paragraph 6.11 onwards below). Council officers have explained that state-aid was not an issue with regards to the change of company or costs resulting from dilapidations as these issues were site specific and not development specific, so would have equally applied to any bidder regardless of their scheme. The auditors' research into state aid requirements initially provided assurance on compliance in that market value had been determined by placing the sale on the open market and

holding an unconditional bidding process. However, the guidance goes on to state that 'the buyer must also be free to decide how to use the land or buildings'. Given that there were conditions and objectives (as stated in the Development Brief) related to the development in terms of the usage of the Hall, the auditors sought qualified legal advice from the Council's Monitoring Officer on this point. The response received was that all works required in the development brief were included in a section 106 agreement, and were thereby controlled solely through planning powers. As such, it has been stated that they would not have been subject to either state aid or procurement rules, as there was no exercise of control over public works, but were instead merely requiring that the works to the Grade I listed building were carried out in accordance with the requirements of the development control team and that of English Heritage.

- 6.4.2 In conclusion** – QC advice on procurement process and its compliance with EC procurement arrangements is provided in a report dated 3 March 2009 and it is clear that the issue of state aid compliance was considered by the Council and evidence has been viewed to that effect. Those Council officers (including a qualified solicitor) queried on this matter have stated their assurance on state aid compliance.
- 6.5 Concern raised – that a thorough valuation was not carried out on Acklam Hall and land to establish an adequate disposal price and that Council responses on this matter have been inconsistent and misleading. A concern was also raised with TVAAS that, at a Members' briefing, the Interim Chief Executive had stated that the Acklam Hall site was valued in 2010 at £1 million and that this figure can be substantiated by evidence.**
- 6.5.1** A book value (revaluation) was carried out by Mouchel on 10 March 2009, effective from 1/4/2008. The evidence to support this is an asset revaluation record sheet (in accordance with the processes at that time). The revaluation recorded the overall value of the site i.e. hall and grounds as £2m which matches the original sale figure (as the £4m included abnormalities, S106, demolition and dilapidation and was never expected to be received in full due to the level of investment that the developer would have to meet). At the time the assumption made was that the Council and the College would have a 50/50 split therefore both parties would record a valuation of £1m each. A development appraisal (not a valuation) was later carried out by Mouchel as a result of the Council receiving a reduced offer from Acklam Hall Ltd of £741k which was subsequently increased to £907k through negotiation and was later agreed upon as the disposal price (to be split 75:25 Council:College). A report detailing the reasons for the reduction in disposal price was prepared by the Valuations Team, considered and concluded by the Council to be acceptable.
- 6.5.2** The £622K valuation relates to the land and buildings that surround Acklam Hall and was carried out in 2013. This would infer that Acklam Hall itself was not included in this valuation but this is not fully clear. The valuation report does not fully clarify who carried out the valuation although it is presumed it was Mouchel.
- 6.5.3** The potential confusion regarding the figures (both valuation and capital receipt) quoted for Acklam Hall could be due to an inconsistency as to whether the gross figure is quoted or just the Council's share of that figure. When the Interim Chief Executive has stated £1m as a valuation, this relates to 50% of the overall £2m valuation (see above) in 2008.
- 6.5.4 In conclusion**, although the Council reasonably placed reliance on its strategic partner as valuation experts, the evidence to support valuations is not fully clear or robust. The lack of adequate audit trails was an issue highlighted in the original audit report hence the actions that have since been taken to implement a new process for land and property disposals.

6.6 Concern raised – that the Council missed an opportunity to sell land directly to a developer for a much higher price.

6.6.1 The Council's priority was to preserve the only Grade 1 structure and therefore the land and hall was to be disposed of as a joint venture which would significantly affect the level of capital receipt given the amount of refurbishment required.

6.6.2 Acklam Hall Ltd sold land onto the developer soon after taking over the site from the Council. The auditors have not confirmed the price of the land sold to Taylor Wimpey as this would be a matter between Acklam Hall Ltd and the developer. Even if it was possible that a higher capital receipt could have been obtained had the Council sold land directly to a developer, the Council's vision for Acklam Hall required a different direction in that the whole of the site (land and buildings) was to be considered as a comprehensive package, with the capital receipts from land disposal being used to address the deficit value of the actual Hall. There were numerous other factors and complexities to consider including the cost of delaying any sale and therefore retaining the risk of ownership; the lack of Council funds to carry out its own refurbishment; English Heritage stipulations etc.

6.6.3 **In conclusion**, the auditors cannot conclude that it was impossible for the Council to have sold at least part of the land for a higher sum; it is acknowledged however that the scheme was far from straightforward. The concerns raised in this area are as already reported in CCS040/15 relating to the need for an effective project management framework which has since been implemented.

6.7 Concern – that a thorough valuation was not carried out on the TAD to establish an adequate disposal price and that Council responses on this matter have been inconsistent and misleading.

6.7.1 It should be noted that there are different valuation criteria depending on the purpose of the valuation (i.e. whether it is market value; rebuild cost or compliance with financial reporting standards). The Auditors' role is not to comment on the quality or the accuracy of the final valuation itself, only to report that there is evidence that such a valuation exists and that it was carried out by a professional valuer.

6.7.2 From enquiries made, the following valuations have applied with regard to the TAD:

- In 2010, the TAD Centre was assigned a value of £1.5m by the Council which was based upon an estimated rental/site value. This valuation is recorded on a document entitled 2010 Main Investment Asset Valuation and shows the building value as £1.145m and the site value as £0.381m, a total of £1.526m. The breakdown of the valuation shows that it is based on estimated rental value. An email from the Corporate Assets Officer in March 2013 to a prospective buyer states, in reference to the TAD that the Council '*currently has the property in its books at £1.526 million, based on existing use/rents*'. The email goes on to comment that the '*property comprises 3744m² which based on a conservative build figure of £1300m² for office accommodation would cost £4.867m to construct at today's prices.*' This would imply that the £1.526 million was not based on rebuild/replacement cost as suggested in a briefing to Members (4&5 October 2016) but was an estimated market valuation and based on full occupancy (as the TAD did not have full occupancy, that valuation may have been optimistic).
- January 2014 – GVA provided a valuation of between £600-900K. This was based however on a marketing void of 12 to 18 months. This valuation was referred to in a report entitled Disposal of Tad Centre/MTLC, dated 16 June 2014 by the Executive Director of Economic Development and Communities.

- April 2015 - an asset valuation report was produced by Mouchel recommending that for capital accounting purposes the TAD be shown as £523k (£61K building; £462K land), based upon fair value.

The above figures correspond to the information provided by the Chief Executive in an email to all members of staff on 14 October 2016 but there has been an inconsistency in the basis of the £1.5m valuation provided in a Members' briefing.

- 6.7.3 In conclusion** – there is evidence that the most recent valuation was carried out in April 2015 by the Council's professional valuers. There is a discrepancy in the basis of the valuation in that the valuation of the TAD appears to have been a market value based on rents (full occupancy) rather than a rebuild value as stated to Members in a briefing held in October 2016.
- 6.8 Concern raised - that elected Members had been invited to a briefing by the Interim Chief Executive at which the Interim Chief Executive provided factual information regarding a number of property disposals for the benefit of Members' clarification. One of the concerns raised included that it had been asserted, at this briefing, that the disposal of the TAD had been subject to a two stage process when the concern was that this was not factually correct.**
- 6.8.1 In conclusion** - The original internal audit report issued on 26 January 2016 reported (para 2.17) that 'From the outset, the disposal process was intended to include two stages with the Stage 2 documentation issue planned for November 2014. In effect, progression to stage 2 did not take place as intended.' No alternative evidence has been made available to the auditors for them to change this view.
- 6.9 Concern – that the Council has not received full payment for the agreed disposals and that there has been inconsistent information provided regarding what actually has been received in relation to the Craft Centre on Gilkes Street; the TAD and Acklam Hall.**
- 6.9.1 Acklam Hall** – at the time of the original internal audit report issued 09 September 2015, £200K had been received as a capital receipt on 11 August 2014. The cost of site fencing was deducted from the first instalment meaning that the net receipt to the Council (based on 75:25 split) was £120,358. A further £235K was received in September 2016 of which £176,250 is the Council's share. The developer is contractually obliged to release three staged payments when development begins on other stages of the development or 4 years from the beginning of construction (i.e. by July 2018 at the latest). Although this does not equate to the £350K quoted by the Interim Chief Executive in an email to all staff on 14 October 2016, this may be due to a difference between quoting the gross receipt as opposed to the Council's share of that receipt and not taking into account the deduction for the fencing. The Council's share of the actual receipt to date is £296,608.
- 6.9.2 Craft Centre, Gilkes Street** – expected capital receipt was £50K and this was received in full (£5K on 31 March 2014 and £45K on 9 May 2014).
- 6.9.3 The TAD Centre** – expected capital receipt was £400K of which £300K has been received to date (18 May 2017). The remainder is due to be paid in one further instalment of £100k payable in April 2018 as agreed at the time of disposal.
- 6.9.4 In conclusion** – capital receipts to date for these properties have been in accordance with agreed payment schedules. There has been some inconsistency in the provision of information in response to queries possibly for the reason discussed in 6.9.1 above.
- 6.10**

That the overage end date specified in the contract for the sale of the TAD was before the date the contract was signed.

- 6.10.1** This appears to have arisen as a result of an error which was then corrected. It is clear that the overage agreement runs for 10 years from the date of completion (15/04/2016) to 2026. Discussions with the Council's Principal Solicitor has clarified that the usual procedure for completing documents such as these would be over the phone, with each party's solicitor holding their client's executed parts. Completion takes place by each solicitor entering the date on the document, and filling in any other parts which cannot be filled in in advance. Each party then sends the other the completed documents, so each party ultimately holds the copy executed by the other. The Council generally retains scanned copies of the MBC executed documents on file, for future reference. In this instance, the buyer's solicitor appears to have made an error with the date and has then corrected it. There are therefore two versions of this overage agreement which reflect that the 10 year period is clearly intended to run from the completion date of the document.
- 6.10.2 In conclusion** – there has been a minor error but which has little or no impact.
- 6.11 Concern raised – that best value has not been obtained for the property disposals (Acklam Hall; Craft Centre and the TAD).**
- 6.11.1** An informal briefing paper to the CMT 4 Dec 2014 states that the 'overriding principle... is for the Council to obtain the best consideration that can be reasonably obtained when disposing of its property assets... The Council can, however, dispose of property at an under value where it considers that the disposal is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of its area. In such circumstances the Council must determine whether the outcomes will be at least as beneficial as the opportunities foregone by agreeing to a reduced receipt.'
- 6.11.2** When assessing best value, the auditors have taken the above principle into account and the three Es of economy, effectiveness and efficiency. This means that the final disposal price is not the sole consideration but also whether the other factors said to have influenced the decision have been achieved i.e. if the Council has sold a property for a lower monetary sum to one individual than it could have received from another on the basis of additional objectives, whether or not those objectives have been or will be realised within a reasonable timeframe is key. When assessing whether best consideration has been achieved, the auditors have therefore taken into account the following:
- The final agreed disposal price (a) versus the highest offered (b);
 - If (a) was lower than (b); the clarity of scoring/reasons for accepting the lower sum;
- Whether, at the time of writing, the reasons for accepting the lower sum have been realised e.g. if the Council accepted a lower financial bid for a property because it believed that the proposal associated with that bid would result in greater long term benefits for the Borough than those associated with the highest financial bid – have those greater benefits been achieved.
- 6.11.3** Acklam Hall – disposal price was much lower than original valuations but the auditors recognise that this was a lengthy and complex project with numerous difficulties and involving different parties including English Heritage. Whilst this project took place some years ago and before the Council had implemented a corporate project management framework, there is evidence to support the movement and consideration of a reduced disposal price. There are issues with the project management and some queries over state aid compliance regarding Acklam Hall which have been discussed elsewhere within this report but, the primary objective of safeguarding the Hall as the Town's only Grade 1 structure has, at the time of reporting been achieved (there are other objectives in the

Development Brief that have not been assessed by the auditors in terms of whether they have been achieved e.g. improvements to the pond).

- 6.11.4** Craft Centre, Gilkes Street – two marketing exercises took place with the first one being cancelled so as to readvertise and apply a scoring assessment. Based on the current situation, the auditors do not conclude that best value has been achieved for the following reasons (although this situation may change at a later date):
- The Council did not accept the highest financial offer of £110K during the first marketing exercise on the grounds that it adopted a preference (after the marketing exercise) to proceed with an option that generated business starts ups). The Council therefore undertook a second advertising campaign where a preference for retail/employment/commercial was stated. The final bid accepted as a result of the second campaign was £50K following a scoring evaluation exercise.
 - Only one business (a nursery) has taken up residence in the building since the sale of the leasehold.
 - No business rates have been received since the sale of the leasehold. It is understood that the building came back into rating in November 2016 (rateable value £10K) and that the bills for 2017/18 charges have recently been issued.
 - There is a lack of evidence of a formal professional valuation for the Craft Centre with only a guide price of £175K based on a pre-marketing valuation produced based on the publicised asking prices that had been set for other Council held assets (Southfield Road and Albert Terrace) - less relevant adjustments for both location, and also condition (662sqm = £270k less £95k = £175k). The leasehold was sold for £50K.
 - In summary, the Council evaluated the bids using a process that placed higher importance on proposed use than on the financial receipt. At the time of this report, no long term business generation has been realised although this may yet still be achieved.
- 6.11.5** Schedule 2 of the extract agreement state that the leasehold could be forfeited by May 2016 if works have not been completed. Three visits have been made by Valuation Services to the site in March and April 2016 and it was confirmed that the contractual works listed within Section 1 external works were completed as required. With regard to the internal works listed within Section 2 of Schedule 2, only the works to the hair & beauty salon have been completed and it was clear that the works to the remainder of the ground floor and the entirety of the second floor were outstanding at the time of the last visit on 22 April 2016. As the buyer has completed a significant element of the works listed within Section 1 & 2 of Schedule 2, Legal Services have advised that the Council's ability to successfully force forfeiture would be remote.
- 6.11.6** The Auditors recently became aware that an additional report was produced by a legal officer, a copy of which was not available at the time of the original audit although there is nothing to suggest that this was a deliberate omission. This report outlined the officer's concerns regarding the disposal process. It is not clear from the report who commissioned the investigation, to whom it was presented or whether there was any outcome as a result of that report. The whistleblower also made reference to a letter to a former Chief Executive (GR) from a former Head of Legal Services (RL) but there was no recollection or awareness of such a letter when queried and therefore the existence of this letter cannot be confirmed and has not been examined within this audit.
- 6.11.7** The TAD Centre - it cannot be concluded that best value has been obtained at this point in time for the following reasons:
- The disposal price of £400K (negotiated up from £350K) was £123K less than the valuation. The highest bid submitted was £500K in May 2015 by one of the original parties to have expressed an interest at stage 1 of the process in 2014 (and then to be advised in Oct 2014 that the sale was not going ahead). This offer

was rejected by the Council. As the Council was not bound by EU or Public Contracts rules for this disposal, it was not legally bound by a timeframe but did not reconsider revisiting the sale process due to a concern, as explained by the then Executive Director of Corporate and Commercial Services, that the prospective buyer had been placed at a disadvantage, and could take legal action against the Council as details of his proposal had by then been disclosed through social media. This point was referred to in a Members' briefing on 4 October 2016 when the question was asked. The recorded response is that the Council could not have accepted the later bid '*because the Council had failed to protect the confidentiality of each bidder*'.

- Another factor for not accepting the higher bid was that it did not propose business start ups. Completion only took place on 15th April 2016 and no business start ups have as yet been initiated. The buyer's submission also included a social value proposal to accommodate a particular charity but this has not happened.

6.11.8 It is noted that other stated influences for the choice of buyer have been stated by the Interim Chief Executive (email dated 14 Oct 2016 to all staff) as 'sold on the basis of the purchaser investing £800K to improve the building'. The auditors are not aware that this figure appeared in any conditions attached to the sale although an email trail indicates that the buyer referred in his Stage 1 tender submission that he would be proposing £800k of investment for the TAD which was said to be the level of refurbishment needed to transform the TAD into 'Boho 7' which was to be an accommodation platform for commercial/office uses (including the existing nursery tenant), new business start-ups (including live/work types), employment, training and skills development. However, in the Executive Sub-Committee for Property report dated 24/3/15 (where it was recommended that the Council accept the bid of £400k from the buyer for the freehold interest – decision deferred pending more information), it was stated that this represented best consideration taking into account the monies that the preferred bidder would have to expend in order to bring the complex back to standard are offset against market value. This figure was predicated on the cost of refurbishment being conservatively estimated at £300k.

6.11.9 In conclusion - At this point in time, best consideration cannot be assessed as having been achieved for the sales of the Craft Centre leasehold and the TAD. For Acklam Hall, issues were noted with the robustness of project management and financial due diligence arrangements although the overall objective of refurbishing and preserving the Grade 1 asset has, at this point in time, been achieved.

7.0 Recommendations

7.1 In terms of improvements to governance and controls, the issues discussed within this report relate to transactions carried out prior to the Council's Improvement Plan. Internal audit recommendations to address governance and control concerns were made in the following internal audit reports CCS039/15 Project Governance and Property Disposals and COR013/14 Project Management. The recommendations from these reports were incorporated into the Council's Improvement Plan. Action has been ongoing by the Council to implement its Improvement Plan as reported to the Corporate Affairs and Audit Committee. Therefore the recommendations that would have been made from this report (other than at 7.3 below) have already been raised and the only additional recommendation to make is that the areas of project management and property and land disposals be included on the annual internal audit plan in order to provide assurance to the S151 Officer that the new controls and processes since implemented are being complied with – any additional actions will be recommended via that audit work.

- 7.2** That the Monitoring Officer considers the findings outlined in this report and whether those findings require him to further action or investigation in response to the issues outlined in this report. When making this decision, the Monitoring Officer should take whatever professional and impartial advice or consultation is considered to be appropriate (either internal and/or external to the Council).
- 7.3** That consideration be given to including within the asset disposal process (since adopted by the Council in December 2016) a requirement that future land and property disposals (where there are factors other than obtaining the maximum possible capital receipt influencing the selection process) should outline an approximate timetable by which the attainment of value for money and/or other objectives will be assessed.