

Cabinet 19 December 2018	 TOWER HAMLETS
Report of: Ann Sutcliffe, Acting Corporate Director, Place	Classification: Unrestricted
Withy House Tenant Management Organisation Termination Notice – Outcome of Independent Assessment	

Lead Member	Councillor Sirajul Islam Cabinet Member for Housing
Originating Officer(s)	Mark Baigent: Divisional Director Housing & Regeneration John Kiwanuka: Housing Partnerships Manager
Wards affected	Bethnal Green
Key Decision?	No
Forward Plan Notice Published	20 November 2018
Reason for Key Decision	N/A
Strategic Plan Priority / Outcome	A borough that our residents are proud of and love to live in

Executive Summary

A Termination Notice was served on Withy House Tenant Management Organisation (TMO) to terminate the Management Agreement under which they had been managing properties at Withy House since 1994. The TMO exercised their right to appeal to Cabinet, in December 2017, where it was decided to defer the final decision for six months to allow time for the TMO to progress their improvement programme and for an Independent Assessor to undertake an organisational review and to provide a report back to the Mayor recommending a final course of action.

The Independent Assessor completed the organisational review and has written a report recommending that Withy TMO continues to provide housing services. The Independent Assessor also recommended a number of measures for Withy TMO to implement with the guidance and support of THH and LBTH. The Independent Assessor's report is appended at Appendix 1.

Recommendations:

The Mayor in Cabinet is recommended to :

1. Agree the recommendations of the Independent Assessor's report appended at Appendix 1. The Independent Assessor recommends that the TMO continue to provide housing services, and that THH and LBTH continue to provide support and monitor the TMOs implementation of the actions identified by the Independent Assessor.
2. Note specifically the independent assessment made with regard to:
 - The service of the Breach Notice served on 3rd June 2016
 - The service of the Termination Notice dated 4th January 2017
 - The suggested further actions detailed in the Approved Assessors report attached as Appendix 1 to this report.

1. REASONS FOR THE DECISIONS

- 3.1 At Cabinet on 19th December 2017 the Mayor deferred a decision on whether to terminate the Management Agreement for six months to allow time for Withy TMO to progress their improvement programme.
- 3.2 In addition the Mayor agreed that an Independent Assessor would undertake an organisational review of the TMO and report back recommending a final course of action. An Independent Assessor was commissioned, the review conducted and concluded, and a report has been issued. The Assessor has recommended that Withy TMO should continue to provide housing management services to the residents of Withy House.

2. ALTERNATIVE OPTIONS

- 2.1 To terminate the Management Agreement between the Council and Withy TMO and make arrangements for Tower Hamlets Homes (THH) to assume the housing management responsibilities.

3. DETAILS OF THE REPORT

- 3.1 Withy House TMO was set up in 1996 to manage a single block of 80 flats on Globe Road. A Management Agreement (MA) was signed on 10th July 1996 in accordance with the Housing (Right to Manage) Regulations 1994. Under the MA, the Council appointed the TMO to undertake responsibility for Cleaning, Caretaking & Grounds Maintenance, Day to Day repairs, Rent Collection and Arrears Control in the block. It has a staffing complement of one Caretaker and one part time Manager. The TMO receives an annual Management & Maintenance allowance of approximately £98,000 per annum to run its services.
- 3.2 However, in November 2015, the new Chair of the TMO informed THH of numerous concerns regarding the TMO's management and employment

issues. The TMO clienting functions are delegated to THH, therefore LBTH liaised with THH to try to establish the root cause of the TMO's problems. Following LBTH/THH liaison, it was decided to conduct an audit of the TMO's management & governance.

- 3.3 The audit investigation concluded that the council could have Nil Assurance concerning the management & governance of the TMO. The audit found there had been a systematic failure of good governance that had put at risk the TMO's effective management. The audit identified long-standing failures in practice and procedure which compromised effective management.
- 3.4 In addition the audit established serious issues around suitability of the TMO's repairs and maintenance contractors, a high level of rent arrears, a lack of appropriate financial procedures, a number of governance issues and an absence of robust anti-fraud procedure. The TMO had also not held the five yearly ballot required by the Management Agreement since 2009.
- 3.5 Following the conclusion of the audit, the Council and THH established that Withy TMO was in breach of its obligations under the Management Agreement. As a result, the Council served breach notice on the TMO in June 2016 followed by a termination notice in January 2017.
- 3.6 The Mayor in Cabinet was asked to uphold the termination notice served on 4th January 2017, and agree that the Council follows the dispute provisions made in the Management Agreement. Under the terms of the Management Agreement drawn up in 1996 the TMO has a right of appeal to the Housing Committee, the nearest equivalent decision-making body today is Cabinet. The TMO exercised this right to appeal to Cabinet.
- 3.7 Subsequently the Mayor decided to defer a decision on whether to terminate the Management Agreement for six months to allow time for Withy Tenant Management Organisation to progress their improvement programme and for an Independent Assessor to undertake an organisational review of the Tenant Management Organisation and to provide a report back to the Mayor recommending a final course of action.
- 3.8 Following this decision Alicia Francis (of Newman Francis) an Approved Assessor appointed by the Ministry of Housing, Communities and Local Government (MHCLG) was engaged to provide an independent assessment of the competency of the TMO over a six month period from January 2018. The Independent Assessor has finalised the review and submitted the report with a recommendation of measures to consider, and the TMO to implement with guidance and support from the Council and THH.

Lessons Learnt, Implementing the Decision, and Assurance

- 3.9 The council delegated the TMO's clienting functions to THH. It is acknowledged by THH that the monitoring of TMOs had fallen short of the standard expected and this resulted in the service of a Breach Notice on THH in 2016. THH have previously acknowledged that that there have been historic

issues with the clienting of Tenant Management Organisations [TMOs]. In 2016 THH in a paper to the Bi Monthly Operational Meeting with LBTH's Client Team stated that the role had not been fully defined or clarified in any officer's work plan and that its management of TMOs had been by exception and reactive to issues arising. An action plan was devised and progress has subsequently been regularly reported to the client. Progress has been made in setting in place clear performance management requirements and regular liaison with all of the TMOs.

- 3.10 Following the report from the independent assessor THH have supported Withy House TMO to review and amend the job description and person specification for the post of TMO Manager. The post has been advertised and short-listing is taking place. Once the successful candidate is in post in the New Year the further recommendations of the assessor will be pulled together, in conjunction with the TMO, to form an action plan going forward. Over the past 10 months significant work has taken place to ensure that Withy House adopt and implement robust procedures and that work is begun on all areas highlighted by the Assessor as requiring attention. However, until a permanent manager is in post the TMO have not been able to take the necessary steps to fully implement all recommendations.
- 3.11 THH is currently undertaking a permanent recruitment to the post of TMO Client Officer. Since February 2017 THH have been using the services of a TMO specialist to develop a robust clienting arrangements for the TMOs within its management. During this period a performance monitoring system has been established, draft management agreements prepared for Withy House and two other TMOs and formal liaison arrangements have been agreed with all TMOs. Once the permanent officer is in post THH will develop the remaining governance monitoring requirements in line with the most recent statutory guidance from MHCLG.
- 3.12 Overall, the three other TMOs in Tower Hamlets have performed adequately. Areas such as rent collection and repairs are of an acceptable standard. Further work is underway to review management of voids. Financial management remains a strong point for all TMOs aside from the documented issues at Withy House. Birchfield House have undertaken additional landscaping works funded from their surpluses and Dennis have developed repair remedies to address condensation and design issues with bathrooms within the block, again funded from surplus funds accrued from prudent management. Bancroft TMC was recognised nationally for their work with community pay-back schemes.
- 3.13 Liaison between the TMOs and THH has improved with the establishment of a Liaison Committee which meets every six months and a working group to look at future investment needs for the TMO managed homes. Whilst all TMOs face challenges in common with all areas of social housing Bancroft, Dennis and Birchfield TMOs are in overall good health and the relationship with all TMOs has improved so that issues can be addressed. THH provide a regular update report on TMO client arrangements to LBTH client team at the bi-monthly operational client meeting.

3.14 Furthermore progress on the implementation of the Independent Assessor's recommendations and improvement generally will be reported to the Corporate Leadership Team (CLT) in December 2019 following an internal audit of Withy TMO.

4. EQUALITIES IMPLICATIONS

4.1 Equalities Impact Assessment (EIA) has been considered and there are no specific equalities implications arising from this report Equalities Impact Assessment (EIA) has been considered and there are no specific equalities implications arising from this report.

5. OTHER STATUTORY IMPLICATIONS

5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.

5.2 **Best Value (Bv) Implications:** The Council is required to consider the value for money implications of its decisions and to secure best value in the provision of all its services.

5.3 **Environment (Including Air Quality):** There are no specific greener environment implications arising from this report.

5.4 **Risk Management Implications:** The Independent Assessor recommends that the TMO continue to provide housing services, and that THH and LBTH continue to provide support and monitor the TMOs implementation of the actions identified by the Independent Assessor. To ensure that the TMOs receive continued advice, support and guidance (including monitoring of their performance) in the future, THH is committed to recruiting a TMO Client Manager.

5.5 **Crime and Disorder Reduction Implications:** There are no specific Crime and Disorder Reduction implications arising from this report.

5.6 **Safeguarding Implications:** There are no specific safeguarding implications arising from this report

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 The TMO receives an allowance of £98,000 per annum, charged to the Housing Revenue Account (HRA), to manage and maintain the block on behalf of the Council.
- 6.2 The TMO has introduced a range of measures to strengthen its governance processes, including the establishment of an Audit and Finance sub-committee to oversee its financial matters, and the reinforcement of its financial procedures. These measures will support the TMO in providing an effective housing service and will assist in the control of its resources. To enhance this control, THH and the Council will continue to monitor and support the implementation of the actions identified in the independent assessment report.
- 6.3 As a result of the improvements made to processes, the rent collection rate for the TMO has increased from 97.5% for the first two quarters of 2017/18 to 104.9% for the early months of 2018/19. This reflects the successful recovery of arrears as well as the receipt of payments for the current charges being raised. The average collection rate for all TMOs in the borough is 98.2%.
- 6.4 The costs of the independent assessment were funded from the Housing Revenue Account.

7. COMMENTS OF LEGAL SERVICES

- 7.1 Relying on clause 19.2.2 of the Management Agreement, on 4 January 2017 a Termination Notice was served by the Council citing six breaches of the Management Agreement between the Council and the TMO.
- 7.2 In accordance with the terms of the Management Agreement, the TMO served a Dispute Notice requiring the Council to review its decision to terminate the Management Agreement. On the 19th December 2017, the Mayor in Cabinet was asked to consider if the decision to serve the Termination Notice should be upheld.
- 7.4 Cabinet deferred the decision by six months to allow the TMO to progress improvements which the TMO stated had been embarked upon and for an independent accessor to be appointed to review the TMO's compliance with the Management Agreement.
- 7.5. The Independent Accessor has recommended that the TMO continue to provide housing services and that THH and LBTH continue to provide support and monitor the implementation of actions identified by the accessor.
- 7.6 Accordingly, Cabinet's agreement to the Independent accessor's recommendation will comply with the Council's contractual obligations under the Management Agreement.

Linked Reports, Appendices and Background Documents

Linked Report

Withy House Tenant Management Organisation (TMO) Termination Notice, Cabinet
December 2017

<http://democracy.towerhamlets.gov.uk/ieListDocuments.aspx?CId=720&MId=7703&Ver=4>

Appendices

- Appendix 1: Report of Independent Assessor

Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012

- NONE

Officer contact details for documents:

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