

Assessment of matters relating to the Wesley Street Mill and McKenzie Arms sites in Bamber Bridge

Contents		Page
1	Introduction	1
2	The council's concerns in commissioning this assessment	1
3	Conclusions	2
4	Events as set out in the files	4
5	Valuations of the McKenzie Arms site	5
6	Drafting of the contract to transfer the McKenzie Arms site	7
7	The interconnectedness of the transactions involved	8
8	Reports to the council	9

1 Introduction

- 1.1 This report has been prepared for South Ribble Borough Council by Lancashire County Council's Internal Audit Service, at the request of the borough council's chief executive.
- 1.2 It sets out the findings of an assessment of the information provided on the following paper files, provided on 23 August 2018:
- Wesley Street Mill EST/1/0/49
 - Development Projects – Wesley Street Mill, Bamber Bridge – M20/1
 - Development projects – Wesley St Mill – Project team papers – M/20/1/1
 - Development projects – Wesley St Mill – Legal papers – M/20/1/2
 - Site of McKenzie Arms Bamber Bridge – M20/2
 - MacKenzie Arms M20/2
 - Various loose documents
- 1.3 Inevitably, given the restricted nature of the information available, a fully balanced assessment cannot be made of the concerns raised by the council at this point in 2018. None of the officers involved has been contacted.

2 The council's concerns in commissioning this assessment

- 2.1 The council has indicated that it is concerned about the following:
- Whether the council's actions were appropriate to serve the best interests of the community and council

- Whether appropriate due diligence was undertaken to support the purchase of the McKenzie Arms
 - Whether the purchase of the McKenzie Arms was achieved at the best consideration for the council
 - The nature of overage associated with the McKenzie Arms transaction in relation to the development of the Wesley Street Mill site
 - Whether the advice given to officers was properly taken.
- 2.2 Allegations have also been made that the leader of the council in 2012 had some relationship with the owner of the McKenzie Arms. However this matter has already been addressed by the council's own internal audit and legal services and is not considered any further in this report.

3 Conclusions

- 3.1 The council's intentions in 2008 and after were reasonably clear: to regenerate a large, derelict brownfield site in Bamber Bridge and to do so holistically through a land assembly with appropriate access to the local road network. The council intended to achieve this through negotiations with the private landowners and, if negotiations were not concluded promptly in 2008, by operating through a developer partner, and potentially using the council's powers of compulsory acquisition.
- 3.2 Conditional decisions were made to seek a developer partner in 2008 and again in 2011, but it does not appear that one was ever appointed.
- 3.3 The council's officers were clearly aware of the complexities of the site's ownership and the interdependencies of issues relating to its access, but were unable adequately to address these. The risks inherent in the council's purchase of the McKenzie Arms site independently of any other negotiations to assemble the whole site were identified and articulated by one of the council's estates surveyors in February 2011, even as officers pursued the purchase of the McKenzie Arms site alone. These risks have since crystallised.
- 3.4 The council's objective of developing the site is only now being realised, more than ten years after the need to regenerate it was first considered and without the access intended onto the larger of the local roads. The council remains the owner of a small part of the site, for which it paid a premium to facilitate that access.
- 3.5 Since it was accepted in 2012 that the council was buying the McKenzie Arms site to enable access to the larger site, the purchase price of £499,999 itself does not appear unreasonable, being located some way between different valuations made by the council's own officers and advisors. However the council has not been able to capitalise on the premium it paid, primarily due to the restrictions placed upon its re-sale to any new owner by its former owner as the transfer to the council was negotiated.
- 3.6 The negotiation of the contract for the council's purchase of the McKenzie Arms site was clearly difficult but the contract's terms and the manner of their drafting have left it requiring interpretation, and the results now present too great a financial risk for any future owners until October 2032.

Matters for the council to consider

- 3.7 The matters for the council to consider that arise from this assessment are reasonably clear at a superficial level (even if difficult to achieve in practice) – the need to ensure that related transactions are properly connected and completed together for example – but may be more difficult to identify and address at a more fundamental level. It is reasonable to assume that the officers involved at the time acted in good faith and with the best of intentions but, collectively, there were some clear points of failure that may inform the way the council operates in future to achieve its objectives.
- i) Whilst the council clearly intended to achieve the regeneration of Bamber Bridge, any plans it made do not appear to have been adequate, or effectively pursued in practice.
 - ii) The reports to the council do not appear fully to have reflected what officers and external advisers were considering in practice and, conversely, decisions made by the council do not appear to have been adequately enacted by officers.
 - iii) Acknowledging that the information available is limited, elected members do not appear to have questioned the progress of the project, or if they have, to sufficient effect.
 - iv) Having recognised the risks to the council of progressing with the purchase of the McKenzie Arms site alone, this was precisely the action taken. The process by which the decision to do so was proposed by officers and recommended to the council is not clear.
 - v) A number of advisers were commissioned to act on the council's behalf, but the drafting of the contract for the transfer of the McKenzie Arms site was undertaken by the council's own legal team. The problematic wording of this contract has effectively precluded the sale by the council of the site to any developer before 2032, and has left it, derelict, in the council's ownership even as the rest of the larger site is being developed.
 - vi) A project team was established in November 2011 and a number of officers met regularly until April 2013, including those central to the project. Risk and issues logs, risk matrices and project timelines were prepared and minutes kept but it is not clear what value was added, if any, by these meetings and documents.

4 Events as set out in the files

- 4.1 Documents available on the files indicate that the following events took place but, in relying solely on this information, this narrative is almost certainly incomplete.
- 4.2 There is little information prior to 2011. In May 2008 the council considered a report setting out the potential use of compulsory acquisition powers to redevelop a site in Bamber Bridge and seeking agreement to advertise for developer partners if no significant progress was made with the private landowners. However the McKenzie Arms, a relatively small part of the whole site, but one with access to the largest of the local roads, Station Road, was

Assessment of matters relating to the Wesley Street Mill and McKenzie Arms sites

bought in 2008 by Beardsworth Developments Limited with the intention of building social housing.

- 4.3 By early 2011 Excelsior Properties as the owner of the largest parcel of land, the Wesley Street Mill site, was in negotiations with Beardsworth Developments Limited, to purchase the McKenzie Arms site. However although offers were made, negotiations were not completed. In February 2011 the Valuation Office Agency (VOA) was instructed by the council to value the site, and the council was made aware of the offers being made for it by Excelsior Properties. The council too, through the VOA, offered to buy the site and negotiated this during March 2011.
- 4.4 On 20 July 2011 the council decided to delegate to its cabinet consideration of the compulsory acquisition of the whole site, subject to the selection of a developer partner.
- 4.5 The first step set out in the report to the council on 20 July 2011 – the selection of a developer partner – was not successfully progressed, although there is some evidence that officers worked on this later with an external consultant. The need for an options appraisal and soft market testing were identified by an external adviser in April 2012 in preparing a brief to assist potential developers, but there is no evidence on file that these were undertaken.
- 4.6 The council does not appear to have had a clear view about the eventual use to which the site should be put, although retail usage was suggested by the council's planning officers in March 2012. Housing was clearly already being considered by Beardsworth Developments Limited as the owner of the McKenzie Arms, and the owner of the larger Wesley Street Mill site was also seeking planning permission for residential use.
- 4.7 At the same time, other options for the whole site were still being suggested by Beardsworth Developments Limited, who proposed their own developer partner. An offer in early 2012 by the potential developer to purchase the larger Wesley Street Mill site was rejected by Excelsior Properties.
- 4.8 Negotiations by the council for the purchase of the McKenzie Arms site continued through 2012, complicated by the difficulty of its valuation as part of the wider site and as a point of access to the site.
- 4.9 A contract for the transfer of the McKenzie Arms to the council from Beardsworth Developments Limited was signed on 25 October 2012, including clauses establishing the conditions under which additional payments ('overage') would be made to Beardsworth Developments Limited by the council and any subsequent owner(s) if the site's value increased after its development. The pub itself was immediately demolished.
- 4.10 The council then entered into negotiations with the owner of the Wesley Street Mill site for the onward sale of the McKenzie Arms site. These negotiations continued through 2013 and 2014 but the uncertainty arising from the overage clauses in the contract for the site's transfer to the council meant that agreement could not be reached. Therefore although reports were prepared for consideration by the council in March and July 2014 the transfer was not completed.

4.11 In December 2012 two applications for planning permission had been submitted for residential development on the Wesley Street Mill site, both with and without access from Station Road and these were granted during 2013. During 2014 the owner negotiated the sale of the Wesley Street Mill site to Countryside Properties and, in 2015, completed the sale. At this point in 2018 it is clear from a visit to the site that the Wesley Street Mill site is being developed by Countryside Properties with access to the site through Wesley Street. The site of the McKenzie Arms remains derelict.

5 Valuations of the McKenzie Arms site

- 5.1 The valuation of the McKenzie Arms site in 2012 was clearly complicated by a number of uncertainties.
- 5.2 Initially the problems facing the local and national economy arising in 2008 are likely to have, at least temporarily, reduced the site's value for any housing or retail use, whether alone or combined with any other site. The McKenzie Arms site was understood by the council to have some additional value though, as an access to any development on the larger Wesley Street Mill site by making that site easier to access from Station Road and therefore more marketable.
- 5.3 That ransom value was disputed and unclear however. At different times access from the larger road has been regarded as either fundamental to the development and necessary to obtain planning permission, or as effectively irrelevant. Beardsworth Developments Limited had initially sought planning permission for eleven properties on the McKenzie Arms site but the council intervened in early 2009 and prompted discussions between Beardsworth Developments Limited and Excelsior Properties. Excelsior Properties offered an alternative site fronting Wesley Street, with space for 22 properties similar to those intended on the McKenzie Arms site.
- 5.4 However the use of land to create additional access to Station Road from the combined site would have reduced the number of properties that could be built on the site and this was deemed arguably to negate the additional value to the site arising from better access.
- 5.5 The assembly of this larger combined site was also dependent upon a land swap with Lancashire County Council to join the McKenzie Arms site with the Wesley Street Mill site. The land swap appears to have been agreed in principle if the whole site were to be developed.
- 5.6 These uncertainties in valuation were compounded after the transfer to the council in 2012 by the terms of the contract for the sale. These bind the council, and any future owner too (until 25 October 2032), to make additional payments to the vendor on the onward sale of the property, but their drafting was unclear and subject to legal interpretation (see section 6 below).

Potential and actual valuations proposed during negotiations

- 5.7 Beardsworth Developments Limited paid £300,000 plus VAT for the McKenzie Arms site on 18 December 2008. They submitted a planning application for 11 properties, resulting in an implied value per plot of £27,273.
- 5.8 Beardsworth Developments Limited's representative claimed in January 2011 that, had planning permission been granted (and there was no valid reason it

Assessment of matters relating to the Wesley Street Mill and McKenzie Arms sites

would not have been), the site would have been worth £500,000, or approximately £45,500 per plot once developed.

- 5.9 On the basis that Excelsior Properties was prepared to exchange the site for an alternative site fronting Wesley Street that could accommodate 22 properties, and valuing each plot at £44,500 (it is not clear why the amount has been reduced slightly here), Beardsworth Developments Limited's representative estimated that the site could have been valued at around £980,000. He inferred from this that the McKenzie Arms site had considerable ransom value as access to the development of the Wesley Street Mill site. To expedite negotiations he proposed a discounted value for the site of £880,000.
- 5.10 In light of this information, in February 2011 the council's estates surveyor proposed that negotiations could be concluded quickly by offering £300,000 immediately, with a further £360,000 if and when terms were agreed with Excelsior Properties and the county council to yield the land exchange. At the same time he set out the options he saw as available to the council (see paragraph 7.5 below.)
- 5.11 At the same time Excelsior Properties' representative offered £400,000 for the McKenzie Arms.
- 5.12 In March 2011 the council's representative matched this offer of £400,000 (contingent on the county council not wanting a share in any ransom element) and offering to pass on 100% of any amount above this that Excelsior Properties paid to the council, less costs. This offer was rejected by Beardsworth Developments Limited as being less than the profit that would otherwise be available from the development of the site.
- 5.13 Beardsworth Developments Limited was prepared instead to accept £500,000 plus 100% of any amount above this that Excelsior, or a new owner, paid the council. This was not acceptable to the council, whose valuer advised that £400,000 reflected the site's ransom value, and that this would be the appropriate sum for a compulsory purchase order.
- 5.14 In July 2011 the council's valuer advised that if the council were to increase its offer, any additional payment obtained from a future developer should at least be shared with the council.
- 5.15 On 5 April 2012 the council made an offer through an estates surveyor to purchase the former McKenzie Arms for £450,000 with a further £50,000 to be paid when access from Station Road was gained to serve a retail development on part of the Wesley Street Mill site.
- 5.16 In response, on 1 May 2012 Beardsworth Developments Limited's representative proposed a sale for consideration of £499,999 with a further amount to become payable if additional access to the Wesley Street Mill site were constructed. If the county council were to seek to recover some of the enhanced value this would be shared equally between the county council and Beardsworth Developments Limited. If the council were instead to transfer ownership then Beardsworth Developments Limited would be entitled to 100% of the additional value.
- 5.17 Although the council's estates surveyor (by then he may have been acting as an independent consultant) could not recommend acceptance of the terms

proposed in May 2012, by late July, with amendment to require any additional value to be shared between the district council, county council and Beardsworth Developments Limited, the valuation had been accepted. Drafting began on a contract for the transfer of the property.

6 Drafting of the contract to transfer the McKenzie Arms site

- 6.1 The attempts to reflect the uncertain long term value of the McKenzie Arms site, which was dependent upon later transactions, complicated the negotiation and eventual drafting of the contract for its transfer.
- 6.2 Once the valuation of the site was effectively settled in May 2012, considerable discussion focussed on the clauses in the contract for sale relating to overage. The discussions and drafting included consideration of the definitions of the current use of the Wesley Street Mill land, valuation and enhanced value, sequencing and trigger points, the first trigger event, permitted disposal, duty to notify, and duration of the agreements.
- 6.3 A contract for the transfer of the McKenzie Arms to the council from Beardsworth Developments Limited was signed on 25 October 2012 with consideration of £499,999, plus additional overage effective until October 2032.
- 6.4 The final contract was eventually drafted in such a way that problems became apparent within a month when a partner from DWF, supporting the council in November 2012 with advice on the procurement of a developer partner, raised some issues that they thought would be of concern to any future developers of the site.
- 6.5 Negotiations by the council to sell the site to the owner of the Wesley Street Mill site during 2013 and 2014 stalled on a number of issues, including planning permissions and section 106 agreements, but in particular the interpretation of the clauses in the contract relating to overage. Counsel's opinion was sought on two different aspects of the contract.
- 6.6 The council required clarification of the covenant established by the contract by which it would not dispose of the site without Beardsworth Developments Limited's prior written consent. Counsel was required to consider how the contract ought to be construed, and whether the clause was subject to an implied term such as that consent was not unreasonably to be withheld.
- 6.7 The council also then required counsel to consider whether the original purchase price was to be deducted in the calculation of the amounts payable as overage after a trigger event. Counsel considered that the council could not, as it had hoped, deduct the original purchase price when calculating the overage payable. He also stated that, "From the point of view of the Council, the scheme for the payment of overage lacks commercial sense."
- 6.8 It is apparent that the potential purchaser was unwilling to take the financial risks associated with the covenants entered into by the council for the benefit of the site's previous owner: the site was, and is, effectively unsaleable.
- 6.9 By September 2014 the problems for the council that officers identified as requiring specialist legal advice included: how overage would be calculated, the need for consent from the previous owner to the onward sale of the site, the need to make any contract for onward sale conditional on that consent,

preparation of litigation to force consent, planning issues and reserved matters, relocation of a transmitter mast from the mill and the mill's demolition.

7 The interconnectedness of the transactions involved

- 7.1 As noted in section 5 above there was some complexity in the valuation of the McKenzie Arms site arising from the location of the combined site and its access to the local road network. This was further complicated by the ownership of the land required to assemble the combined site. The council had identified the need to use a developer partner to facilitate the site's assembly and development but it is not clear that one was ever appointed, then or subsequently.
- 7.2 Protracted negotiations with the private landowners had failed to progress the site's regeneration. The council was aware of the offers and valuations that had been made by the private landowners and, by February 2011, was itself considering the purchase of the McKenzie Arms site. The estates surveyor set out his assessment of the position in a briefing note at that point although it is not clear from the information available why the council would have considered purchasing the McKenzie Arms site alone.
- 7.3 He recognised that the site held some additional ransom value above its market value as an access point to the larger site and concluded that it would be right for the council to pay this. However he also noted that the council's objectives would be at significant risk, and it would be at risk of losing money if it paid this additional ransom element, "without tying up the access arrangement through a composite deal involving the current owners of the McKenzie Arms, School playing fields and Mill."
- 7.4 A process of land assembly therefore appears to have been required to manage the site as a whole and this was acknowledged. Indeed this had already been recognised by the council's intention to procure a developer partner.
- 7.5 An estates surveyor set out two options: either to conclude negotiations quickly by offering to buy the McKenzie Arms site for its market value plus overage later when terms had been agreed with Excelsior Properties and the county council; or to conclude deals with all parties before committing the council to buying the site. He noted that, "this may take weeks, if not months, given Excelsiors [sic] apparent track record in negotiations to date".
- 7.6 Officers then pursued negotiations over the next 20 months to purchase the site. No other deals appear to have been attempted and none were concluded. Further, as noted above at section 6, the wording of the contract for this first transaction then impeded its connection with any others.

8 Reports to the council

- 8.1 Various reports to the council between 2008 and 2014 are held on the files, although it is not clear whether all of them were finalised and actually reported.
- 8.2 In May 2008 the council's agreement was sought in principle to the use of its powers of compulsory acquisition to secure the regeneration of the borough, as well as to advertise for developer partners if no significant progress has been made with the landowners.

Assessment of matters relating to the Wesley Street Mill and McKenzie Arms sites

- 8.3 In July 2011 the selection of a developer partner through a competitive process was recommended and, subject to that, if negotiations to acquire the land and interests failed, the council agreed to consider the compulsory acquisition of the the land and interests.
- 8.4 In July 2012 the council was asked to agree to acquire the McKenzie Arms site, authorise expenditure on the demolition of the pub, and establish a capital budget to cover these costs and the potential future costs arising from the compulsory purchase order process if necessary.
- 8.5 The report set out the offer that had been made in May 2012 by the council to acquire the site for £450,000 with a further £50,000 when access from Station Road was gained to serve a retail development on part of the Wesley Street Mill site: but this offer had been rejected. The smaller amendment to the offer that had been negotiated regarding additional value (see paragraph 5.16) was however reflected in the report.
- 8.6 Later reports to the council were drafted in 2014 relating to the disposal of the McKenzie Arms site, but it is not clear whether any were taken.
- 8.7 Considered alone, the reports to council available on the files are insufficient to support a full understanding of the rationale for the eventual purchase and use of the McKenzie Arms site. Nor is it clear that the decisions taken by the council – the selection of a developer partner in particular – have been enacted, but it is possible that other information, not available here, was made available to members.

We have prepared this report solely for the use of South Ribble Borough Council and it would not therefore be appropriate for it or extracts from it to be made available to third parties other than the external auditors. We accept no responsibility to any third party who may receive this report, in whole or in part, for any reliance that they may place on it and, in particular, we expect the external auditors to determine for themselves the extent to which they choose to utilise this work.