



MINUTES OF THE MEETING OF THE AUDIT AND GOVERNANCE COMMITTEE

**TUESDAY 26 SEPTEMBER 2023
VIA DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor Bruce
Councillor McFarlane
Councillor McGuire
Councillor Menzies
Councillor Ritchie

Council Officials Present:

Ms S Fortune, Executive Director for Council Resources
Mr D Proudfoot, Executive Director for Place
Ms W McGuire, Head of Housing
Ms M Ferguson, Head of Corporate Support
Ms E Dunnet, Head of Finance
Mr D Stainbank, Service Manager – Internal Audit
Mr P Vestri, Service Manager – Policy, Improvement & Partnerships
Mr C Grilli, Service Manager – Governance, Council Resources
Mr S Allan, Senior Auditor – Internal Audit
Mr T Reid, Head of Infrastructure
Mr L Wright, Emergency Planning, Risk & Resilience Officer
Ms L Brown, Executive Director for Education & Children's Services
Ms M Patterson, Chief Executive
Ms N Aitken, Digital Project Manager
Ms C McCorry, Service Manager – Connected Communities
Ms C Rodgers, Service Manger – Customer Services
Mr S Cooper, Service Manager - Communications
Mr J Baker, Service Manager – Economic Development
Mr G Marsden, Planning Obligation Manager
Mr P Forsyth, Project Manager – Growth & Sustainability
Ms L Crothers, Service Manager – Protective Services

External Audit:

Mr J Boyd, Audit Scotland

Clerk:

Ms M Scott
Ms F Currie (back up)

Apologies:

Councillor K McLeod
Councillor L Jardine
Councillor T Trotter

Declarations of Interest:

There were no formal declarations of interest but for transparency Councillor Menzies and Councillor Ritchie made Members aware they were appointed Members of the Board of Enjoy Leisure.

Councillor Forrest made Members aware is a Member of the Board of the Brunton Theatre Trust.

PRIVATE BUSINESS

1. INTERNAL AUDIT REPORT: BRUNTON THEATRE TRUST

This item was discussed in private.

Decision

The Audit and Governance Committee agreed to note the contents of the report.

PUBLIC BUSINESS

2. MINUTE OF AUDIT & GOVERNANCE COMMITTEE ON 13 JUNE 2023

The minutes of the Audit & Governance Committee from 13 June 2023 were approved as an accurate record.

3. INTERNAL AUDIT REPORT: SEPTEMBER 2023

A report was submitted by the Service Manager for Internal Audit to inform the Audit and Governance Committee of Internal Audit reports issued since the last meeting of the Committee and provide an update on progress made against 2023/24 annual audit plan.

Duncan Stainbank, Service Manager for Internal Audit reported that since the last meeting of the Committee final reports had been issued in respect of the following audits; Brunton Theatre Trust, Tyne & Esk Funding and Scottish Housing Regulator Annual Assurance Statement. The Brunton Theatre Trust was granted limited assurance, Tyne & Esk Funding was granted reasonable assurance and the Scottish Housing Regulator Annual Assurance Statement was not graded and this would be discussed further later on the agenda.

Mr Stainbank reported Tyne & Esk Rural Communities Development Fund is part of the Scottish Government's Community Led Local Development Rural Programme, which is the replacement for the previous LEADER Programme that was funded by the European Union. He added that the delivery of the Rural Community Led Local Development funding was agreed in August 2022 with the completion deadline of March 2023.

Mr Stainbank highlighted the key findings, recommendations and the dates for completion for each audit category.

Councillor Menzies asked if the full register applicants are in place now as the deadline was August 2023. Mr Stainbank confirmed there is a full register now in place but the publication of that has been slightly delayed as the team are reviewing exactly what information they wanted in it.

In response to a second question from Councillor Menzies, Mr Stainbank explained there were two items within the spreadsheet which caused issues; system problems with voting and a calculation issue with the sheet which meant in one case an application was lower scored than it should have been. Mr Stainbank noted that in that particular case the application was also rejected for that particular year on the basis they wouldn't have been able to spend the funding within the timescales required.

Councillor Menzies asked if we could be assured no projects had been adversely impacted by the underspend on Capital. Mr Stainbank assured Members that no projects had been adversely impacted and the underspend was down to short term funding for this particular year and he hopes in years to come there will be more time for applications to come through and therefore more time for the money to be spent.

In response to questions from Councillor Ritchie, Mr Stainbank explained the spreadsheet would be fixed for the actual calculations earlier than March 2024, that date is to allow for the transfer to the system.

Mr Stainbank confirmed he was happy to take questions on the Annual Audit Progress Report at this time.

Councillor Menzies asked in what circumstances the Council would use agency staff. Mr Stainbank stated agency staff can be used in a number of areas, particularly where the Council has found the recruitment of specific skills difficult and we require them for a short period of time to keep Council services running especially within statutory services.

In response to a second question from Councillor Menzies in relation to the Musselburgh Flood Prevention Scheme, Mr Stainbank said there is a major decision due to be made in January 2024 which is taking all the resources from the team to complete a full audit exercise. Mr Tom Reid, Head of Infrastructure explained it is the intention to have a thorough audit of the process and the governance but as it is a small team we don't have the capacity or resource to engage all of the consultation feedback into the designs to make sure the designs and the report come forward in time for January therefore the full review would have to come after the January report.

Councillor McFarlane asked if external organisations have any restrictions or regulations on the amount of finance they receive from the Council. Ms Ferguson stated that the Council makes funding available to Community Councils for a number of purposes. She added they receive an annual grant to assist with their administration and running costs, they also receive other funding for particular purposes but as part of our general community funding to them they have wider discretion to spend on local matters they find appropriate.

Councillor Menzies said that there had been huge changes with Mr Stainbank's team and noted the huge amount of internal audits that had been undertaken. She thanked the team on behalf of all Members and members of the public for working so hard and appreciated all the work they had done to give assurance that the Council is trying to do the best by them.

Decision

That the Audit and Governance Committee note:

- i. the main findings and recommendations from the Internal Audit reports issued during the period from June 2023 to September 2023 as contained in Appendix 1 and covered in agenda items 2 and 7;
- ii. Internal Audit's progress against the annual audit plan for 2023/24 as set out in Appendix 2.

4. REVISED INTERNAL AUDIT PLAN 2023/24

A report was submitted by the Service Manager for Internal Audit to inform the Audit and Governance Committee of Internal Audit's revised operational plan for 2023/24.

Duncan Stainbank, Service Manager for Internal Audit reported that the annual audit plan had been prepared in accordance with Public Sector Internal Audit Standards and highlighted the key additions of auditable areas and noted which items had been removed from the plan to make way for these new additions.

Councillor Menzies asked what the impact of reactive work has on the Internal Audit team. Mr Stainbank explained that reactive work often includes whistleblowing and investigation work which has an impact on the team if it requires a considerable amount of work so an allowance is made for this within the plan. He added that we now have a Counter Fraud Officer who can take on some of the investigation work going forward but it depends on the level of work coming through as there is still a training plan in place for that particular officer.

In response to a follow up question from Councillor Menzies, Mr Stainbank explained it does cover internal and external fraud and we will investigate things as they are highlighted as well as being proactively involved with the National Fraud Initiative which is a data matching initiative across public sector organisations across the UK. He added the team were working their way through a number of different matches including key areas in relation to the National Fraud Initiative including Council Tax matches to the electoral register in relation to single person discount, as well as matches in relation to creditors and housing. Mr Stainbank confirmed a report would be forthcoming about all of those activities to the June 2024 Audit and Governance Committee.

Decision

The Audit and Governance Committee were asked to approve the revised Audit Plan for 2023/24. A roll call vote was carried out and it was a unanimous decision to approve.

5. AUDIT AND GOVERNANCE COMMITTEE ANNUAL/END OF TERM REPORT 2022/23

A report was submitted by the Service Manager for Internal Audit to present the outcome of the 2022/23 Audit and Governance Committee self-assessment and seek approval from the Audit and Governance Committee to present the Annual/End of Term Report 2022/23 to the Council.

Duncan Stainbank, Service Manager for Internal Audit drew members attention to the agreed areas for improvement as part of the Audit and Governance Committee Annual/End of Term Report 2022/23. He highlighted that Members will receive a questionnaire from himself in October to make recommendations on any areas of skills

and knowledge that could be enhanced by having co-opted independent members and which areas require further training or development by December 2023.

Councillor Menzies asked how many Members were asked to complete the self-assessment. Mr Stainbank confirmed all Members were asked to complete a questionnaire but unfortunately only 2 returns were received so the team will be looking at a different approach for taking the exercise forward in future years.

Councillor McGuire gave his thanks for setting up the training for Members and was looking forward to this taking place in December.

Councillor Menzies said this had been the steepest of learning curves and to be able to build on the confidence of the public we must be robust and unapologetic in our scrutiny as untimely we want departments, policies and people that are all aiming to make East Lothian a better, safer and more resilient place to work, stay and play. Councillor Menzies added that all Members have been invited to meet with Audit Scotland informally on the 6th of December to find out exactly what we don't know, what we should be asking and what good scrutiny looks like.

Decision

The Committee were asked to approve the Audit and Governance Committee Annual/End of Term Report 2022/23 (Appendix 1) and its self-assessments using the CIPFA Audit Committees Guidance (Appendices 2 and 3) and agree that the Audit Committee Annual/End of Term Report 2022/23 should be presented to the Council.

A roll call vote was carried out and Members agreed to approve both points unanimously.

6. HOUSING ANNUAL ASSURANCE STATEMENT

A report was submitted by the Executive Director for Place to advise the Audit and Governance Committee of the Scottish Housing Regulator's regulatory framework and in particular, the requirement for East Lothian Council to produce an Annual Assurance Statement, which requires to be signed off by the Senior Auditor on behalf of the Council and to obtain approval for East Lothian Council's Annual Assurance Statement as laid out in Appendix 1.

Wendy McGuire, Head of Housing spoke to the report which highlighted the requirement for the Annual Assurance Statement to be submitted to the Scottish Housing Regulator by the end of October each year. The Regulator asked that the relevant committee was assured we were complying with all regulatory requirements and standards, however also asked to highlight areas we were not compliant and any measures taken to address these. Ms McGuire noted that the department have robust arrangements in place to support its governance with quarterly and annual checklists which are all signed off by each relevant service manager and in addition the Scottish Social Housing Charter Performance Group also consider the evident gathered from these areas and in the event of partial compliance this group would consider our action plans and monitor the progress to ensure full compliance.

Ms McGuire reported that the conclusion of the audit confirmed that the Council complied with the regulatory requirements with a few exceptions where areas of partial compliance were determined. These were related to the annual gas safety inspections, reporting against all the protected characteristic groups, interlinked fire alarms and electrical safety inspections as well as meeting the requirements of the Homeless

Persons Unsuitable Accommodation Order. Ms McGuire noted the work undertaken to reduce the number of non-compliant properties and the ongoing work that is being done to become fully compliant in reporting against the protected characteristic groups. Ms McGuire added that the Council continued to be in breach of the Homeless Persons Unsuitable Accommodation Order but does continue to work hard to mitigate these breaches as well as respond to homeless pressure generally through new supply of new build and open market acquisitions, high numbers of allocations to homeless households, use of the private rented sector where available, use of shared tenancies as well as other initiatives.

Councillor Ritchie asked if it was more about lack of stock or specific things in the Unsuitable Accommodation Order that are leading to us having breaches. Ms McGuire confirmed there were a number of factors for this and the amendments made to the Accommodation have not helped. She added we do not have enough supply of suitable accommodation to meet the demand. Ms McGuire stated there are other factors the team are exploring, such as prevention.

In response to a question from Councillor Forrest, Ms McGuire explained as part of the process for gas safety checks the Council notify their tenants a couple of months in advance so they have warning of the appointment. She added that 3 letters are sent out before the Council would force access to the property. In a second question Councillor Forrest asked if the team felt the comprehensive letter that was sent out to tenants to explain how the electrical check would be carried out has made a difference to getting through these checks quicker. Ms McGuire said she does not have evidence to show that was the case but she would hope so.

Councillor McGuire asked how many homeless requests come from residents in East Lothian and how many come from out with East Lothian. Ms McGuire explained we have just started to receive a number of homeless applications from outside of East Lothian. She explained there was a change to the local connection test in November 2022 we are beginning to see more presentations from out with. In a follow up question Councillor McGuire asked if East Lothian Council had a legal obligation to accept and manage these requests. Ms McGuire confirmed there is now a legal obligation since the changes made in November 2022 so this has been an added pressure to the team.

Councillor Menzies asked how we ensure our managers are away of the regulatory requirements. Ms McGuire said regular team meetings are held with managers to ensure they are kept up to date and noted they would also be part of any consultation process with changes made to the framework.

In response to a second question from Councillor Menzies, Ms McGuire explained new standards were set out last year but some examples of unsuitable accommodation were property size, type, shared bathrooms and kitchens but she was happy to share the full list with Councillor Menzies outside of the meeting.

In a follow up question Councillor Menzies asked if the Council had anything in place to assist us. Ms McGuire reported the team work tirelessly to try and mitigate the risks but some will be medium to longer term as it will take a while to get solutions in place. Ms McGuire stated the team continue to look at ways to accelerate the delivery of affordable housing and exploring different options such as flat sharing and also review the allocations policy further down the line. Ms McGuire added that growth in the mid-market sector which is helping with some of our homeless clients. She stressed the pressure continues to the team with the changes that have been made.

Councillor Menzies asked if the team had been communicating with other local authorities to see if they were in the same position as East Lothian or if they have homes available and would like people to move there. Ms McGuire assured Members the team were working very closely with our partners across the region and wider and they would be writing back to the Scottish Government in light of the impact of local connection in particular. She added the Housing Convener had also written to the Housing Minister setting out some of those areas of pressure.

In response to a question from Councillor Menzies, Ms McGuire confirmed we do measure our average time for homelessness assessment against other local authorities and the landlord and benchmarking reports show evidence of this. Ms McGuire was happy to share both of these with Members.

Decision

The Committee agreed to note;

- The regulatory framework and the requirement for the Senior Internal Auditor to sign-off the Annual Assurance Statement on behalf of the Council
- That the regulatory framework requires the submission of the AAS no later than the 31st October 2023

The Committee was asked to approve the Annual Assurance Statement as detailed in Appendix 1 noting that East Lothian Council was partially compliant with the regulatory requirements for the financial year 2022/23 and partially compliant for the first quarter of 2023/24. A roll call vote was carried out and it was a unanimous decision to approve.

7. FINANCIAL MANAGEMENT CODE

A report was submitted by the Executive Director for Council Resources to provide the Audit and Governance Committee with an assessment of compliance with CIPFA's Financial Management Code (FM Code) and proposed actions to improve and enhance this.

Ellie Dunnet, Head of Finance reported the Financial Management Code was designed to support good practice in financial management and to assist local authorities in demonstrating their financial sustainability. The Chartered Institute of Public Finance & Accountancy (CIPFA) produced the code, which sets the standards of financial management for local authorities. Ms Dunnet explained CIPFA developed the FM Code in response to the challenges of reduced funding and increased demand for services, alongside the high profile financial management issues which have faced a small number of local authorities in recent years, which have served to highlight the importance of robust financial management.

Ms Dunnet stated the Code was a straight forward document based around 4 core principles. She drew Members attention to the one risk related to the budget setting process and compliance with the Council's statutory responsibility to set a balanced budget for the next year which reflects the significant challenge the Council is facing in relation to the scale of the funding gap for the next financial year.

Councillor Menzies asked how assured we can be that the Council will be able to set a balanced budget given the outside risks we have no control over and any political decisions that may be made within the groups. Ms Dunnet explained a significant amount of work was being done on this at the moment and she was hopeful they would be working towards achieving a balanced position for 2024/25 although that is likely to require some difficult decisions to be made by Council to close the funding

gap for next year. Ms Dunnet added it has been highlighted as a red risk is as part of the Financial Management Code it did not feel appropriate at this point in the year to assume it would be likely we would be able to balance the budget given the risks being reported. Ms Dunnet made Members aware this was a challenge of a scale the Council has never seen before therefore it will continue to be a risk until the budget is set for next year. She added it was important to recognise the wider challenges to managing the financial environment beyond the principles that are set out within the code that impact significantly on the financial health of the local authority and our capacity to manage that such as government funding and policy decisions.

Councillor Menzies thanked Ms Dunnet for being so honest and forthright when answering questions.

Decision

The Committee agreed to note:

- The assessment of compliance against the FM Code and proposed actions documented within Appendix 1
- The conclusion that overall, the Council is complying with the 7 principles of the code, although there is scope for improvement/enhancements to compliance of these areas, which has been identified through the assessment

8. HOUSING RISK REGISTER

9. DEVELOPMENT RISK REGISTER

10. COMMUNITIES RISK REGISTER

The Committee agreed to hear all three Risk Register reports together as the purpose, recommendations and background are duplicates across these Risk Register reports.

Reports were submitted by the Chief Executive to present to the Audit and Governance Committee the Housing Risk Register, the Development Risk Register and the Communities Risk Register for discussion, comment and noting. The Risk Registers are developed in keeping with the Council's Risk Management Strategy and are live documents, which are reviewed and refreshed on a regular basis, led by the Housing Local Risk Working Group (LRWG).

Lee Wright, Emergency Planning and Resilience Officer stated Very High risks are unacceptable and measures should be taken to reduce, transfer or treat the risk to a more tolerable position; high risks may be tolerable providing the Council is assured that adequate and effective control measures are in place; medium risks are tolerable with control measures that are cost effective; and low risks are broadly acceptable without any further action to prevent or mitigate risk.

Mr Wright gave an update on the current Housing, Development and Communities Risk Registers which contained ;

- 12 High, 7 Medium and 3 Low Risks for Housing
- 3 High, 3 Medium and 6 Low Risks for Development
- 1 Very High, 6 High, 17 Medium and 6 Low Risks for Communities

As per the Council's Risk Strategy only the Very High and High risks are being reported to Committee.

Housing

In response to a question from Councillor Forrest, Ms McGuire confirmed that from 2024 the regulations will be changing so that new builds can no longer be connected

to the gas grid but this is yet to be confirmed and she thinks this may be delayed slightly however, the Council are looking at alternative heating systems and communicating with tenants and there will be a training process with tenants and housing staff to ensure that tenants are making the best use of any new technology. Ms McGuire said she did have some concerns as gas is the cheapest fuel and new forms of electric heating will be more expensive however, given the increase in building regulations in terms of fabric first she would hope this would balance things out and tenants would not have to use the heating as often.

In a second question Councillor Forrest asked if the problem we have is the amount of land we have available to build houses on which is the issue. Ms McGuire explained land supply is dealt with through the planning system but the main issue for the Council is around cost. She added that the issue is not land supply but the control of the land as the majority of affordable housing comes through land use planning policy and we rely on Section 75 which doesn't give us control on when these sights come forward. Ms McGuire explained if the market was to slow down it would have a huge impact on when affordable housing would then come forward but the Council will continue to work closely with the private sector and the Scottish Government to ensure we mitigate that risk as much as possible.

In response to a third question from Councillor Forrest, Ms McGuire confirmed the event was well attended by staff and tenants. The decision was made to invite colleagues from a variety of service areas based on some of the feedback and concerns received from our Tenants and Residents Panel. Ms McGuire hoped staff were able to provide some good information to tenants and feedback from the event will be reviewed to see if there are areas we need to improve on in our leaflets and Home Front booklet. She added that the revenues team had done significant work in reducing rent arrears and the financial inclusion team were working very closely with housing officers to try and bring that down even further.

Councillor Menzies asked if we had issues with mould within the county. Ms McGuire stated as a result of the publicity around the tragic death of a young boy down south last year the concern of mould and damp has increased amongst our tenants. She added the majority of issues around damp and mould are the result of life circumstances, this information had been picked up through the new workshop the Council have set up. Ms McGuire there have been cases of damp which have been picked up by the short life working group and looked at how we can monitor that more closely and bring in external contractors in that area. Ms McGuire made Members aware that work is coming to a close and Members Briefing would be held towards the end of October to give an update on this.

Councillor Menzies commented that she also attended the event and was pleased to see the amount of tenants and staff members who attended. Councillor Menzies said she received feedback from multiple tenants about the lack of response from the Council when complaints were made, even if work was being done to resolve the issue there was no communication with the tenant to advise them of this.

Development

Councillor Bruce asked if there had been substantial changes in our understanding of what needs to happen at Blindwells to make it deliverable that has caused that risk to change. Mr Graeme Marsden, Project Manager explained the increase of risk is mostly around the increase of capital costs and delivering a new development has significant capital costs in terms of infrastructure and the developed market. Mr Marsden added the risk has been highlighted further as we are engaging further with the land owners through the development of the business case.

In response to a follow up question from Councillor Bruce, Mr Marsden explained the work will be developed over the next year which gives sufficient time for LDP2s between the evidence based report and proposed plan stage which will be into 2025 so there will be enough time to reflect and compare costs and alternative strategies.

Councillor Bruce asked where the responsibility lies in terms of engagement between the Council and the developer. Mr Marsden stated the majority of the responsibility will come back to the developer but there is a role for local government to deliver services. He added that although it is a developer lead process but the Council wants to inform that process and help lead on it to deliver the best possible outcomes for the development.

Councillor Menzies asked for more of an understand of the possible risks around parking management projects failing. Mr Peter Forsyth, Project Manger stated the risks were varied and quite detailed. He added there are risks to not achieving what they hope to in regards of climate change, health and wellbeing and also risk to the Council in terms of income generation. Mr Forsyth noted the biggest risk to failing is the opposition from communities in respect to the introduction of charges where they feel they are being unfairly heard. He added significant work had been done in that area including survey work, economic impact assessments, consultation for North Berwick and mitigated a lot of this but unfortunately there still remains a high number of oppositions within the community. Mr Forsyth explained the Council may have to seek Government Ministers through the department of Planning and Environmental Appeals to adjudicate on this and have an appointed reporter if we cannot address some of the objections so it will be an ongoing issue.

In response to a second question from Councillor Menzies, Mr Forsyth explained the Council has taken regard of the potential route this could take within the programme so we have made some time concession within delivery for potential public hearings but we not aware of the timeframe it might take due to the level of objection so there is potential for further delay.

Councillor Bruce commented he was concerned to see the score for Blindwells increase as it plays a big part in how we deal with future growth and development in the county. Councillor Bruce added he would take his concerns to the Climate Change and Sustainability cross party group to see if there is something than can be done on a cross party basis to support our officers from a political side.

Councillor Menzies commented climate change should be at the heart of decisions made and put aside any political statement Councillors might want to make and instead ask if this is necessary for the planet and if yes, politics shouldn't play a part in the answer.

Communities

Councillor Menzies asked what was causing the very high item and what could be done to mitigate that. Caroline Rodgers, Service Manager explained the very high item was in relation to the Council's telephony system to fail. She highlighted the importance of the system operating as it should and stated over the past months there had been an increasing number of failures of the external telephony providers particularly around the alarm system and that is why the risk is currently very high. In terms of mitigation the Council are upgrading the alarm receiving softer and telephony system, both are underway and will be delivered within the next few months. Ms Rodgers stated the failures have been a nationwide as part the upgrade from analogue to digital telephony systems so we are working with the local

government digital office and a working group to work with suppliers to find the root causes of the failures and address them.

In response to a question from Councillor Bruce, Ms Lynn Crothers, Service Manager explained this matter had been raised quite recently when civil servants from the Scottish Government completed an audit on prepared East Lothian Council were for an outbreak of animal disease. She added that fortunately we are quite well prepared even with additional risks of being a coastal area and the civil servants were happy with the amount of work that has gone into making sure we are prepared for any possible outbreaks. Ms Crothers reported that during that meeting the lack of quarantine facilities was raised as a concern due to an incident this year where a dog brought over from Ukraine had to be allowed to quarantine at home as the only quarantine provider in Scotland did not have a van available to collect the pet. She assured Members these concerns had been raised but it still does remain a risk for ourselves and other local authorities in Scotland but she is hopeful to get some movement on it soon.

Decision

The Committee agreed to note:

- The relevant risk have been identified and that the significance of each risk is appropriate to the current nature of the risk
- The total profile of the Housing, Development and Communities risks can be borne by the Council at this time in relation to the Council’s appetite for risk
- Although the risks presented are those requiring close monitoring and scrutiny over the next year, many are in fact longer-term risks for Housing, Development and Communities and are likely to be a feature of the risk register over a number of years

Signed

Councillor Lee-Anne Menzies
Convener of the Audit and Governance Committee