

CABINET

Prosecution under the Regulatory Reform (Fire Safety) Order 2005

10th November 2009

Report of the Monitoring Officer

PURPOSE OF REPORT			
This report is submitted to Cabinet in accordance with the Monitoring Officer's duties under section 5A of the Local Government and Housing Act 1989 to inform the Cabinet of a contravention of the Regulatory Reform (Fire Safety) Order 2005 in the course of the discharge of the Council's functions on behalf of the executive.			
Key Decision	<input type="checkbox"/>	Non-Key Decision	<input type="checkbox"/>
		Referral from Statutory Officer	X
Date Included in Forward Plan	N/A		
This report is public			

OFFICER RECOMMENDATIONS

- (1) That Cabinet consider the Monitoring Officer's report, and, in accordance with Section 5A(8) of the Local Government and Housing Act 1989, prepare a report specifying what action, if any, Cabinet has taken or proposes to take in response to the report, and its reasons.

1.0 Introduction

- 1.1 Section 5A of the Local Government and Housing Act 1989 provides that it shall be the duty of the Monitoring Officer, if at any time it appears that any proposal, decision or omission in the course of the discharge of functions by or on behalf of the authority's executive has given rise to a contravention of any enactment or rule of law, to prepare a report to the executive of the authority with respect to that proposal, decision or omission. Having prepared such a report, the Monitoring Officer is required to arrange for a copy to be sent to each member of the authority.
- 1.2 This report is submitted to Cabinet under Section 5A of the 1989 Act, following the Council's conviction at Lancaster Magistrates' Court on the 9th October 2009 in respect of three breaches of the Regulatory Reform (Fire Safety) Order 2005. These related to a fire at 56 Chatsworth Road, Morecambe, a property held by the Council in the exercise of its executive functions.

- 1.3 A copy of this report has been sent to all members of the Council. Following consideration of the report, Cabinet is required by Section 5A(7) of the 1989 Act to prepare a report specifying what action (if any) it has taken or proposes to take in response to the report, and its reasons for taking such action or, as the case may be, for taking no action. A copy of that report must be sent to the Monitoring Officer and all members of the Council.

2.0 Background

- 2.1 On the 18th February 2005, the Council entered into a Management Agreement with Adactus Housing Group in respect of a number of properties owned by the Council, some occupied and some vacant. Under the agreement, the Council appointed Adactus "to be its agent and to perform Management Services" There was a duty on Adactus to carry out day to day planned and responsive repairs to the value of £250 per repair. Other planned works such as replacement of windows, doors, central heating and boiler remained the responsibility of the Council.
- 2.2 By a letter of the 24th May 2007, the Council asked Adactus to add 56 Chatsworth Road to the Management Agreement. There was no written acknowledgement of the request, but Adactus was collecting rent (one of its responsibilities as management agent) in respect of Flats 1 and 2 from July 2007 and in respect of Flat 3 from February 2007.
- 2.3 On the 1st March 2008, there was a fire at 56 Chatsworth Road. No one was injured, but during the subsequent investigations, it emerged that there was no fire risk assessment for the property, the fire alarm was not in working order, nor was the self-closing device on the first floor staircase, and the lock on the entrance door to upper floors could not be opened easily in an emergency. Prosecution proceedings were subsequently brought against the Council by the Lancashire Fire and Rescue Service in respect of these breaches of the Regulatory Reform (Fire Safety) Order 2005, and also for failure to co-operate with Adactus in order to enable compliance. Similar proceedings were brought against Adactus.
- 2.4 On receipt of the summons in August 2009, Counsel's advice was obtained, and this was that it would appear to be all but impossible to successfully defend the prosecution, and that it would be in the best interests of the Council to enter guilty pleas to some or all of the five charges at the earliest opportunity.
- 2.5 At the hearing before Lancaster Magistrates' Court on the 9th October 2009, the Council entered guilty pleas to three of the charges, and Adactus to two. The Council was fined £3000, and ordered to pay prosecution costs of £2728, and victim surcharge of £15.
- 2.6 In the light of the fire and the subsequent proceedings, officers have been concerned to ensure that a similar situation does not arise in the future. Under the Management Agreement with Adactus, there was only one tenanted property still being managed by Adactus. That property is at 67 Clarendon Rd and following the fire at 56 Chatsworth Road a risk assessment was carried at 67 Clarendon Road so as to comply with the Regulatory Reform (Fire Safety) Order 2005. The property will shortly be empty and will then fall outside the scope of the Order.
- 2.7 Arrangements are also being made for the following clause to be included in all relevant contracts and agreements:

"The Management Company shall ensure that its staff or contracted workers comply with all legal requirements concerning health and safety legislation and regulations in connection with the Project and shall make available to Lancaster City Council copies of any relevant Health and Safety Certificates, records or documents. Furthermore, the Management Company shall ensure that it complies with all legal requirements and regulations as set out in the Regulatory Reform (Fire Safety) Order 2005 and any other fire safety regulations and statutory duties in force or that do come into force in connection with the Project Building and the Site. For the avoidance of doubt the Management Company shall be the 'responsible person' for the purpose of the Regulatory Reform (Fire Safety) Order 2005 for the duration of the Building Contract."

2.8 It is hoped that these arrangements will prevent any similar problems arising, and to that extent the Council will have learned important lessons from this prosecution. Clearly fire safety should be of paramount importance in all properties for which the Council has responsibilities.

3.0 Details of Consultation

3.1 In preparing this report, the Monitoring Officer has, in accordance with Section 5A (5)(a) consulted with the Chief Executive as head of the paid service, and with the Section 151 Officer.

4.0 Options and Options Analysis (including risk assessment)

4.1 The Cabinet has a statutory duty to consider the report and to report to the Monitoring Officer and all members of Council on the action (if any) it has taken or proposes to take, and its reasons. This is a matter for Cabinet, but Cabinet may wish to consider noting and endorsing the action taken by officers as set out in paragraphs 2.6 and 2.7.

5.0 Officer Preferred Option (and comments)

5.1 There is no preferred officer option, as the relevant legislation requires Cabinet to prepare its own report following consideration of the Monitoring Officer's report.

6.0 Conclusion

6.1 Cabinet is requested to consider the Monitoring Officer's report.

RELATIONSHIP TO POLICY FRAMEWORK
None
CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)
None

FINANCIAL IMPLICATIONS

The fine has been paid from the Winning Back the West End Property Account budget and will be incorporated into the 2009/10 budget as part of the 2010/11 budget process. Work is ongoing to identify where funds can be vired from, in order to meet the cost.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments to add.

LEGAL IMPLICATIONS

Legal Services dealt with the prosecution, and instructed Counsel to advise and represent the Council.

MONITORING OFFICER'S COMMENTS

The report is submitted in accordance with the Monitoring Officer's duties under Section 5A of the Local Government and Housing Act 1989.

BACKGROUND PAPERS

None

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