

Lease of Premises: Burnbrae Road, Bonnyrigg

Report by: Chief Internal Auditor

Report for Information

1 Recommendations

The Audit Committee is asked to note the work undertaken by Internal Audit in response to the instruction, from the Council on 29 August 2023 to review the lease of the retail premises at Burnbrae Road Bonnyrigg.

2 Purpose of Report/Executive Summary

The purpose of this report is to provide members of the Audit Committee with details of the recent work carried out by Internal Audit following an instruction from the Council meeting on 29 August 2023.

The instruction in the minute was that the Council had agreed:

- That Internal Auditors investigate the position of the retail unit at Burnbrae Road and that the Council are at no undue risk.
- That an update is provided 'in private' on the retail unit currently being constructed adjacent to this building, in Buccleuch Street.

Internal Audit has reviewed the situation of the retail unit at Burnbrae Road which was subject to the inherent commercial risks of developing retail unit space as part of any place making development. The risk of leasing retail space to commercial partners materialised as an issue in relation to this development as a result of an identified partner potentially not being able to take on the lease of the building when complete. However, on identification of this issue, Council Officers acted in an appropriate manner to reduce the risks to the Council. Processes were undertaken to identify a new preferred partner and an appropriate organisation was identified who will be taking on the lease for this premises.

Internal Audit found that whilst commercial risk has been identified in relation to the development of this retail unit, this risk is being appropriately managed.

The retail units in Buccleuch Street are in the process of being let and have interactions with the Dalkeith Town Centre regeneration plans. Internal Audit have no concerns over the processes being undertaken in relation to these units that they would bring to the attention of the Audit Committee, although the process remains ongoing.

Date 17 January 2024

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3 Background

- 3.1** The 29 August 2023 Council meeting was presented with report 8.4 for noting in relation to the Chief Executive in consultation with the Leader of the Council using Standing Order 19.2 powers to secure lease arrangements with a supermarket provider to occupy the retail unit being developed by the Council at Burnbrae Road, Bonnyrigg. The minute of the 29 August 2023 Council meeting instructed that the Council had agreed:
- That Internal Auditors investigate the position of the retail unit at Burnbrae Road and that the Council are at no undue risk.
 - That an update is provided 'in private' on the retail unit currently being constructed adjacent to this building, in Buccleuch Street.
- 3.2** Internal Audit, having been advised of this instruction on 5 October 2023, met with officers from the Property and Facilities team who provided further documentation in relation to these properties through to December 2023. A final report is now being provided to the Audit Committee identifying the agreed conclusions of this Internal Audit work.
- 3.3** The Internal Audit work completed as instructed has focused on the leasing of the retail unit at Burnbrae Road which was being developed as part of a development to deliver 20 housing units in addition to the retail unit. A review of the processes being undertaken to let the retail units in Buccleuch Street has been completed at a high level.

Findings

- 3.4** As part of the development of the retail unit at Burnbrae Road, Bonnyrigg a documented preferred client had been identified for the retail unit who had signed a pre-lease agreement to conclude a lease when the unit had been completed. Towards the end of 2022 and beginning of 2023, as a result of multiple contacts with this client, the Property and Facilities Management Service had ascertained that due to a change of circumstances with this client, they would not be in a position to enter a lease agreement when the building was completed.
- 3.5** The Property and Facilities Management Service undertook an open market exercise for this property (with a closing date in June 2023) and 4 offers were received to be the preferred lease client. In July 2023, the Council decided (as described in paper 8.4 to the Council on 29 August 2023) to progress with the offer that provided the highest rental value and largest retailer who had offered to take on the lease.
- 3.6** The retail unit at Burnbrae Road was completed and passed over to the Council in December 2023. The major supermarket retailer who agreed to take over the lease has been confirming the lease terms and conditions with the Council appointed legal firm and a final lease is now available for signature during January 2024 (with a commencement date of the lease shortly after this).

- 3.7** The risk of potential clients being unable to continue with a lease are understood by the Property and Facilities Management Service and has been monitored and mitigated and on that basis no undue risk has been taken.
- 3.8** The retail units in Buccleuch Street are in the process of being let by the Council. They have interactions with the wider Dalkeith Town Centre regeneration plans and are not being let directly through the market. However, when required, independent advice on rent levels is being sought to ensure rates are in line with the market. At the time of writing, no leases have yet been finalised for the units.

4 Report Implications (Resource, Digital, Risk and Equalities)

4.1 Resource

Resource implications are considered as part of the audit process to ensure these are reasonable and proportionate to the risks.

4.2 Digital

There are no digital implications arising from this report.

4.3 Risk

This review identifies the risks associated with retail development and how they are managed.

4.4 Ensuring Equalities

This report does not relate to a new or revised policy, service or budget change, which affects people (the public or staff), so an Integrated Impact Assessment (IIA) is not an applicable consideration.

The Internal Audit work is carried out in accordance with the appropriate legislation and professional standards. The latter includes compliance by those within the Internal Audit function with the Code of Ethics set out in the PSIAS which is appropriate for the profession of Internal Audit founded as it is on trust placed in its independent and objective assurance about risk management, internal control and governance.

4.5 Additional Report Implications (See Appendix A)

APPENDIX A – Additional Report Implications

A.1 Key Priorities within the Single Midlothian Plan

Although this report does not relate directly to the key priorities within the Single Midlothian Plan to which Midlothian Council and its Community Planning Partners have made a commitment (Reducing the gap in economic circumstances; Reducing the gap in learning outcomes; Reducing the gap in health outcomes; and Reducing the impact of climate change), good governance is important to enable Midlothian Council to deliver its key priorities in support of achieving the Council's objectives.

A.2 Key Drivers for Change

Key drivers addressed in this report:

- ☒ Holistic Working
- ☒ Hub and Spoke
- ☒ Modern
- ☒ Sustainable
- ☒ Transformational
- ☒ Preventative
- ☒ Asset-based
- ☒ Continuous Improvement
- ☒ One size fits one
- ☐ None of the above

Midlothian Council is committed to creating a great place to grow supported by the 9 drivers for change. Implementing the 9 drivers for change in practice is applicable to the Council's Internal Audit service provision to assist the Council in achieving its objectives.

A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- ☒ One Council Working with you, for you
- ☒ Preventative and Sustainable
- ☒ Efficient and Modern
- ☒ Innovative and Ambitious

A.4 Delivering Best Value

The definition of Internal Auditing within the Public Sector Internal Audit Standards (PSIAS) is "Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes."

Implementation by Management of the actions associated with Internal Audit recommendations, that are designed to improve internal control and governance arrangements and management of risks, underpins the Council's own continuous improvement arrangements to enhance its effectiveness, thus supporting the delivery of the Council's best value duties.

A.5 Involving Communities and Other Stakeholders

The Chief Internal Auditor is accountable to the Audit Committee which, in fulfilling its governance role, acts as a bridge between the Council and other stakeholders.

This report has been presented to the Corporate Management Team to outline the key messages of assurance.

A.6 Impact on Performance and Outcomes

The Findings and Recommendations from Internal Audit work during the year are designed to assist the Council in improving its performance and outcomes.

A.7 Adopting a Preventative Approach

Internal Audit assurance work includes assessments on when a preventative approach can be adopted.

A.8 Supporting Sustainable Development

This report does not relate directly to supporting sustainable development. Good governance is important to enable Midlothian Council to achieve its objectives.