

AGENDA ITEM NO 6

REPORT NO 329/19

ANGUS COUNCIL

POLICY & RESOURCES COMMITTEE – 26 SEPTEMBER 2019

COMMUNITY ASSET TRANSFER APPLICATION – DECISION – INCH MAINTENANCE AND PRESERVATION SOCIETY (IMPS), FORMER BRECHIN LEISURE CENTRE, RIVER STREET, BRECHIN

REPORT BY IAN LORIMER, DIRECTOR OF FINANCE

ABSTRACT

This report seeks the Committee's decision on a Community Asset Transfer (CAT) application recently submitted regarding a Council asset.

1. RECOMMENDATIONS

1.1 It is recommended that the Committee:-

- a. note the background to Community Asset Transfer (CAT) and the Council's policy and method of assessing applications as set out in Report 105/18;
- b. note the summary information on this CAT application contained in **Appendix 1**;
- c. note the outcome from the assessment process and the views of the Community Asset Transfer Group (CATG) as outlined in Section 4.5 of this report regarding this application;
- d. note that this application concerns a Council owned building on a Common Good asset;
- e. note the common good considerations and consultation arrangements required by legislation and the results from this as set out in Section 5 and **Appendix 2** of this report;
- f. determine whether to:-
 - (i) agree the application (with or without amendment); **OR**
 - (ii) reject the application, giving reasons for such rejection
- g. authorise, if the application is approved, the Director of Legal & Democratic Services to petition the court under section 75 (2) of the Local Government (Sc) Act 1973 for authority to dispose of part of the common good land at Brechin and conclude formal legal agreements before the transfer formally takes place and note that terms and conditions in line with the Council's agreed policy will apply;
- h. determine, if the application is approved, whether the cost of obtaining court approval is to be met by the applicant or the Brechin Common Good Fund noting the officer advice in paragraph 6.4;
- i. note that if the Committee determines under recommendation h) that the applicant should meet these costs the applicant could if they so choose abandon the CAT process;
- j. note that if the application is rejected or is agreed with significant amendments the applicant can apply for a review of that decision to the Council's CAT Decision Review Committee and ultimately appeal to Scottish Ministers; and
- k. note that, if the application is approved, officers will report back on the outcome of the court process.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN (LOIP) AND COUNCIL PLAN

- 2.1 The proposals set out in this report will contribute to the outcomes outlined in the Local Outcomes Improvement Plan, Locality Plans and Council Plan, which focus on the economy, people and place. Community Asset Transfer is a core part of Community Empowerment and it is important that the Council support community groups in a manner which delivers best value.

3. BACKGROUND

- 3.1 The Community Empowerment (Scotland) Act 2015 (“the Act”) introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of. Community bodies can request ownership, lease or other rights, as they wish through a process known as Community Asset Transfer (CAT). The Act requires those public authorities to assess requests transparently against specific criteria, and to agree the request unless there are reasonable grounds for refusal.

- 3.2 CAT applications are administered and assessed by officers on the Community Asset Transfer Group (CATG) using the assessment model approved in Report 105/18 (Angus Council meeting of 22 March 2018).

- 3.3 In deciding whether to agree to or refuse the request, the Council must consider the following things:-

- the reasons for the request
- any other information provided in support of the request
- whether agreeing to the request would be likely to promote or improve:-
 - economic development
 - regeneration
 - public health
 - social wellbeing
 - environmental wellbeing, or
 - whether agreeing to the request would be likely to reduce socio-economic inequalities
- any other benefits that might arise if the request were agreed to
- how the request relates to the relevant authority’s duties under Equalities legislation
- any obligations that may prevent, restrict or otherwise affect the authority’s ability to agree to the request

- 3.4 In reaching its decision the Council must compare the benefits of the community transfer body’s proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request; another proposal made by the Council; continuing the existing use or disposal on the open market.

- 3.5 As well as assessing the benefits which the proposed CAT may deliver the Council must also assess whether the community transfer body is able to successfully deliver the project, and make it sustainable.

4. CAT APPLICATION – INCH MAINTENANCE & PRESERVATION SOCIETY (IMPS)

- 4.1 The above group have applied for a Community Asset Transfer for the former Brechin Leisure Centre, River Street, Brechin DD5 4JG (UPRN 359982). The group wish to lease this building (which is a General Fund asset on land held on the Brechin Common Good Account) for 3 years but have stated an intention to start an exit strategy after 18 months. The group’s application was confirmed as valid in line with the legislation on 4 February 2019. The application has been subject to public notices and has been assessed in line with the national guidance and the Council’s assessment process.

4.2 Two objections were received; one stating there is already a table tennis club operating in Brechin and the other refers to a large amount of misleading information and un-answered questions strongly emphasising the impact on the application going forward. Further detail on all the support responses and objections received and the applicant's response to those objections is provided in **Appendix 2**.

4.3 A summary of the application and the applicant's proposals for the asset they are seeking to take on through CAT is attached as **Appendix 1**. Broadly, the group wish to provide a community resource hub for the people of Brechin, particularly those living in East Brechin to meet the needs of all the community, from young to old and be truly intergenerational; creating a vibrant, welcoming and inspiring focal point for residents and others.

4.4 The application has been assessed by the CATG using the Council's agreed assessment model. The application scored as follows:-

Community Benefit (score out of 90)	35.2
Financial Assessment (score out of 52)	19.6
Overall Assessment/ Best Value Conclusion	may provide best value – careful judgement required

4.5 Based on the above assessment the CATG's recommendation is that careful judgement is required, however in line with Report 105/18, it is for members of the Committee to make the final determination on whether the application is approved or rejected. In considering their position members are reminded that the Act requires public authorities to agree requests unless there are reasonable grounds for refusal. Applicants can also apply for a review of, and ultimately appeal the Council's decision.

4.6 Specific points to note in this application and its assessment include:-

The group is requesting the rights of:

- 1) Freedom of use of the play area
- 2) Retain all utilities i.e. boiler, heating systems etc.
- 3) Installation of kitchen which would allow for cooking sessions with members of the public in accordance with building regulations.
- 4) Isolation of heating flow and return supplies to boiler.
- 5) Leave fire alarm system as is.

4.7 The applicant (the IMPS Group) has an existing lease from the Council for the paddling pool, old toilets and 3G pitch which they operate for the community albeit separately and pre-dating the Community Empowerment Act.

4.8 The group's offer to lease the asset in question is for £2,500 p.a. The market rental value for the asset subject to the CAT is estimated at £30,000 p.a. At present the General Fund pays a nominal ground rent to the Brechin Common Good for the building of £35 p.a.

5. COMMON GOOD CONSIDERATIONS

5.1 This CAT application is one of the first the Council has received which involves the proposed transfer (through a CAT lease for 3 years) of an asset held on land on the Common Good Account. The Community Empowerment (Sc) Act 2015 (the Act) requires additional consultation measures to be taken where there is a proposed change of use or disposal affecting a Common Good asset.

5.2 Section 104 of the Act sets out the requirements in relation to Common Good assets. This part of the legislation means that where a local authority is considering:-

- (a) disposing of any property which is held by the authority as part of the common good, or
- (b) changing the use to which any such property is put

it must publish details about the proposed disposal or change of use. The details may be published in such a way as the local authority may determine but in any event it must notify local community councils and any community body that is known by the authority to have an interest in the property. The local authority must invite those bodies to make representations in respect of the proposals.

In deciding whether or not to dispose of any property held by a local authority as part of the common good, or to change the use to which any such property is put, the authority must have regard to:-

- (a) any representations made by the community council(s) and other community bodies with an interest; and
- (b) any representations made by other persons in respect of its proposals

5.3 The former leisure centre building which is subject to the CAT application covered by this report sits on Common Good land. Although the proposed CAT lease would continue to see the land being used for leisure purposes granting a lease would mean that the Council no longer controlled the common good land during the period of the lease and therefore could mean a disposal for the purposes of the Act. Officers deemed it prudent in the absence of case law on the new legislation to consult in line with the requirements of Section 104.

5.4 The Council is required to notify the public of CAT applications whether they involve Common Good assets or not. In line with the legislation the CAT application in this report was therefore the subject of two simultaneous consultations, firstly to obtain public views on the CAT application itself and secondly on the proposal to lease a building which sits on a Common Good asset.

5.5 The approach to consultation was multi-layered and involved the following:-

- Local Communities Officers attended the Brechin Community Council meeting of 9 May 2019 to explain and discuss the common good aspects of the CAT applications. Hard copies of information was provided at the meeting and also provided electronically afterwards
- Public notices - were placed along Bridge Street, River Street and in the car park in the leisure centre. Information was left in the library, community campus and on the former leisure centre building.
- Social Media – the Communities Team Facebook page was used to publicise the public notices
- TellMeScotland Website – was used to publicise the CAT application and share consultation responses including objections

5.6 As indicated in paragraph 4.2 there were 2 objections regarding the proposed CAT application but neither of these are directly relevant to the Committee's deliberations regarding the Common Good aspects of this CAT application, i.e. they were not about the impact on a Common Good asset.

5.7 Local members have been consulted regarding the Common Good aspects of this CAT application. At the time of writing one local member has indicated their support for the CAT application and the other local members have still to give a view.

5.8 Although the CATG's recommendation is that careful judgement is required the Group make no specific recommendation on the merits or otherwise of leasing the building on this Common Good asset. It is ultimately for the Committee to make the decision regarding the CAT application and the Common Good aspects of it having heard the views of local members. The Committee can chose to agree the application with or without amendments or reject it.

- 5.9 Officers consider the Common Good land on which the former Brechin Leisure Centre sits to be inalienable and this means if the CAT application is approved by members the transfer will require approval from the Sheriff Court or Court of Session by way of a petition under Section 75 (2) of the Local Government, etc. (Scotland) Act 1973. This will delay matters and will incur costs and could be expensive, particularly if opposed.
- 5.10 The criteria for agreeing to a CAT application are not necessarily the same as for the disposal of common good assets. The latter must be for the benefit of the citizens of the former burgh which is different to the presumption in favour of a CAT unless there are reasonable grounds to refuse. Accordingly, members and eventually the court in determining the petition will need to decide if the proposal is to the benefit of the Brechin Common Good and its citizens. It is possible that the court could reject the petition even though under CAT legislation the proposal is approved by members.

6. FINANCIAL IMPLICATIONS

- 6.1 The financial impact on the Council/Common Good has been taken into account in the assessment of the application. The main points of note are as follows:-
- Leasing of the asset requested generates a small income of £2,500 p.a. for the Brechin Common Good Fund. This compares to an estimated market rental value of £30,000 p.a. for the period of the lease.
 - Agreeing the CAT could prevent the possibility of a commercial let for the property or the sale of the property and the achievement of a capital receipt for the Brechin Common Good Fund and the General Fund
 - The CAT lease would however reduce council costs e.g. rates and utilities for the period of the lease. These are estimated at £34,000 p.a.
 - The building is surplus to the Council's requirements
- 6.2 Costs will be incurred in seeking court approval in relation to the Common Good land which the former Leisure Centre sits on. These are difficult to estimate as the Council has no recent history of making an application such as this. Assuming approval could be obtained through the Sheriff Court, an unopposed application could be conservatively estimated at between £3,000 and £5,000. Costs will rise significantly if there are objections and an opposed application could be conservatively estimated at between £10,000 and £15,000. If approval is required through the Court of Session, an opposed application could cost up to £25,000 and possibly more. If it is unopposed then it could be conservatively estimated at between £10,000 and £15,000. With this in mind if Members approve the transfer they are asked to consider whether the costs should be borne by the applicant (as a condition of the transfer) or the Brechin Common Good Fund. The likely cost and who will pay these may impact on the application proceeding if agreed.
- 6.3 Given that the building is surplus to Council requirements and that a court application process for the Common Good land it sits on will be required if the CAT is rejected in order that the Council can sell or commercially lease the building it may be possible in this particular case to pursue court approval covering different disposal scenarios. This is uncertain and may not be feasible. Members may wish to consider this aspect in deciding how the costs of the court process will be met.
- 6.4 In deciding which party should meet the costs of the court approval process members will wish to bear in mind that these costs may significantly outweigh the rental value offered by the applicant over the period of the lease (£7,500 in total over 3 years). The Common Good Fund may incur a net cost if it is to meet the court approval costs and these are more than the lease income. Such a negative impact on the Common Good Fund could only be justified if members are satisfied that this is outweighed by the non-financial benefits from the application proceeding. It should also be borne in mind however that the applicant may not be in a position to meet the costs of the court process especially since these wouldn't be known with certainty at the outset. The applicant could abandon the CAT process at any point if they so choose.

7. RISKS

7.1 There are risks with this proposed CAT which the Committee may wish to bear in mind as follows:-

- The short term nature of the proposed lease means the Council will retain ownership of the asset and it will become surplus again at the end of the lease period. The building's condition may deteriorate in the intervening period without adequate maintenance, although the lease will require the tenant to maintain it and a dilapidations clause will apply;
- There are some concerns about the applicant's ability to take on and successfully manage this large asset and make it financially sustainable. Although an outline financial plan has been prepared and funding applications are being made the costs of running the facility and the incomes required to cover these all carry risk i.e. costs and incomes may be higher or lower than estimated. These factors have been reflected in the assessment by the CATG.

7.2 There is a risk of costs being incurred through the court process for disposal of a common good asset which results in a rejection by the court. These costs would be incurred by either the Common Good Fund or the applicant depending on the Committee's view of recommendation h) in this report. Costs will be incurred regardless of the outcome of the court process and would be payable even if the CAT could not go ahead because of the court's decision.

8. CONSULTATION

8.1 The Chief Executive and Directors of Legal & Democratic Services and Infrastructure have been consulted in the preparation of this report.

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report 105/18 – Community Asset Transfer Policy Development & Applications Update

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List of Appendices

Appendix 1 – CAT Application

Appendix 2 – Support, Objections and Applicant Responses