

AGENDA ITEM NO 4

REPORT NO 416/19

ANGUS COUNCIL

CAT DECISION REVIEW COMMITTEE – 9 DECEMBER 2019

REVIEW OF POLICY & RESOURCES COMMITTEE COMMUNITY ASSET TRANSFER APPLICATION DECISION – CARNOUSTIE AND MONIFIETH MEN'S SHED - THE MACHINE ROOM, INVERTAY HOUSE, 3 MAULE STREET, MONIFIETH

REPORT BY IAN LORIMER, DIRECTOR OF FINANCE

ABSTRACT

This report asks the Committee to review a Community Asset Transfer (CAT) decision taken at the Policy & Resources Committee of 4 April 2019 regarding a Council asset. This is the first review under the CAT legislation which the Council has been asked to undertake.

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 background to the Council's CAT Review procedure as set out in Report 210/18 attached as **Appendix A** and the remit of this Committee as set out in paragraph 3.4;
- c. note the information and assessment in the original CAT application (Report 101/19) contained in **Appendix B** and the decisions reached by the Policy & Resources Committee of 4 April 2019 as summarised in paragraph 3.6;
- d. note the terms of the application for the CAT Review request submitted by the Carnoustie and Monifieth Men's Shed as set out in **Appendix C**;
- e. note the objections submitted as part of the original CAT application and the further objections submitted through the CAT Review process and the Carnoustie and Monifieth Men's Shed responses to these as set out in **Appendix D**;
- f. determine whether the Committee has the information it requires to make a decision in this case or whether further procedure as described in paragraphs 6.2 and 6.3 is required;
- g. subject to the conclusion on recommendation f) above being that no further procedure is required and taking all of the information provided in this report and appendices into account including the officer advice set out in Section 6 of this report determine whether to:-
 - (i) confirm the original decision of the Policy & Resources Committee of 4 April 2019 on the CAT application; **OR**
 - (ii) modify that original decision or any part of that decision giving reasons; **OR**
 - (iii) substitute a different decision, giving reasons.

- h. note that if this Committee decides to change the original decision of the Policy & Resources Committee and approve the application it will be necessary to conclude formal legal agreements before the transfer formally takes place and that terms and conditions in line with the Council's agreed policy will apply;
- i. note that the applicant can appeal the decision of this Committee to Scottish Ministers.

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

- 2.1 The information set out in this report is relevant 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. The CAT application and the proposed alternative use for the Invertay House site would both deliver positive outcomes.

3. BACKGROUND

General

- 3.1 The Community Empowerment (Scotland) Act 2015 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 the Community Asset Transfer Group (CATG) which is made up of officers from a number of Council services using the assessment model approved in Report 105/18 (Angus Council meeting of 22 March 2018).

Decision Review Procedure

- 3.3 A community transfer body can ask for their asset transfer request to be re-examined in certain circumstances. This is in the form of a **review** (where the original decision on the asset transfer request is reviewed by the Council) and thereafter an **appeal** (where the asset transfer request is considered by the Scottish Ministers). This report covers a request for a review of a decision made by the Policy & Resources Committee on a CAT application.
- 3.4 In line with the legislation the Council must put in place an internal review mechanism so that CAT decisions made by the Policy & Resources Committee can, if requested by applicants, be reviewed.

At its meeting of 19 June 2018 the Policy & Resources Committee approved Report 210/18 which set out the proposed guidance and process for reviews based largely on the national guidance and relevant Regulations. **Appendix A** to this report outlines the agreed review process. The remit of the CAT Decision Review Committee is:-

"The determination of any request for review of any decision made by the Policy & Resources Committee on a Community Asset Transfer application in terms of the Community Empowerment (Scotland) Act 2015 and in particular the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016."

Original Application and Decision by Policy & Resources Committee

- 3.5 The original CAT application from the Carnoustie & Monifieth Men's Shed regarding the Machine Room at Invertay House, Monifieth was considered by the Policy & Resources Committee of 4 April 2019 (Report 101/19 refers). That report provides essential background to the original application, the CATG assessment of that application and the assessment of the alternative use of the whole Invertay House site for housing purposes.

3.6 Members of this Committee are asked to note the information and assessment in the original CAT application (Report 101/19) contained in **Appendix B**. In relation to Report 101/19 the Policy & Resources Committee agreed, inter alia:-

- to note the summary information on a possible alternative use of the whole Invertay House site for housing purposes, detailed in Appendix 2 to the Report;
- to note the outcome from the assessment process and the views of the Community Asset Transfer Officer Group regarding the CAT application and the potential alternative use for housing as outlined in Sections 5 and 6 respectively of the Report;
- to note the other factors relevant to the CAT application including the financial implications and risks outlined in the Report;
- to note that the Committee's decision regarding the CAT application would have implications for the sale or re-use of the remainder of the site which would be subject to a separate report in due course;
- to reject the CAT application as best value would be served by transferring the site to the Council's Housing Revenue Account for delivery of thirty five affordable houses, subject to a further Report.

4. CURRENT POSITION

Application for Review

4.1 Since the Policy & Resources Committee rejected the CAT application the Carnoustie and Monifieth Men's Shed have, in line with the legislation, asked for that decision to be reviewed by the Council. The Men's Shed have set out 15 points in a written statement asking for the review. This is attached at **Appendix C**.

Objections

4.2 Part of the review procedure requires the Council to notify interested parties that an application for a review has been received. This has resulted in the Council receiving an objection to the CAT review application from the owner of a neighbouring property. This party also submitted a notice of objection when the original CAT application was received and subsequently publicised. This was commented upon in Report 101/19. **Appendix D** sets out the objections submitted as part of the original CAT application and the further objections submitted through the CAT Review process and the Carnoustie and Monifieth Men's Shed responses to these.

5. SUMMARY OF THE CASE

5.1 The Carnoustie and Monifieth Men's Shed applied for a Community Asset Transfer for the former machine room and some of the adjacent land and buildings at Invertay House, 3 Maule Street, Monifieth DD5 4JG (UPRN: 117080028). The group wish to take a lease for 15 years of this asset. Broadly the group are actively seeking to provide a Men's Shed which provides recreational facilities and to advance the social needs, health and wellbeing of men living in Carnoustie and Monifieth.

5.2 The group's offer of rent is £1,500 p.a. The market rent for the area subject to the CAT is estimated at £9,000 p.a. The site requested through the CAT application and how it relates to the whole site is shown in the map in Appendix 1 to Report 101/19 (Appendix B of this report).

5.3 The original application was assessed by the CATG using the Council's agreed assessment model. The application scored as follows:-

Community Benefit (score out of 90)	46.2
Financial Assessment (score out of 52)	14.8
Overall Assessment/ Best Value Conclusion	May represent best value, careful judgement required

5.4 Based on the above assessment the CATG recommendation was for members to consider carefully whether the application represents best value. The CATG assessment was that the proposal was not strong enough to merit a recommendation to approve it but was not without merit and so wasn't recommended for rejection either.

5.5 In this case the other options for the site (alternative use of social housing) were relevant considerations. The alternative use was also scored using the CAT assessment model and scored as follows:-

Community Benefit (score out of 90)	75.8
Financial Assessment (score out of 52)	42.2
Overall Assessment/ Best Value Conclusion	Likely to represent best value

5.6 One note of objection was received from a member of the public regarding Men's Shed application and one note of objection was received through the review consultation period. The grounds of objections were:-

- Lack of privacy/intrusion of privacy
- Machinery noise
- Paint and spray fumes
- Devaluation of private property
- Inappropriate toilet facilities
- Clutter of items left outside premises are a hazard

The Men's Shed have responded to these concerns (Appendix D refers).

5.7 As part of their CAT application the group are seeking:-

- the right to purchase the land and buildings proposed for lease within the period of the lease. This was not considered as part of the assessment. If members are minded to approve the CAT lease request, the CATG recommends this option to purchase is refused and a condition is imposed that any purchase request should be subject to a new CAT application and considered accordingly;
- freedom of use of garden area;
- installation of kitchen and toilet facilities in accordance with building regulations
- access to parking space
- other property related works

5.8 The site of Inverlay House, Monifieth is surplus to the operational requirements of the Council's General Fund (Revenues and Benefits Service). This building has been vacant for some time and continues to incur costs while it remains in the Council's ownership. The Carnoustie and Monifieth Men's Shed group have an existing month to month lease from the Council (paying £525 p.a.) and are currently operating from the former Machine Room premises. The CAT application covers this facility and an additional building, lock up garages and land.

5.9 The options for the Inverlay House site are:-

- a. Open market disposal
- b. Appropriation to the Council's Housing Revenue Account
- c. Community Asset Transfer (part site only)

- 5.10 In making its decision the Policy & Resources viewed the alternative use of the Invertay site for the provision of Council housing as providing better value overall. The Committee were however supportive of the Men's Shed and its aims and instructed officers to work with the group to look at other accommodation options to secure alternative premises for the Shed. Officers have engaged with the Men's Shed since April and a couple of alternative options are being investigated. These may or may not prove feasible as an alternative to the Invertay House Machine Room option. Finding alternative accommodation options which the Council owns and no longer needs in the area the Carnoustie and Monifieth Men's Shed operate in is however very challenging.

6. DETERMINING THE APPLICATION FOR REVIEW

- 6.1 This Committee's role is to determine whether to:-

- (i) confirm the original decision of the Policy & Resources Committee of 4 April 2019 on the CAT application; **OR**
- (ii) modify that original decision or any part of that decision giving reasons; **OR**
- (iii) substitute a different decision giving reasons.

- 6.2 It is important to note that the national guidance on Community Asset Transfers requires "...that, in carrying out a review, the local authority must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals." The Committee is advised that it should only uphold the review if it considers that either:-

- a. the decision is perverse or that no reasonable public body would make the decision subject to challenge;
- b. in making the decision the Policy and Resources Committee took into account an immaterial consideration;
- c. in making the decision the Policy and Resources Committee failed to take into account a material consideration;
- d. the decision is tainted by procedural impropriety; or
- e. the Policy and Resources Committee erred in law in making the decision.

- 6.3 In making its determination the Committee needs to first consider whether it has sufficient information to reach a decision at the meeting which has been called. The national guidance on reviews, which reflects the Act, states:-

"Once they have the initial evidence, any representations from interested parties and comments on those representations, the local authority may consider they have enough information to determine the appeal. If not, they may decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The community transfer body can say in their initial evidence what procedures they think should be used, but the final decision is with the local authority."

- 6.4 In this instance officers consider that all of the information the Committee requires to make a decision is provided in this report and its appendices but it is ultimately for the Committee to make this determination (recommendation f) of this report refers).
- 6.5 If the Committee is content that it has the information required to make a decision without the need for further procedure it will wish to consider the original CAT application and all of the information and advice provided thereon together with the decision review application and the objections and comments thereon (Appendices B, C and D). The Committee must consider the following things:-

- the reasons for the review
- any other information provided in support of the review
- the information in the original application and documents
- 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
- any benefits that might arise by adopting the alternative proposal set out in Report 101/19, of use of the whole site for affordable housing, taking into account the council's functions and purposes, and how those benefits compare with those of the request
- how the request relates to the authority's duties under Equalities legislation
- any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request
- the Act requires public authorities to agree to requests unless there are reasonable grounds for refusing them

6.6 If members of the Committee consider that further procedure is required before the application for review can be determined (recommendation f) of this report refers) then it will be necessary to:-

- a) Confirm what further steps and information is required and how to obtain that information;
- b) Defer any decision on the review application until that further information is available;
- c) Arrange another meeting of the CAT Decision Review Committee to determine the review application

7. FINANCIAL IMPLICATIONS

7.1 The financial impact on the Council was taken into account in the assessment of the original CAT application and alternative option of Council housing. The main points of note are as follows:-

- Leasing the asset to Carnoustie and Monifieth Men's Shed would result in income of £1,500 p.a.;
- Rejection of the CAT would allow the whole site to be either marketed for sale or used for Council housing. Both of these options are estimated to generate a capital receipt for the General Fund of £370,000 and would remove ongoing running costs which are currently £2,000 p.a. (net of rental income) for the General Fund;
- Approval of the CAT is anticipated to result in the Council housing option becoming unviable financially in terms of unit costs and the ability to secure Scottish Government affordable housing grant;
- Approval of the CAT would result in a reduction in the likely capital receipt value if the Council opted to sell the remaining site. This potential loss in value is difficult to assess but has been estimated at approximately £75,000 (£295,000 compared to £370,000).

8. RISKS

8.1 Specific risks in relation to the CAT application include:-

- a) There is a risk of the Carnoustie and Monifieth Men's Shed being unable to find alternative premises if their CAT application is rejected and this may harm the group's objectives and the benefits they bring to their members and the wider community. This risk would be mitigated somewhat if members ultimately decide to progress the housing option instead of open market sale as this would give around 18 months for alternative premises to be found;

- b) There is some risk associated with a community group being sustainable over the length of the proposed lease and being able to pay the rent and maintain the building as lessee so that it can be returned to the Council in appropriate condition at the end of the lease. This risk isn't considered to be significant given the strength of the group currently;
- c) There is a risk that market interest for the remainder of the site will be diminished and the value obtained in all likelihood reduced if Committee approve the CAT application and thereafter approval is given for an open market sale for the remainder of the site. This risk cannot be mitigated to any significant degree – the CAT application needs to be determined first so the consequences of its approval on the value of the remaining site cannot be known with certainty at this point. It is however reasonable to conclude that the remaining site with a tenant undertaking activities such as those described on an adjacent site would reduce the value of any sale.

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 A – Report 210/18 - CAT Review Procedure & Guidance
Appendix B – Original CAT Application (Report 101/19 including appendices)
Appendix C – Carnoustie and Monifieth Men's Shed review points
Appendix D – Objections and response from the Men's Shed to these objections