

AGENDA ITEM NO 10

REPORT NO 260/20

ANGUS COUNCIL

POLICY & RESOURCES COMMITTEE – 27 OCTOBER 2020

COMMUNITY ASSET TRANSFER APPLICATIONS – CARNOUSTIE & MONIFIETH MEN'S SHED

REPORT BY JACKIE BUCHANAN, DIRECTOR OF LEGAL & DEMOCRATIC SERVICES

ABSTRACT

This report asks the Committee to note the outcome of an application for appeal under section 88 of the Community Empowerment (Scotland) Act 2015 in relation to Invertay House, 3 Maule Street, Monifieth and to determine a Community Asset Transfer (CAT) application recently submitted in relation to a Council asset, namely the Panmure Centre, 114 Kinloch Street, Carnoustie.

1. RECOMMENDATIONS

1.1 It is recommended that the Committee: -

- a. notes the outcome of the application for appeal to the Scottish Ministers under section 88 of the Community Empowerment (Scotland) Act 2015 (the "Act") in relation to Invertay House, 3 Maule Street, Monifieth as detailed in paragraph 3.1; (link to actual decision) <http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=120889&T=0>;
- b. notes the background to Community Asset Transfer (CAT) and the Council's policy and method of assessing applications as set out in Report [105/18](#);
- c. notes the summary information on the CAT application in relation to the Panmure Centre, 114 Kinloch Street, Carnoustie contained in Appendix 1;
- d. notes the other factors relevant to this CAT application including the financial implications and risks outlined in this report;
- e. notes the outcome from the assessment process and the recommendation and views of the Community Asset Transfer Officer Group regarding this application as outlined in Section 5.4 of this report;
- f. based on the information and advice contained within this report determine whether to:-
 - (i) agree the application, on the proposed community asset transfer lease conditions set out in Appendix 5, subject to the date of entry being delayed until it is vacant in terms of paragraph 4.3, giving clear reasons for reaching that decision (with or without amendments or conditions); **OR**
 - (ii) reject the application, giving clear reasons for such rejection;
- g. note that if the application is approved 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 CAT policy per Report 105/18 will apply: the tenants will be liable for all repairs and insurance, cannot transfer the lease or sub-let and must (i) use the property as agreed, (ii) allow public use for a reasonable charge (if any), and (iii) pay the Council's legal fees; and
- h. note that if the application is rejected, or if the application is agreed but on significantly different terms and conditions, the applicant can seek a review of that decision to the Council's CAT Decision Review Committee and ultimately appeal to Scottish Ministers.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN (LOIP) AND COUNCIL PLAN

- 2.1 The proposals set out in this report will contribute to the outcomes outlined in the Community 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 supports community groups in a manner which delivers best value.

3. BACKGROUND

THE MACHINE ROOM, INVERTAY HOUSE, MONIFIETH

- 3.1 Following an internal review by Angus Council, the Carnoustie & Monifieth Men's Shed submitted an application for appeal to the Scottish Ministers under section 88 of the Community Empowerment (Scotland) Act 2015 in relation to their CAT application for the Machine Room, Invertay House, Monifieth. The Reporter appointed considered the proposal in terms of its contribution to National Outcomes and, whilst finding a positive contribution to many of the themes, determined that alternative use as housing presented the stronger contribution to the stated outcomes. In their view, this reflected the scale of investment and employment and the benefits of increased access to housing that would accrue from the alternative use proposed by the council. Consequently, the Reporter considered there were reasonable grounds for refusal of the request. Scottish Ministers accepted the findings and recommendations of the Reporter and dismissed the appeal and refused the asset transfer request.. The Scottish Ministers' decision letter mentioned that the Council's Review Committee were supportive of the community group's aims and had encouraged officers to work with the group to look for alternative accommodation. The letter asked the Council to work proactively with the community group to find new premises.

PANMURE CENTRE, 141 KINLOCH STREET, CARNOUSTIE

- 3.2 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.
- 3.3 CAT applications are administered and assessed by the Community Asset Transfer Group (CATG) using the assessment model approved in Report 105/18 (Angus Council meeting of 22 March 2018).
- 3.4 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

- 3.5 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.
- 3.6 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.
- 3.7 It should also be noted that the Council has a legal obligation to sell or lease land for the best consideration that can reasonably be obtained including in the case of a CAT transfer. This is unless such a proposed sale or lease falls within the exceptions permitted under *The Disposal of Land by Local Authorities (Scotland) Regulations 2010*.

The exceptions are as follows.

- (i) If the best consideration (being either the price in a sale or total rent in a lease) is under £10,000, OR, where the difference between the best consideration and the proposed price/rent is under 25%.
- (ii) In any other case, where the Council has carried out an appraisal to consider the financial implications, benefits and disbenefits of the disposal and that the disposal is reasonable and likely to contribute to the promotion or improvement of economic development or regeneration or health; social well-being or environmental well-being. It is recommended that local authorities demonstrate that there has been a rigorous evaluation, supported by evidence that makes clear how they have reached their decision.

As elected members are aware a rigorous evaluation process is carried out by the CATG as referred to in paragraph 3.3 above including the factors outlined in paragraph 3.4.

4. CURRENT POSITION

- 4.1 The Panmure Centre was identified as surplus as part of the Transforming Angus: Agile Working and Estates Review report 480/15. Prior to that it was used as a community education and development centre and a nursery. In report 46/17 Appendix 2 the Exit Strategy for the property when it became surplus (then estimated as March 2020) was for "Commercial Sale" which was "dependent upon the establishing of a new location for the Early years provision which is currently delivered from this location".
- 4.2 In the summer of 2019 council officers facilitated a site visit and several public meetings with local community groups to highlight the council's intention to market the property for sale in June 2020. Officers sought to gauge any interest in the property and discuss the possibility of a joint CAT application.
- 4.3 The asset is currently in use by the Panmure Pre-School Playgroup (top floor) and Early Years Provision (ground floor) who will continue to need use of this facility until the new ELCC is completed and opened. The ELCC Project Manager has provided an indicative completion date of April 2021 meaning the Panmure Centre could be vacant then, however there is no definite date for completion at this stage. Any update to timescales will largely be determined by building works being completed on time. The date for any potential transfer would require to take cognisance of these considerations.
- 4.4 The Unit Condition Survey in the attached Asset Management Plan (Appendix 2) scores the building as Condition C+ (56.10%) i.e. showing major defects and/or not operating adequately. The plan also identifies potential remedial works totalling £179,000 for the year 2021/22. Full details can be found in Appendix 2.

5. CAT APPLICATION – CARNOUSTIE & MONIFIETH MEN’S SHED

- 5.1 Carnoustie & Monifieth Men’s shed has applied for a Community Asset Transfer for The Panmure Centre, 141 Kinloch Street, Carnoustie. The group wish to lease this asset for a period of 10 years at a rent of £1,500 per annum. The group’s application was confirmed as valid in line with the legislation on 6 April 2020. The application has been subject to public notices and has been assessed in line with the legislation and national guidance and the Council’s assessment process.

The CATG carried out an assessment under *The Disposal of Land by Local Authorities (Scotland) Regulations 2010*, as set out in paragraph 3.7, and found that the proposed lease at a below market rent is reasonable and likely to contribute to the promotion or improvement of social well-being. The assessment took account of the following:

1. The plan and description in the CAT application of the site and buildings, its physical characteristics, location and surroundings.
 2. The current use of the asset.
 3. The best consideration (rent) that can reasonably be obtained for the asset, as assessed by the council’s Team Leader – Estates, a member of the Royal Institution of Chartered Surveyors, on 3 July 2020.
 4. Details of the key terms of the proposal and the Council’s standard CAT lease conditions.
 5. Details about the community group, its aims and objectives, governance structure, funding and its charitable status.
 6. An outline of what the community group intends to do with the asset and whether there has been involvement of local people.
 7. A copy of the most recent accounts or other evidence that the community group is financially able to maintain the leased asset.
 8. The options appraisal and cost benefit analysis carried out by the CATG, referred to in paragraph 5.4, any alternative use for the asset and report 480/15, which identified it as surplus.
 9. Details of how the lease at less than best consideration (rent) that can reasonably be obtained, will contribute to one or more of the purposes set out in Regulation 4(2) of the Regulations.
 10. An indication of the local demand for the services provided by the community group and details of any known opposition or support for the proposal and the measures (if applicable) which the Council might take to deal with the opposition.
 11. Confirmation the proposed lease complies with the European Commission’s State aid rules.
- 5.2 Fourteen letters of support were submitted at application stage. A further 2 letters of support and one letter of objection were received following public consultation (see Appendix 4).
- 5.3 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. In broad terms the group propose to provide recreational facilities and advance the social needs, health and wellbeing of men of all ages and backgrounds living in Carnoustie and Monifieth and surrounding areas by:
- Creating, developing and maintaining a facility, namely a Men’s Shed.
 - Offering opportunities for men in the Carnoustie and Monifieth area to meet and undertake creative, physical, purposeful and recreational activities of their choice.
 - Reducing isolation of men in the area thus contributing to their physical and mental wellbeing and developing the capacity of men in the Carnoustie and Monifieth area to share their skills and knowledge with others in the community.

5.4 The application has been assessed by the CAT Officer Group using the Council's agreed assessment model. The application scored as follows: -

Community Benefit (score out of 90)	58
Financial Assessment (score out of 52)	22
Overall Assessment/ Best Value Conclusion	likely to represent best value

5.5 Based on the above assessment the CAT group recommendation is to approve the CAT application based on the following reasons:

- A lease enables the council to retain the building should the group's circumstances change in the future. A 10 year lease would also allow the future sale of the asset.
- The group could achieve very good outcomes for the community if they had a suitable base both in terms of mental health improvements and with the physical help they can provide to individuals and third sector groups.
- This would be a good use of a much-liked landmark building in Carnoustie. Whilst the general fund would receive annual below market rent of just £1,500 per annum, this is counter-balanced by the mental health / community benefits that could be delivered which has considerable value to the public purse. The proposal has been assessed as representing best value, taking account of the considerations detailed at paragraph 5.1.

Members are however reminded in line with Report 105/18, it is for the Committee to make the final determination on whether the application is approved or rejected. Members may approve the application with amendments or additional conditions. 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.

5.6 Other factors to consider in this application include:

- The Carnoustie & Monifieth Men's Shed is a well-established group who are actively looking for permanent premises. The group's application states "that we would not wish to occupy the entire building; the installation of machinery on the upper floor is not a practical proposition. While we are therefore submitting this CAT request on behalf of the Carnoustie and Monifieth Shed alone, this is in no way incompatible with the premises serving as a centre for use, occasional or permanent, by a range of community groups." The CAT application is for the whole building. The Men's Shed have indicated that they would intend to sub-let other parts of the building to other community groups. However, it would not be possible to make this a condition of the lease and there will therefore be no obligation upon them to do this. There is therefore a risk that the other parts of the building may remain empty.
- It should be noted that, notwithstanding the condition of the premises, the Men's Shed will be responsible for full repairs and maintenance of the whole building over the term of the lease as provided for in Appendix 5.
- The group have a planned 5-year progressive programme of improvement and have produced a Development Plan / Business Plan in support of their application (see Appendix 3). A copy of this has been placed in the members sharepoint area as additional background on the applicant and their plans for the future.

5.7 The proposed CAT lease conditions are in Appendix 5.

6. FINANCIAL IMPLICATIONS

- 6.1 The financial impact on the Council has been considered in the assessment of the application. The main points of note are as follows: -
- a. Approving the CAT application would result in income of £1,500 per annum in comparison to an annual rental value of £15,000. However, as mentioned in paragraph 5.1 the CATG's assessment under *The Disposal of Land by Local Authorities (Scotland) Regulations 2010* found that the proposed lease at a below market rent is reasonable and likely to contribute to the promotion or improvement of social well-being.
 - b. If the CAT application is approved Angus Council would have no ongoing repair and maintenance during the period of the lease.
 - c. Approving the CAT would mean that business rates would no longer be payable by the Council.
 - d. Rejection of the CAT would allow the site to be marketed for sale generating a capital receipt for the General Fund in the region of £100,000 to £125,000. Members should note that this particular building becoming surplus was anticipated as part of the Council's agile programme and a capital receipt as part of that programme of £80,000 was expected. Approval of the CAT would mean that capital receipt no longer being achieved at least for the period of the lease.

7. RISKS

- 7.1 The following risks are relevant to this application: -
- a. There is a risk of the Carnoustie and Monifieth Men's Shed being unable to find alternative premises if the CAT is rejected and this may harm the groups objectives and the benefits they bring to their members and the wider community.
 - b. There is a 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 tenant 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. Failure by the Carnoustie & Monifieth Men's Shed to secure the necessary funding to maintain / improve the building as intended.

8. CONSULTATION

- 8.1 As required under CAT legislation, and as mentioned in paragraph 5.2, a public consultation was carried out.

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

List of Appendices:-

- Appendix 1 - A summary of the CAT application and the applicant's proposals
- Appendix 2 - Angus Council Asset Management Plan
- Appendix 3 – Carnoustie & Monifieth Men's Shed Development Plan / Business Plan
- Appendix 4 – Letters of support and objection (referred to in 5.2)
- Appendix 5 – Proposed CAT Lease Conditions