



REPORT TO: POLICY & RESOURCES COMMITTEE ON 9 APRIL 2019

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST –
LESSER BOROUGH BRIGGS, ELGIN**

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

1. REASON FOR REPORT

1.1 This report invites the Committee to consider an asset transfer request and options for the future in respect of land at Lesser Borough Briggs, Elgin.

1.2 This report is submitted to Committee in terms of section III (B) (16) of the Council's Scheme of Administration relating to the management of Common Good and Trust property and section III (B) (59) relating to Community Asset Transfer requests.

2. RECOMMENDATION

2.1 The Committee is invited to:

- (i) decline to consider the Asset Transfer Request made by Elgin Sports Community Trust for a rent-free lease of the site at Lesser Borough Briggs, Elgin as shown in the Appendix;**
- (ii) instruct officers to undertake a public consultation (on a proposal to expose the site for sale or lease on the open market) in accordance with the legislative provisions for the disposal of Common Good property, as detailed in section 4(b) of this report;**
- (iii) instruct officers to report back to this Committee with the results of the public consultation to allow the Committee to consider whether to proceed to petition the court;**
- (iv) note that exposing the site for sale or lease on the open market would not be a barrier Elgin Sports Community Trust submitting a formal asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 at any time; and,**
- (v) note that obtaining court consent would facilitate the disposal of the site by means of a sale or long lease to Elgin Sports Community Trust in the event of a transfer price being agreed.**

3. BACKGROUND

- 3.1 On 7 January 2019, Elgin Sports Community Trust submitted an asset transfer request for an area of land, extending to 1.015 Hectares or thereby, at Lesser Borough Briggs, Elgin, as shown in the **Appendix**.
- 3.2 The site is held on a Common Good title. Due to its potentially inalienable status, court consent would be required before the Council could grant a 99-year lease over, or otherwise dispose of its interest in, the site.
- 3.3 The site, which is shown as white land within the current Local Development Plan, lies within the town centre boundary. *Policy R1 Town Centre Development* supports a mix of uses, including retail, commercial, leisure, recreation, tourism, cultural and community facilities.
- 3.4 The proposed Local Development Plan 2020 includes this site within *OPP8 Lossie Green*, which is designated for mixed uses, including leisure, office and/or retail. The location of the site within the defended flood plain means that it is not suitable for vulnerable uses, such as housing.
- 3.5 Elgin Sports Community Trust is a Scottish Charitable Incorporated Organisation (SC047984) that was formed with the object of advancing public participation in sport within the Elgin community. Although the trust meets the eligibility criteria to make an asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015, it has chosen not to make use of that provision. Consequently, the Council is not obliged to consider this request – the Council is only obliged to consider valid asset transfer requests that have been made under the Act by eligible community transfer bodies.
- 3.6 The trust wishes to lease the site for a period of 99 years at a fixed nominal rent of £1 per annum (if asked). The market value of the site has been independently assessed at £325,000. The Estates Manager has confirmed that this sum would be an appropriate amount to pay by way of a grassum or premium in exchange for a 99-year lease at a nominal rental. The trust's request thus involves a 100% discount valued at £325,000.
- 3.7 Before it could agree to the request, the Council would need to satisfy itself that the proposal is likely to generate benefits commensurate with the requested discount and that these are the same as or greater than the benefits that could be achieved by any alternative proposal. In this instance, a valid alternative would be to dispose of the site on the open market, potentially realising a capital receipt in the region of £325,000. This could be invested in order to generate an annual income to the Common Good, which could then be made available to help fund suitable projects within the former burgh.
- 3.8 In its submission, the trust stated that it was not eligible to apply to the Scottish Land Fund for assistance to purchase the site due to a population restriction. A recent change to the eligibility requirements has removed this restriction. The eligibility requirements are now similar to those for making asset transfer requests under the 2015 Act.
- 3.9 Officers have discussed the proposal with representatives of the National Lottery Community Fund, who have indicated that they would be keen to discuss the trust's proposals for the site with a view to considering an application for stage one funding. Scottish Land Fund grants, which range

from £10k to £1M, are generally available to help eligible voluntary and community groups purchase land for their communities.

- 3.10 The trust's current proposal would remove the opportunity to develop this site for any other purpose for the next 99 years.
- 3.11 Part 8 of the Community Empowerment (Scotland) Act 2015, which came into force on 27 June 2018, requires that before taking a decision to dispose of a Common Good property the Council must publish details of its proposals, notify certain specified bodies, and invite those bodies to make representations. Whilst the Council can market the property it cannot accept any offers until it has carried out this statutory consultation and been granted court consent. In this case it is felt that the appropriate order would be to carry out public consultation to assess the views of the community before approaching the courts to seek authority to dispose of the property, and only then, having had regard to the views of the community and addressed the Common Good issue, market the property for sale or lease.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

As the property is a Common Good asset, the interests of the inhabitants of the former burgh take precedence over the Council's Corporate Plan and 10 Year Plan (LOIP).

Transferring assets to the community can support the 10 Year Plan (LOIP) aim of creating more resilient and sustainable communities with less need for universal services provided by the public sector. It can also be consistent with the Corporate Plan value of promoting community empowerment as a means of supporting communities take on more responsibility.

The Council's corporate priority of working towards a financially stable Council should be taken into consideration when dealing with requests for a transfer of an asset at less than market value.

(b) Policy and Legal

Common Good assets are administered by the Council in relation to each former burgh within its administrative area. Common Good property is owned outright by the Council by virtue of Section 222(2) of the Local Government (Scotland) Act 1973. In administering these assets, the Council is required to have regard to the interests of the inhabitants of the area to which the Common Good formerly related.

Section 104 of the Community Empowerment (Scotland) Act 2015 requires that before taking any decision to dispose of a Common Good property the Council must first publish details of the proposed disposal. In publishing these details, the Council must also:

- (i) notify the relevant community council and any community body that is known to have an interest in the property, and
- (ii) invite those bodies to make representations in respect of the proposals.

In deciding whether or not to dispose of the property, the Council must have regard to any representations made, whether by those invited or by some other relevant party.

The Lesser Borough Briggs site is an asset over which a question arises as to its alienability. Consequently, a disposal of the asset would require court consent. In reaching its decision, the court is likely to take into consideration the level of community support for a transfer or disposal.

On 21 March 2017, the Policy and Resources Committee approved the following policy statement in relation to Community Asset Transfers (para 5 of the Minute refers).

“Moray Council recognises the important role that the transfer of property assets can play in empowering communities and strengthening their resilience. Where appropriate, the Council will use the transfer of assets to give more control to communities and local people, inspire them to find local solutions to community needs, and as a means of helping communities become more sustainable in the long term. In determining all asset transfer requests, the Council will have regard to the guidance provided by the Scottish Government in relation to asset transfer requests made under Part 5 of the Community Empowerment (Scotland) Act 2015, whether or not such requests are made under the provisions contained in the Act.”

Where assets are transferred at less than market value, such disposals must comply with the Disposal of Land by Local Authorities (Scotland) Regulations 2010, which requires that the Council must be satisfied that the proposed transfer is reasonable and that the disposal is likely to contribute to at least one of the following purposes:

- a) Economic Development,
- b) Regeneration,
- c) Public Health,
- d) Social Wellbeing, or
- e) Environmental Wellbeing.

Reasonableness is taken to imply that the requested discount is the minimum necessary to allow the project to proceed and that it is proportionate to the costs and benefits of the project.

(c) Financial Implications

Agreeing to transfer this asset for nil consideration would mean foregoing a potential capital receipt valued at £325,000. Disposal of the site would require the consent of the Sheriff Court following a public consultation. The costs of the public consultation, court action, and legal notices, etc. are estimated to be in the region of £3,000. If successful, these costs would be deducted from any capital receipt obtained.

Disposal of the asset would mean that the site would no longer be available for hire to circuses and fairs. Such lets typically provide Elgin Common Good with an annual income in the region of £4,600 to £4,700.

(d) Risk Implications

There are no risk implications arising directly from this report. However, if the Council subsequently agrees to petition the court, there is a risk

that the petition would be unsuccessful. The level of risk would be significantly reduced if the Council was able to demonstrate community support for a disposal. A further report will be brought to this Committee setting out the risk implications before a final decision is reached.

(e) Staffing Implications

Whilst all work involved can be accommodated within existing staffing resources, current pressures may lead to delays in implementation.

(f) Property

There are no property implications arising directly from this report. A further report will be brought to this Committee setting out the property implications before a final decision is reached.

(g) Equalities/Socio Economic Impact

An Equalities Impact Assessment is not required as agreeing the recommendations would have no impact on service delivery.

(h) Consultations

Consultation has taken place with the Asset Management Working Group CAT Sub-Group*, Legal Services Manager, P Connor Principal Accountant, Estates Manager, Democratic Services Manager, and Equal Opportunities Officer. All comments are incorporated in the report.

(*Corporate Director (Corporate Services), Head of Development Services, Head of Financial Services, and Educational Resources Manager.)

5. CONCLUSION

5.1 The Council has full discretion as to whether it considers asset transfer requests made outwith the provisions of Part 5 of the Community Empowerment (Scotland) Act 2015.

5.2 All community bodies making an asset transfer request are required to provide details of how they intend funding their proposals. Agreeing to transfer assets with the benefit of a 100% discount on the transfer price should only be considered when all available alternative funding sources have been exhausted. This helps ensure compliance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

5.3 The Common Good site at Lesser Borough Briggs is not required for Council service delivery and, if court consent is forthcoming, could be sold on the open market for a significant capital receipt that would be used to provide an ongoing benefit to the Elgin community.

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Background Papers: Held by author
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