



REPORT TO: CORPORATE COMMITTEE ON 7 NOVEMBER 2023

SUBJECT: TRUST PROPERTIES IN ELGIN

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1 REASON FOR REPORT

- 1.1 To invite the Committee to consider a mechanism for bringing vacant residential properties held under public trusts back into use.
- 1.2 This report is submitted to the Corporate Committee in terms of Section (III) (B) 20 of the Council's Scheme of Administration relating to the management of Trust property.

2. RECOMMENDATION

2.1 It is recommended that the Committee:

- (i) **agree in principle to the four vacant Trust properties being leased to the Council on terms and conditions to be agreed by the Head of Housing and Property, the Head of Governance Strategy and Performance and the Chief Financial Officer; and**
- (ii) **authorise the Chief Financial Officer, in consultation with the Head of Housing and Property and the Head of Governance, Strategy and Performance, to agree the detailed terms of the lease subject to the proposal being financially sustainable.**

3. BACKGROUND

- 3.1 The Council are Trustees of two cottages at Ladyhill, Elgin, (Ladyhill Cottages) and eight Victoria Diamond Jubilee Homes in Victoria Road, Elgin, (Victoria Cottages). Both of the Ladyhill Cottages and two of the Jubilee Cottages are currently vacant. The previous tenancies were managed by the Council's Housing service on behalf of the Trustees.
- 3.2 Ladyhill Cottages were gifted by the Right Honourable Sir Archibald Williamson in 1921 to the former City and Royal Burgh of Elgin to be held in trust for the benefit of "suitable persons". The trust property comprises two cottages being Suvla Cottage and Messines Cottage, together with an area of garden ground, open space and access and approach to Ladyhill. The

cottages are Category C listed. Ladyhill Cottages are not registered with the Office of the Scottish Charity Regulator (OSCR).

- 3.3 Jubilee Cottages were built by the City and Royal Burgh of Elgin in 1897 to establish a memorial to the Diamond Jubilee Year of Queen Victoria. The property was transferred by a Deed of Trust to the Trustees in 1899. The cottages are also Category C listed. In March 2017, the six mid-terraced cottages were renovated to provide assessment and rehabilitation units, which are currently managed by Health and Social Care Moray. At that time, the two end-terraced cottages were still occupied by tenants. Jubilee Cottages are registered with OSCR.
- 3.4 All four vacant cottages are not in a lettable condition as they do not meet the requisite standards. Both of the Trust Funds are in deficit with no prospect of any income to offset ongoing costs. The bulk of the ongoing property costs relate to Council Tax, currently amounting to a total of £5,232 for the two Ladyhill Cottages and £4,484 for the two Jubilee Cottages.
- 3.5 A project to bring Suvla Cottage up to a lettable standard secured a grant of £64,000 from the Town Centre Capital Fund allowing work to commence earlier this year. After the project started on site, additional essential works were identified, bringing the total cost up to £90,000. These additional estimated costs of £26,000 are currently unfunded. Messines Cottage will require the same level of work to bring it back into use. No works have commenced on Messines Cottage. Bringing both vacant Jubilee Cottages back into use would require the construction of rear extensions to meet spatial standards and a specification of full refurbishment has been developed at a total estimated cost of £155,000.
- 3.6 The Trust purposes are currently incapable of being delivered without the identification of an alternative funding source.

4. LADYHILL COTTAGES TRUST

- 4.1 The beneficiaries of the Ladyhill Cottages are such persons as the Trustees may at their discretion select as occupants with preference being given to:
- (i) ex-sailors, ex-soldiers or ex-airmen of the national forces should any apply and be approved by the Trustees; and
 - (ii) if possible, to natives of Morayshire or Nairnshire.
- 4.2 The trust deed includes a further preference that the rent to be charged shall be purely nominal in return for the occupant's services as gardeners in their spare time and caretakers of the garden, open space, access and approach to the cottages and to Ladyhill.
- 4.3 The Council sought advice from external solicitors who are specialists in trust law. Although the Trustees are not permitted to sell or change the use of the cottages, the advice received is that the Trustees do have the power to let out the property on such terms as they see fit, including charging a rent, without the need to amend the Deed of Gift. Although the preferences set out in paragraphs 4.1 and 4.2 above reflect the wishes of the granter of the Deed of Gift, they are not considered to be legally binding.

5. JUBILEE COTTAGES TRUST

- 5.1 Under the terms of the Trust Deed, Jubilee Cottages are to be used as far as possible as dwelling places or homes for poor people of respectable character who are unable otherwise to provide comfortable homes of a similar class for themselves. In selecting the tenants, the trust deed includes provision that preference is to be given applicants in the following order:
- (i) To old married couples and the survivor of them provided the survivor is over fifty years of age at the time of death of the predeceased.
 - (ii) To widows or elderly single females.
 - (iii) To old men married or unmarried.
 - (iv) In making the selection of beneficiaries ... natives of the City and Royal Burgh of Elgin will have first claim and after them preference will be given to persons who for a length of time have resided in the City and Royal Burgh of Elgin and made an honest living there.
- 5.2 As with Ladyhill Cottages, the preferences reflect the wishes of the grantors, in this case being the former City and Royal Burgh of Elgin. Many of the detailed conditions are now considered archaic and unenforceable.
- 5.3 The Trust Deed allows the Trustees to re-convey the property to the Council. However, the vacant cottages can also be leased to the Council provided that the proposal is not at variance with the Trust purposes.

6. PROPOSAL

- 6.1 The Trustees have the power to grant a lease of the four cottages to the Council in its capacity as Housing Authority. This would allow the trust purposes to be fulfilled by enabling funds from the Housing Revenue Account to be used to bring the cottages back into use.
- 6.2 As the cottages would remain the property of the respective Trusts, the Council would allocate the tenancies under the framework of its Allocations Policy via a lettings plan which would endeavour to satisfy the preferences set out in the trust deeds as far as reasonably possible in the current context.
- 6.3 In exchange for taking on full responsibility for the properties, no rent would be charged by the Trustees. The level of rent charged by the Council would enable it to use funds from the Housing Revenue Account to maintain the properties.
- 6.4 It is proposed that the trust properties be leased to the Council for a minimum period of 20 years to ensure full recovery of the refurbishment costs. The financial position would be kept under review, with a formal review undertaken prior to the end of the lease to ensure that a return to the respective trust control would be sustainable at that time. The intention is for the properties to return to trust control only when that is financially sustainable.

6.5 In summary, it is proposed that the Trusts lease the cottages to the Council on full repairing terms and conditions for a period of 20 years at a nominal rent. The Council would be obliged under the terms of the lease to bring the cottages back into a lettable condition before subletting. The lease could be extended by mutual agreement between the Trust and the Council if deemed appropriate.

7. SUMMARY OF IMPLICATIONS

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

This report identifies a means of bringing four vacant residential properties back into use in a way that is financially sustainable. The Corporate Plan and LOIP identify the need to address the shortage of affordable housing and tackle homelessness while working towards creating a sustainable Council that provides valued services to the community.

(b) Policy and Legal

This report deals with the Council's legal duties as Trustees. The Trustees have full responsibility for the management of the two public trusts with reference to the trust purposes. In the absence of any powers in a deed of trust then the powers under the Trusts (Scotland) Act 1921 apply. These powers include granting leases provided that they are not at variance with the terms and purposes of the trust.

(c) Financial Implications

If no changes are agreed then the trust funds would continue to operate in deficit, incurring additional annual costs of at least £9,713 in respect of Council Tax alone, with additional miscellaneous costs incurred as required for reasons of health and safety.

The proposal involves funding from the Housing Revenue Account of £116,000 in respect of Ladyhill Cottages and £155,000 in respect of Jubilee Cottages. The intention would be to let each cottage at the prevailing Local Housing Allowance rate, providing an annual income of approximately £5,000 per cottage at current levels. Allowing for annual Council operating costs of £20 per week per cottage, this leaves approximately £4,000 per annum to service the debt. Assuming no extraordinary costs during the period of the lease, this results in a minimum payback period of 15 years for Ladyhill Cottages and 20 years for Jubilee Cottages.

(d) Risk Implications

If no changes are agreed, the properties will remain unlettable and their condition will continue to deteriorate. The proposals provide a mechanism for bringing the properties back into use.

(e) Staffing Implications

There are no staffing implications arising from this report.

(f) Property Implications

The property implications are set out in the body of the report.

(g) Equalities/Socio Economic Impact

A stage 1 Integrated Impact Assessment identified no adverse impacts. The proposals involve bringing four dwelling houses back into use, which would then be let out in accordance with the Council's Allocations Policy. There is no change to Council services involved.

(h) Climate Change and Biodiversity Impact

There are no climate change or biodiversity implications arising from this report.

(i) Consultations

The Depute Chief Executive (EEF), Head of Housing and Property, Head of Governance Strategy and Performance, Chief Financial Officer, Legal Services Manager, Property Asset Manager, Laurie Milne, Senior Accountant, Democratic Services Manager, and Equal Opportunities Officer have been consulted and their comments incorporated in the report.

The properties sit within Wards 6 and 7. Ward Members, Councillors Peter Bloomfield, John Divers, Amber Dunbar, Jeremie Fernandes, Graham Leadbitter and Sandy Keith, are aware of the proposal and may make their views known at Committee.

8. CONCLUSION

8.1 The Trusts are currently operating in deficit, which means that the Trustees are unable to fulfil the trust purposes without identifying an alternative funding source.

8.2 The Trustees have power to grant a lease to the Council on terms and conditions that would allow the trust purposes to be delivered while bringing four dwelling houses back into use.

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