



**REPORT TO: ECONOMIC GROWTH, HOUSING AND ENVIRONMENTAL
SUSTAINABILITY COMMITTEE – 1 DECEMBER 2020**

SUBJECT: 3 LOGIE COTTAGES, FORRES – TRUST PROPERTY FUNDS

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

1. REASON FOR REPORT

- 1.1 This report invites the Committee to consider the distribution of funds following the sale of the trust property at 3 Logie Cottages, Forres.
- 1.2 This report is submitted to the Economic Growth, Housing and Environmental Sustainability Committee following a decision of Moray Council on 17 June 2020 to operate a simplified committee structure as a result of the COVID 19 pandemic. In the case of this committee the combining of the delegated responsibilities of Economic Development and Infrastructure, Community Services (housing and Property) and Finance (budget, capital and revenue monitoring) (para 9 of the minute refers).

2. RECOMMENDATION

The Committee is invited to:

- (i) note that the trust property 3 Logie Cottages, Forres has now been sold, generating a receipt of £102,100;**
- (ii) note that the loan of £10,499.56 provided by the Housing Revenue Account (HRA) in 2013 to cover essential repairs to the property has been paid; and**
- (ii) decide on how the remaining funds should be distributed.**

3. BACKGROUND

- 3.1 Policy and Resources Committee on 9 April 2019 instructed the sale of 3 Logie Cottages and requested that a report come back to committee with suitable options so that members can agree on the distribution of the proceeds of sale (net of the loan repayment) in accordance with the trust terms (para 3.4 of the minute refers). A copy of the report is attached at Appendix 1 for reference.

- 3.2 The property is trust property and the elected members of Moray Council are the trustees as successors to the former Town Council.
- 3.3 A loan of £10,227.56 was provided in 2013 from the HRA for essential repairs to the property. This sum (together with interest of £272 thereon) has been repaid to the HRA, leaving a total sum of £91,600.44 available for Members to distribute to suitable beneficiaries.
- 3.4 In relation to the funds to be distributed, the trust deed (in the form of a Disposition) stated any sale proceeds are to be applied for 'behooof of the poor of Forres'. It is accepted the wording of the bequest is outdated. It may assist Members to think of potential beneficiaries as those who may need help and support due to lack of the means necessary to meet basic needs such as food, clothing and shelter.
- 3.5 Discussion has taken place between the Head of Governance, Strategy and Performance and the former Head of Housing and Property Services in relation to the funds being used for affordable housing in Forres. As there are no new build projects in Forres at present it has been suggested that Members consider using the funds for delivery of external wall insulation to council owned properties in the Thornhill area of Forres. These properties are of non-traditional construction and are particularly difficult to heat, frequently leading to fuel poverty for tenants. Housing and Property Services explained that external wall insulation has already been applied to the vast majority of privately owned and ex-right to buy properties in the area of similar construction funded through the Scottish Government. The use of the funds in this way would reduce the tenure-based inequality in this geographical area. This suggestion would be in line with the spirit of the trust.
- 3.6 The Head of Education, Resources and Communities has been consulted and commented that the Community Support Unit had suggested that the community should be involved in determining where the money is spent, either through a locality plan or through a mini participatory budgeting process. If this route was not possible another suggestion put forward was to link in with FACT (Forres Area Community Trust) who are currently looking at projects to tackle hardship/poverty.
- 3.7 Members have the option to split the proceeds between beneficiaries of their choosing provided they follow the spirit of the trust.

4. SUMMARY OF IMPLICATIONS

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

As the property is a Public Trust asset, the trust purposes take precedence over the Council's Corporate Plan and 10 Year Plan (LOIP), however, the funds can assist the council in addressing its priority of directing services to those in greater need.

(b) Policy and Legal

Under the trust deed the Trustees have absolute discretion as to where the proceeds of sale are to be distributed, provided the funds are applied for the benefit of the 'poor of Forres'. In terms of section 4 of the Trusts (Scotland) Act 1921, trustees have wide powers but their actions should not be at variance with the terms and purposes of the trust.

(c) Financial Implications

None.

(d) Risk Implications

Members are advised to adhere to the spirit of the trust and make a decision based as close as possible to the trust purposes. If the trust is breached, there is a risk of challenge by potential beneficiaries that the Council are in breach of their fiduciary duty to distribute trust funds. There is also a risk of reputational damage.

(e) Staffing Implications

Whilst all work involved can be accommodated within existing staffing resources, current pressures caused by Covid 19 may lead to delays in implementation.

(f) Property

The trust property has been sold and once the funds have been paid out the trust will be wound up.

(g) Equalities/Socio Economic Impact

An Equalities Impact Assessment is not required as Members are considering the distribution of funds from the sale of a property which is held in trust, the trust purposes do not allow for any other beneficiaries and no other service of the Council is involved.

(h) Consultations

The Head of Governance Strategy and Performance, the Head of Education, Resources and Communities, the Acting Head of Housing and Property Services, Legal Services, the Chief Financial Officer, Lissa Rowan Committee Services Officer and the Equal Opportunities Officer have been consulted and all comments incorporated in the report.

Local Ward Members (Councillors Alexander, Creswell, Feaver, and McLean) are aware of the proposals and may make their views known at Committee.

5. CONCLUSION

- 5.1 The property at 3 Logie Cottages, Forres has been sold and the Trustees have absolute discretion in relation to the distribution of the proceeds of sale under the terms of the trust.**

Author of Report: Elaine Gutchter, Solicitor

Background Papers: Held by author