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**REPORT TO: ECONOMIC GROWTH, HOUSING AND ENVIRONMENTAL SUSTAINABILITY COMMITTEE ON 6 OCTOBER 2020**

**SUBJECT: COMMUNITY ASSET TRANSFER REQUESTS (2015 ACT): ALICE LITTLER PARK, ABERLOUR**

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

## **1. REASON FOR REPORT**

- 1.1 This report invites the committee to consider two competing community asset transfer requests made under Part 5 of the Community Empowerment (Scotland) Act 2015 for the transfer of title to Alice Littler Park, Aberlour.
- 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 agree 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**

### **2.1 The committee is invited to:**

- (i) note that the Council has received two competing asset transfer requests under the Community Empowerment (Scotland) Act 2015 for Alice Littler Park, Aberlour, which means that it is prohibited by section 84(2) of the Act from disposing of the asset until both requests have completed the full process set out in legislation;**
- (ii) refuse the request to transfer ownership of Alice Littler Park to Play Aberlour for the reasons set out in section 6; and,**
- (iii) approve the request to transfer ownership of Alice Littler Park to Aberlour Community Association, subject to:**
  - (a) the terms and conditions set out in section 7, and**
  - (b) the prohibition against disposal being lifted.**

### **3. BACKGROUND**

- 3.1 In 1990, the Alice Littler Memorial Trust granted the Council a rent-free lease in perpetuity of Alice Littler Park for recreational purposes for the benefit of the general public and, in particular, the people of Aberlour. In 2015, ownership of the park transferred to the Council at no cost following the conversion of its lease into ownership by virtue of the Long Leases (Scotland) Act 2012.
- 3.2 Aberlour Community Association (the Association) is currently responsible for the Alice Littler Park Play Area under a lease agreement dating back to 1998. On 22 August 2019, the Association submitted a valid asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) for the transfer of ownership of the whole of Alice Littler Park. On 3 January 2020, Play Aberlour also submitted a valid asset transfer request under the Act for the transfer of ownership of the park.
- 3.3 Section 82 of the Act requires the Council to give notice to each party of its decision to agree to or refuse its request within 6 months of the relevant validation date of the request. The Association agreed to extend the deadline for determination of its request to allow both requests to be considered side-by-side. The Council is prohibited by section 84(2) of the Act from disposing of the park until the process is completed for both requests. This prohibition will remain in place while any review or appeal process is underway.
- 3.4 In determining each request, the Council is required to take into consideration any benefits that might arise if it were to agree to any alternative proposal in respect of the land to which the request relates.
- 3.5 Both requests were the subject of public consultation exercises, details of which together with the responses thereto were published on the Council's website. The redacted submissions, representations and responses are available through the Committee Management System at <https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1623/Committee/37/SelectedTab/Documents/Default.aspx>.

### **4. CAT/085/ATR(CEA) – ABERLOUR COMMUNITY ASSOCIATION**

- 4.1 The Association is a registered Scottish Charitable Incorporated Organisation (SC009817) that meets the criteria for being classed as a community-controlled body able to request a transfer of ownership under the Act.
- 4.2 The Association was formed to benefit the inhabitants of Aberlour and the wider community of Speyside with the following purposes:
- The advancement of citizenship and community development through the promotion of civic responsibility and volunteering and the promotion of economic and social development; and,
  - The provision of recreational facilities and activities for the purpose of social welfare, leisure, recreation and with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended.

- 4.3 The Association's governance and financial management arrangements are considered to be sound and sustainable. Best value characteristics are in evidence in its proposal. Its members have demonstrated through their proven track record of managing community assets for the community that they have the necessary skills and experience to deliver the Association's objectives. It has the necessary resources to deliver its objectives and has arrangements in place to monitor the achievement of these. Its business case demonstrates that its proposals are affordable and financially sustainable.
- 4.4 The public consultation confirmed strong support from the community for a transfer of the park to the Association. The Association's request is supported by the Alice Littler Memorial Trustees. No objections to the proposed transfer were received through the public consultation.
- 4.5 The Association has confirmed its willingness to work closely with other interested community groups, including Play Aberlour, to achieve the best outcomes for the local community. The Association's business case demonstrates that it promotes equality of opportunity and fosters good relations between various groups protected under the Equality Act 2010.
- 4.6 The projected benefits of the Association's proposal relate to economic development, public health, social wellbeing and environmental wellbeing. They support the Local Outcome Improvement Plan priorities of developing a growing, diverse and sustainable economy, building a better future for our children and young people, and empowering and connecting communities. They also support the Corporate Plan priorities of ensuring caring and healthy communities, encouraging economic development and growth, while contributing towards ensuring a financially stable Council. Overall, the projected benefits are demonstrated well and represent value for money.
- 4.7 The Association has requested that the property be transferred for nil consideration. In January 2020 the Council's Estates Manager advised that the estimated market value of the park could reasonably be stated as £46,000. The impact on property markets and values of COVID-19 and its associated government restrictions remains unclear. Consequently, this valuation estimate carries a significantly higher degree of uncertainty than usual. The request involves a disposal at less than the best price that could reasonably be obtained, equating to a discount of 100% on the estimated value. However, the projected benefits of the proposal are considered to be commensurate with the discount sought.

## **5. CAT/064/ATR(CEA) – PLAY ABERLOUR**

- 5.1 Play Aberlour is a registered Scottish Charitable Incorporated Organisation (SC047670) that also meets the criteria for being classed as a community-controlled body able to request a transfer of ownership under the Act.
- 5.2 Play Aberlour was formed to benefit the community of Aberlour in particular and Moray as a whole with the following purposes:
- To provide recreational facilities and activities by undertaking an upgrade to existing facilities and/or creating new recreational activities within the village of Aberlour.

- 5.3 Play Aberlour has failed to provide information on its finances to the Scottish Charity Regulator (OSCR) within the required 9 months of its financial year end and, at the time of writing this being more than 75 days overdue, the organisation is now classed as 'defaulting'. Consequently, its governance and financial management arrangements are considered to be weak.
- 5.4 Although Play Aberlour has demonstrated a clear vision for the park and despite there being a broad range of skills and experience available through its trustees, it has not provided a costed plan or feasibility study showing how its vision can be achieved. In February this year, the trustees were given an opportunity to address this omission but have failed to provide any further information. Therefore, its asset transfer request must be assessed on the basis of the limited information provided in its submission.
- 5.5 A total of 48 responses were received during the public consultation carried out by the Council as part of the statutory CAT process, 25 of which were in support of the proposals and 22 being against. One representation provided additional information but did not register clear support for, or objections to, the proposal. Play Aberlour's request is not supported by the Alice Littler Memorial Trustees.
- 5.6 Although Play Aberlour has stated its willingness to work with the Association to bring positive change to Aberlour, it is considered that it has failed to demonstrate a collaborative approach to the challenges faced by its community.
- 5.7 Overall, its arrangements for securing Best Value are considered to be weak and not well demonstrated in its proposals.
- 5.8 The primary focus of Play Aberlour's proposal is the play area, which is currently held on lease by the Association. The projected benefits of the overall proposal relate to improved amenity through redevelopment of the play area and improved maintenance within the park.
- 5.9 If the projected benefits were to be achieved they would support the Local Outcome Improvement Plan priorities of developing a growing, diverse and sustainable economy, building a better future for our children and young people, and empowering and connecting communities. They would also support the Corporate Plan priorities of ensuring caring and healthy communities, encouraging economic development and growth, while contributing towards ensuring a financially stable Council.
- 5.10 Play Aberlour's request also involves a disposal at less than the best price that could reasonably be obtained, equating to a discount of 100% on the estimated value. However, if the projected benefits could be achieved, they would be considered to be commensurate with the discount sought.

## **6. REASONS FOR RECOMMENDATIONS**

- 6.1 The transfer of the park to an appropriate community-controlled body would be in keeping with the purposes of the original lease from the Alice Littler Memorial Trust to the Council.

- 6.2 The strength of the Association's overall business case is considered to be strong. That is,
- (a) Its governance and financial management arrangements are sound and sustainable,
  - (b) Best Value characteristics are in evidence in the proposal, and
  - (c) Projected benefits are demonstrated well and represent value for money.
- 6.3 The strength of Play Aberlour's overall business case is considered to be weak. That is, although the projected benefits would be considered acceptable and could lead to value for money,
- (a) Its governance and financial management arrangements are weak, and
  - (b) Best Value characteristics are not well demonstrated in its proposal.
- Consequently, there is a high risk that Play Aberlour's projected outcomes would not be achieved.
- 6.4 Both Play Aberlour and the Association have a right to request that the Council reviews its decision if the request is refused or the terms of the decision differ from those requested.

## **7. TERMS OF TRANSFER**

- 7.1 If the recommendations are agreed the following terms and conditions would apply to the transfer:
- (a) Subjects – the asset comprises the two areas of ground at Alice Littler Park, Aberlour, designated as areas A and B and outlined in red in the **Appendix**;
  - (b) Condition – the transfer is conditional upon the prohibition from disposal contained in section 84(2) of the Community Empowerment (Scotland) Act 2015 no longer being in force.
  - (c) Access Rights Retained – the Council would retain rights of access over the route of the Speyside Way and those areas required to be used in connection with potential future bridge works as shown in the **Appendix**.
  - (d) Access Rights Granted – the purchaser would be granted access rights over the roadway to Alice Littler Park as shown in the **Appendix**. Maintenance and repair costs of the roadway would be shared by the purchaser and the Council based on respective usage.
  - (e) Price – the price payable would be £nil.
  - (f) Existing Lease – the terms of the existing lease agreement in respect of the play area would apply until the date of the transfer;
  - (g) Fees/Expenses – each party would meet its own legal expenses in the processing of the transaction, including legal expenses and surveyors fees;
  - (h) Other Terms – any other detailed terms agreed with the Council's Legal Services Manager and Estates Manager.

## 8. SUMMARY OF IMPLICATIONS

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

Transferring assets to the community supports the 10 Year Plan (LOIP) aim of creating more resilient and sustainable communities and is consistent with the Corporate Plan value of promoting community empowerment as a means of supporting communities to take on more responsibility.

### (b) **Policy and Legal**

On 21 March 2017, this committee approved the following policy statement (paragraph 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.”*

Both asset transfer requests were made under Part 5 of the Community Empowerment (Scotland) Act 2015. In reaching its decision, section 82(3)(f) of the Act requires the Council to take into consideration any benefits that might arise if it were to agree to any alternative proposal in respect of the land to which the request relates. Section 82(5) requires the Council to agree to the requests unless there are reasonable grounds for refusing them. Section 82(7) requires the Council to give notice, within the period prescribed by Scottish Ministers, to the community transfer bodies of its decision to agree or refuse their requests. The decision notices must include the reasons for its decision. The prescribed period is 6 months from the validation date of each request. Section 84(2) of the Act prohibits the Council from selling, leasing or otherwise disposing of the requested asset until the whole process is completed in respect of both requests

Each valid asset transfer request that is received must be processed in line with the procedures and timescales set out in legislation, even if further requests are received for the same asset. There is no provision to allow the Council to delay a decision on one request until it has considered another, unless the community transfer body making the first request agrees to extend the timescale.

In accordance with the Asset Transfer Request (Procedure) (Scotland) Regulations 2016, both requests were the subject of public consultation exercises. As Alice Littler Park is classed as public open space, details

were also published in a local newspaper in accordance section 27 of the Town and Country Planning (Scotland) Act 1959.

Assets transferred to the community at less than market value must comply with the Disposal of Land by Local Authorities (Scotland) Regulations 2010, which requires the Council to be satisfied that the proposed transfer is reasonable and that the disposal is likely to contribute to the promotion or improvement within Moray of any of the following purposes:

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

Reasonableness in this context is taken to imply that the requested discount is the minimum necessary to allow the project to proceed and that it is commensurate with the likely benefits of the project.

### **(c) Financial Implications**

The Estates Manager has advised that the estimated market value of the park could reasonably be stated as £46,000. Both parties have requested that the park be transferred for nil consideration. The projected benefits of a transfer are considered to be commensurate with the requested 100% discount on the purchase price.

The Alice Littler Memorial Trust has assumed responsibility for funding maintenance of the grass areas within the park for the current season. Consequently, transferring the park would be cost neutral.

### **(d) Risk Implications**

Project risks have been considered by the Association and appropriate actions identified to mitigate these. The Association has a proven track record in managing local facilities, having taken over responsibility for the former Speyside Way Visitor Centre, tea room and public toilets following a successful asset transfer request in 2016. The Association has also managed the operation of the town's Fleming Hall since 1 April 2001 under a lease from the Council. Consequently, the risks of the Association's project failing are considered to be low.

For the reasons outline in the report, there is a high risk that Play Aberlour's projected outcomes would not be achieved.

As stated in para 4.7 of this report, the impact of the coronavirus on property markets and the estimate of value for this property are currently unclear. As such, the estimate of value provided is subject to material valuation uncertainty. Consequently, a higher degree of caution should be attached to the estimate of value than would normally be the case.

There is a low risk of the presence of State Aid as the proposed service is considered to be local and, therefore, unlikely to affect intra-community trade among EU member states.

**(e) Staffing Implications**

There are no staffing implications arising from this report.

**(f) Property**

The property implications are as detailed in this report.

**(g) Equalities/Socio Economic Impact**

An Equalities Impact Assessment is not required as agreeing to the asset transfer request would have no adverse impact on service delivery.

**(h) Consultations**

The Depute Chief Executive (Economy, Environment And Finance), Chief Financial Officer, Head of Economic Growth and Development, Head of Education Resources and Communities, Environmental Protection Manager, Legal Services Manager, Estates Manager, P. Connor Principal Accountant, Acting Community Support Manager, L. Rowan Committee Services Officer, and Equal Opportunities Officer have been consulted and comments incorporated in the report.

The local Ward Members, Councillors Nicol, Ross, and Wilson, are aware of the proposals and may make their views known at Committee.

**9. CONCLUSION**

- 9.1 The strength of Play Aberlour's overall business case is considered to be weak and there is a high risk that its projected outcomes would not be achieved. Consequently, it is considered that there are reasonable grounds to refuse this request.**
- 9.2 The proposed transfer to the Association contributes to the priorities set out in the Council's Corporate Plan and the Local Outcomes Improvement Plan and its projected benefits are considered sufficient to justify a disposal at less than market value. No reasonable grounds have been identified for refusing its request for a transfer of ownership.**
- 9.3 The Council is prohibited from disposing of the site until the statutory processes have been completed for both asset transfer requests.**

Author of Report: Andrew Gray, Asset Management Coordinator  
Background Papers: Held by author  
Ref: CAT/064/ATR(CEA) and CAT/085/ATR(CEA)