

## **ASSET TRANSFER UNDER THE COMMUNITY EMPOWERMENT ACT**

### **REFUSED**

**To: THE GARIOCH PARTNERSHIP, FIRST FLOOR, WYNESS HALL, JACKSON STREET, INVERURIE, AB51 3QB**

**DATE OF NOTICE – 22 JANUARY 2019**

**This Decision Notice relates to the asset transfer request made by THE GARIOCH PARTNERSHIP, (SCIO SC043548) on 4<sup>th</sup> July 2018 in relation to FORMER MARKET PLACE PRIMARY SCHOOL, MARKET, PLACE, INVERURIE, AB51 3XN (“The Request”)**

**OUTCOME - Aberdeenshire Council has decided to refuse the request.**

#### **Reasons for Decision**

In terms of Section 82(2) of the Community Empowerment (Scotland) Act 2015 the Council has carried out a review of the decision confirmed by notice dated 31<sup>st</sup> August 2018 to refuse the request. Following review, the Council has confirmed the decision subject to modifications.

The reasons for the decision as modified following review are; -

#### **Statutory grounds for refusal**

The Council has considered the request in terms of Section 82 of the Community Empowerment (Scotland) Act 2015 (“the Act”) and reached the decision that they have (**four**) reasonable grounds in terms of Section 82 of the Act to refuse the request and these are;-

#### **( First Ground ) Consideration of the benefits of the Request has demonstrated insufficient evidence of these being achievable**

The case for agreeing to the request by the Applicant is substantially made in the Applicant’s Business plan and which was submitted to support the Request, but given the weakness and lack of evidence in the Business plan ,the Council consider there is insufficient evidence that the request will result in or is likely to succeed or promote or improve;(i) economic development, (ii) regeneration,(iii) public health,(iv) social wellbeing, or (iv) environmental wellbeing or any other or other benefits ,and accordingly, it is not unreasonable for the Council to refuse the request .

The consideration of the Business Plan by the Council and its proposed benefits are as set out as under noted, and underlines the Council’s reasoning to coming to the conclusion to refuse;-

## **1.1 Proposal**

Although great emphasis is placed on the requirement for a 'much needed' Third Sector Hub little evidence of need and demand has been provided to substantiate this assertion. The Request does not include a market needs assessment.

The ambition of reducing reliance on core grant funding support from the Council is positive and one which the Council would support. However, the surplus figures calculated on page 24 of the Business Plan submitted by the Applicant are not factually accurate raising questions in terms of how this can be achieved.

There is no evidence of additional activities generated because of this Request, other than those derived from the co-location of voluntary services e.g. synergy of space, collective working etc.

## **1.2 Overview and Structure**

The Council is content that the Board of Trustees have a strong skill set. However, given the high dependency on funding from the Council it is unclear how the organisation itself will be sustained in the longer term should funding from the public-sector decrease.

## **1.3 Project Background**

The Council is supportive of the ambition set out in the Request. However, there is a general lack of information in terms of how the Partnership plans to deliver on key aspects of the project. Importantly there is a lack of evidence in terms of commitment and detailed usage from other voluntary organisations.

Great emphasis has been placed on the perceived lack of affordable meeting space. The Partnership's proposed hourly charge can be found on page 23 of the Business Plan. Upon comparison with Aberdeenshire Council's charging policy in all cases the Councils hourly rate is significantly less.

No additional evidence has been submitted to show that demand outstrips supply within the area. With respect to Inverurie Town Hall alone based on regular lets only and not considering one off bookings the hall is used on average 25.5 hours a week out of a possible 98 hours (based on availability between the hours of 8am to 10pm). High quality community space will also be available upon completion of the Inverurie Community Campus.

Although there is no financial projection associated with the 'affordable nursery provision' the implication within this section is that this would be a subsidised facility. This would have implications for nursery providers throughout the area and no evidence has been provided to demonstrate how this would align with the Councils 1140 implementation strategy.

## **1.4 Community Needs and Demands / Partnerships**

On initial reading the Council considered the community engagement element of the plan to be weak. In response to this feedback the Partnership launched an online petition, the outcome of which highlights a few issues which are factually incorrect, for example a perceived affirmation that the Inverurie Campus will not be accessible and affordable to all. Although the petition attracted several comments the Partnership has not undertaken any robust analysis of this feedback. The petition therefore adds very little in terms of the robustness of the Business Case. There is little information to demonstrate how the Partnership has adopted to engage with the wider community and there is little detail in terms of the outcome of this engagement.

Whilst groups have stated general interest, other than perhaps the Food Bank there is no detail in terms of actual commitment nor levels of anticipated usage. No guaranteed user groups have been identified nor potential customers seeking a lease.

The identified user groups themselves do not look like they would be financially strong and may well rely on donations etc for their own funding. Although there is an indication that business start-up is an area of interest there is no detail to support this demand, nor a clear indication as to how this could contribute to the sustainability of the project.

Further submissions were made in the request for review from the Applicant which included additional information on user groups and community engagement. However the proposals are still lacking in detail and do not add anything to the overall Business Case which in the Council's view is not sufficiently robust to demonstrate the benefits of the project.

## **1.5 Asset**

There is no evidence to suggest that the Applicant has undertaken an independent condition survey of the building. There is no depth to this section of the plan in terms of how the Applicant plans to raise the funds required to upgrade the facility, nor is there any indication throughout the plan as to the extent of required capital investment or ongoing maintenance costs, although the Applicant clearly consider these costs to be minimal. The Council agreed that it would have been prudent for the Applicant to conduct a full survey of the building to ascertain repair and maintenance costs. As the business plan takes no account of these costs and given the surplus figures have been calculated incorrectly, the Council are of the view that even a small unexpected capital cost could jeopardise the viability of the project. This is borne out by the survey instructed by the Council which concludes costs in the sum of £146,682.50 would be incurred (excluding VAT and professional fees) to reinstate the asset to a condition prior to any of the improvement works proposed under the Business Plan.

Given there is an expectation in the plan to attract office start-ups no consideration has been given as to the basic works required to upgrade the space to a lettable

standard to attract potential high value leaseholders, for example; good quality refurbishment, wall and floor coverings, furniture, Wi-Fi, etc. Building Warrant costs are also not included.

As part of the review process, further information was sought from the Applicant on this issue however the response lacked sufficient detail and failed to provide any further assurance.

## **1.6 Capital cost**

The Applicant in the request for review submitted that the asset valuation of £555,000 was incorrect and following a request for written information from Council officers, the correct valuation figure of £290,000 has been noted. However the valuation of the asset remains significant therefore the change in valuation does not materially impact the reasons for refusal as set out below.

There remains nothing within the section to indicate how the Applicant would meet the capital cost of purchasing the asset. Although the expectation is that it would be sold for £5,000, this asset has an independent market value of £290,000. Apart from the unexplored nursery provision, the Business Plan is heavily weighted towards the provision of a centralised location for users, rather than providing any new benefit or services to the community. Accordingly, due to the lack of evidence the projected benefits are ill defined and/or unrealistic and do not demonstrate value for money or Best Value characteristics which would competently justify any discount from the market value. If the transfer were to proceed this would result in a loss of an asset with a value of £290,000 with the resulting impact on the capital plan.

If the transfer was to proceed at such a discounted price, then it would be essential that the Council make it a condition of any sale that the Applicant be required to repay the difference in price if the benefits are not delivered or to return any increase in value to the Council if the use of the Asset is changed. This can be done by imposing conditions within the Contract to sell and or to seek securities over the title albeit due to the legislative complexities of these conditions there are risks in the absolute robustness of enforcing these in the future.

## **1.7 Plan**

The implementation of the Inverurie Town Hall element of the Aberdeenshire Office Strategy is heavily dependent on the provision of carparking at the Market Place site. Therefore, it would be inappropriate for the Applicant to assume that the Town Hall element of the strategy will be implemented should this site be disposed of through an Asset Transfer.

Should the Council be able to implement the Town Hall element of the Office Strategy it would look to secure the use of assets within its existing control to reduce costs and to provide temporary accommodation to displaced users where possible.

Aligned with previous comments, this section indicates that renovation will be in a planned manner. However, there is no clear asset management plan for the building

and no indication that the applicant understands the requirements for capital investment and ongoing maintenance costs. The response to the request for information sought by the Council as part of the review provided no further assurance on this point as it lacked sufficient detail.

## **1.8 Management Plan**

The Council welcome the establishment of a user group but again there is little detail as to how the services would be delivered. A business start-up provision is suggested but there is no evidence of the demand for such a provision.

There is some potential for duplication of effort with the existing Business Gateway service. The plan states “Start-up Business opportunities are often the first step into long term employment for the unemployed, this could be achieved working with another partner in sections of the MPPS facility.” However, business start-up support is already catered for at Crichtonbank and Thainstone Business Centre.

The plan includes a Disaster Resilience Centre and again there is no indication as to what this means in real terms, or how this would generate income. The Council utilises a hub and spoke model for Rest Centres during the response phase of emergencies, in the case of Inverurie, the Academy being the “hub” and the primary schools the “spokes”. This model is embedded in policy and works very well.

## **1.9 Project**

### **1.9.1 Project Costs**

The business plan is well structured. However, Officers are concerned about the lack of substance from a financial perspective. It is very unusual for a three-year financial forecast to contain so little detail and Officers would reflect that the income figures within the Financial Appraisal seem highly optimistic.

The business plan does not recognise that a reduction in occupancy e.g. 20%, 30%, 40% does not equate with a comparable reduction in utility costs unless the opening hours are greatly reduced and set as such. If this approach were to be taken the operation would not be beneficial to the overall community. Due to this lack of correlation the breakeven costs would be higher than stated in the business plan (£165).

The running costs relied upon by the Applicant have been calculated using current figures from Aberdeenshire Council. This does not include expenditure on items such as telephony, ICT, Broadband, administration, HR etc. An assumption has been made that as these are currently paid within the Councils revenue grant to the Partnership and that this would be sustained. The Partnership should not rely on this assumption. It appears that no calculation has been made regarding an increase in these costs as the organisation moves to a larger building. Therefore, they do not appear in the forecast.

The Council does not consider these costs to be realistic and given the lack of detail and evidence provided throughout the Business Case, this can be considered a competent reason to refuse the request.

### 1.9.2 Capital Cost

Apart from the unexplored nursery provision, the Business Plan is heavily weighted towards the provision of a centralised location for users, rather than providing any new services to the community. Due to the lack of evidence and detail within the Request, The Council is unable to competently apply the discount model. Given the Applicant is only prepared to pay £5,000 for the asset, Officers are of the view that this does not provide Best Value and agree this is not a viable way forward.

### **(Second Ground ) Alternative Proposal**

The benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal, namely, there is insufficient evidence provided to demonstrate the benefits arising from the Request, as opposed to those benefits to be gained from the Council's decision of 26 April 2018 to progress the Aberdeenshire Council Workspace: Office Space Strategy i.e. annual revenue saving of £676,000, a positive impact on the Inverurie town centre as demonstrated by Town Impact assessment and improved and more efficient office facilities for the whole Council.

After considering multiple options over an extended period, on 26 April 2018 Aberdeenshire Council agreed the Council's Workspace: Office Space Strategy. This decision included, as a wider programme of works across Aberdeenshire, an agreement to release Gordon House, Inverurie and undertake the refurbishment of Inverurie Town Hall including the provision of an extension to that building to accommodate a Service Point, Civic and Community space and an extension for office space, with associated parking at the former Market Place School.

It is important to emphasise that failure to provide a parking solution at Market Place is not only critical to the Inverurie Town Hall element of the Office Space Strategy, but to the strategy as a whole. The strategy incorporates significant changes to office provision at Stonehaven, Woodhill House, Aberdeen and Ellon, as well as Inverurie. The strategy, as approved, provides a cohesive solution to the Council's needs and jeopardising any element of it jeopardises the whole strategy.

For the avoidance of doubt, the Applicant's submissions in the request for review regarding the timeline of the case and the Council's decision on the strategy are noted. In considering the application the Council has to look at the substance of the alternative proposal, not the decision making process that sat behind it. Accordingly the Council did not consider this to be of relevance to its determination of the application. The Applicant has, through the asset transfer process, put forward its case for the asset to the Council which has resulted in extensive discussion and

debate. The Council has therefore had the opportunity to assess the benefits of the request against the benefits of the alternative proposal.

### **(Third Ground) Statutory Compulsion**

The Council is under a statutory duty to obtain Best Value and given the projected benefits as detailed in the request are ill defined and/or unrealistic the Council would be in breach of its duty to obtain Best Value as it could not competently justify any discount or transfer in terms of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and accordingly the forgoing statutory duties prevents or restricts the Councils ability to agree to the request. Following review of the decision, the Council considered that the reduction in the value of the asset from £555,000 to £290,000 did not materially impact on this reason for refusal as a discount in the sum sought by the Applicant was still significant and could not be justified where there were no clearly defined and realistic benefits outlined by the Applicant.

### **(Fourth Ground) Financial Loss**

If the transfer were to proceed this would result in a loss of an asset of £290,000 with the resulting impact on the Councils capital plan which is not sustainable in the current financial climate.

As noted above, the reduction in the valuation of the asset from £555,000 to £290,000 does not materially impact this reason for removal following review. Having regard to the value of the asset it remains a significant loss that cannot be sustained.

### **Right to appeal**

**You have a right to appeal this decision to the Scottish Ministers. An appeal must be submitted within twenty working days of the date of this notice to:-**

**The Scottish Government, St Andrew's House, Regent Road, Edinburgh, EH1 3DD or by email to [community.empowerment@gov.scot](mailto:community.empowerment@gov.scot).**

**Guidance on the process can be found at**

**<https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-community-9781786527509/pages/20/>**