

25 FEBRUARY 2016

CASTLE TOWARD SCRUTINY REPORT

1.0 EXECUTIVE SUMMARY

The Performance Review and Scrutiny Committee has delegated powers in terms of the Scheme of Administration and its terms of reference include responsibility for scrutiny in relation to commenting on decisions and policies agreed by the Council and other committees and the impact they have on Argyll and Bute as an area, and making recommendations as appropriate.

Good Scrutiny provides a critical friend challenge to decision makers, enables the voice of the public and should be for the purpose of driving improvement.

At the PRS Committee meeting 26 February 2015 it was agreed to accept the request by Councillor Marshall and Dance to consider the Council decision to reject the offer of the Castle Toward estate by the SCCDC under the terms of the Land Reform (Scotland) Act 2003.

This report provides comments and recommendations arising from the Committee's scrutiny of the Council's decision making process in relation to the community right to buy application in respect of Castle Toward submitted by South Cowal Community Development Company (SCCDC).

The Castle Toward right to buy process was an issue of significant profile in the Cowal area and is viewed as having a detrimental and damaging impact on the Council's reputation.

The Council's style of managing the proposed right to buy process, while in line with legislative and technical requirements, could be perceived as not conducive to demonstrating openness and responsiveness to customers and constituents.

This report will provide comment on various issues raised during the course of the Committee's scrutiny and make recommendations in connection with these with a view to ensuring that the Council has a clear, transparent and robust process for dealing with any future applications of a similar nature.

Recommendations made cover a range of themes and are underpinned by a requirement to develop a draft policy and set of procedures which provide clear guidance and instruction in relation to the Council's requirements of any potential purchaser and which outlines transparent governance and decision making arrangements.

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2.0 INTRODUCTION

2.1 This report provides comments and recommendations arising from the Committee's scrutiny of the Council's decision making process in relation to the community right to buy application in respect of Castle Toward submitted by South Cowal Community Development Company

3.0 Detail:

3.1 The Committee noted that applications to purchase Council property by community organisations, whether made informally or in accordance with the provisions of Part 2 of the Land Reform (Scotland) Act 2003 have been dealt with on an ad-hoc basis. The Committee view is that the Council approach to dealing the SCCDC proposal was very much transactional in nature which did not demonstrate, or perhaps was not conducive to supporting a more collaborative approach. A more open and responsive style may not have altered the outcome of the application but could have negated what is seen by many as, a perceived lack of political will in progressing the application.

In order to facilitate a shift to a more collaborative approach the Committee considers that it would be appropriate for the Council to further develop guidance, policies and procedures to deal with such applications. The policies and procedures should also relate to asset transfer requests which may be submitted by community groups once the relevant provisions of the Community Empowerment (Scotland) Act 2015 are in effect.

Arising from the Committee's scrutiny of the handling of the application by South Cowal Community Development Company, a number of themes were identified and it is considered that the policies and procedures should deal with, amongst other things, the following aspects:-

3.2 Issue 1 – Governance

It is important to identify where the appropriate decision making is to lie in relation to such applications and whether there is to be any delegation to area committees and/or officers. It may be that the extent of any delegation could relate to the both the amount and/or percentage of any discount and include guidance on decision making route(s) which are aligned to the value of the property.

3.3 Issue 1 – Recommendation

The Council should request officers to provide for Member consideration and approval draft policies and procedures relating to requests by community groups to purchase Council property, whether made informally or in accordance with the provisions of Part 2 of the Land Reform (Scotland) Act 2003, and in relation to asset transfer requests submitted by community groups in accordance with the provisions of the Community Empowerment (Scotland) Act 2015.

The Council should invite officers as part of their development of draft policies and procedures for Council approval to provide options in relation to a proposed scheme of delegation in relation to such matters.

3.4 Issue 2 –: Valuation Guidance/Limitations on discounts

Valuation information was an important element of proposal. From the outset there was a difference of opinion as regards the value of the property and this underpinned much of the discussion throughout the process. The Council had a valuation figure, provided by the Scottish Government appointed District Valuer, of £1.75m. SCCDC were working to an alternative figure of £850,000 provided by Savills. There seemed to be little attempt to reconcile these figures and it could be viewed that both parties positions became entrenched as a result.

Audit Scotland in their annual report stated “it is our view that it was for the Council to decide on whether to accept or reject the purchase proposal for Castle Toward from the SCCDC. In making this decision it is appropriate that the elected members considered a range of factors including the details of the proposal, the District Valuer’s valuation of the property, and the appropriateness of alternative valuations”

3.5 Whilst acknowledging Audit Scotland’s view, as part of the draft policies and procedures it may be that the Council would wish to consider indicative amounts of discount or percentages of discount that will be available to suitable applicants. This would assist in the management of expectations of community bodies in relation to such applications. It may be that the limitations in terms of percentages available could be greater for smaller value discounts. It should of course be made clear to applicants that there is no guarantee of the indicative discount or indeed any discount being agreed and that the decision in each case will depend on its own individual facts and circumstances. It is important that parameters are defined from the outset and where proposals or application do not meet requirements the relevant parties are notified accordingly and timeously.

3.6 Issue 2 – Recommendation

It is recommended that as part of the draft policies and procedures officers should present to members options in relation to limitations on the percentages and amounts of any available discounts.

3.7 Issue 3 –Mediation

Although South Cowal Community Development Company did not produce a formal valuation of the property until January 2015, it was clear from early on in the process that there was a dispute between the Council and the community

body in relation to the valuation of the property. Whilst it is recognised that the appropriate legislation both in relation to the community right to buy and asset transfer requests provides an appeal process, it is considered that the Council should as part of its policies and procedures include an informal and quick mediation process whereby the issues in dispute are identified and the different positions of the parties involved are presented outlining any rationale which underpins a particular stance. I.e. legal or statutory obligations.

The suggested process would be used for matters in dispute which are material to the sale or disposal of an asset or progression of a project or initiative. The Committee acknowledges that it will not be possible to resolve every issue by such a procedure but considers that since the Council is dealing with local communities, it is appropriate to endeavor to seek such a solution though such a procedure without it being necessary for community bodies or group to exercise the appeal processes or complaints processes available to them.

3.8 Issue 3 –Mediation - Recommendation

It is recommended that as part of the policies and procedures to be developed, officers provide options on a quick and informal mediation procedure with a view to avoiding the necessity of community bodies or group requiring to exercise formal appeal or complaints processes available to them.

3.9 Issue 4 – State Aid

State Aid was an issue which was also the subject of much discussion during the proposal. Again as with valuation, differing interpretations and viewpoints were evident and it is the Committee's view that confusion remains in relation to the extent of which state aid applies and which party bore the residual risk. The Committee recognised that there is a disparity between the requirements contained within the Scottish Government's guidance in relation to the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the nature and content of advice provided by the Scottish Government's specialist State Aid Unit. The guidance requires authorities to ensure "that the nature and amount of subsidy complies with the State Aid rules particularly if there is no element of competition in the disposal process". The State Aid Unit provides advice on a risk basis so that rather than stating that the nature and amount of the subsidy complies with the State Aid rules the advice will be along the lines of the risk of successful challenge is low to medium or medium to high or whatever. This disparity causes difficulties in the decision making process.

3.10 Issue 4 – State Aid - Recommendation

Whilst the superiority of the EU in determining such issues is recognised it is recommended that officers are instructed to contact the Scottish Government, highlighting the disparity referred to and seeking Scottish Government assistance whether by amending the relevant guidance to accord with the type of advice issued by the State Aid Unit or amending the nature of the advice provided by the State Aid Unit so that authorities are able to ensure following advice from the State Aid Unit that they are complying with the requirements of the Guidance.

3.11 Issue 5 – Reports

Timely availability and clarity of information presented to members was identified as an issue. The Committee recognises that of necessity, applications particularly for larger amounts of discount will involve considerable research and investigation and there will be a considerable number of documents and other information which requires to be assessed by officers before the matter is referred to Members for their decision.

It is noted however that officers will carry out the assessment of the documentation and it is therefore appropriate that they should report in clear and concise terms on their findings. Reports should also make it clear, where appropriate, matters where decisions require to be made by Members. It should be recognised that reports, on occasion, may identify multiple policy options where a decision is required by members and a recommendation from officers would be inappropriate. This should reduce the possibility of it being considered that the reports are equivocal or ambiguous because alternative decisions may be open to members.

It is also noted that some Members consider that additional information (e.g. the full business case presented by applicants) should be available for consideration by Members whereas other Members would be content to receive clear and concise conclusions on information which has been the subject of an assessment carried out by officers. It is important also that Members have a sufficient period of time to consider the information available to them.

3.12 Issue 5 – Reports - Recommendation

It is recommended that as part of the draft policies and procedures, a pro-forma style of report should be developed which sets out clearly and concisely the information required by Members, including the conclusions of any officer assessments of information provided by applicants, to enable them to make fully informed decisions. Although not an exhaustive list the assessment process should ensure information is provided on a range of areas including valuations, economic benefits, alignment with corporate objectives, community benefits, sustainability, equalities, risk and third party funding levels. The availability of the report should be such that Members have a sufficient period to allow them to consider fully the terms of the report. Members should also be provided with a link to an online repository of detailed information should they require more than the basic information provided in the report.

3.13 Issue 6 – Information

The Committee noted that reports were presented for Members' consideration when not all of the information which Members required to enable them to make their decision had been made available to the Council. It is important that efforts should be made to ensure that all the necessary information is available to Members in a single report and that there should be no need for Members to defer a decision to a later date. Applicants should be advised that unless all the required information is made available for the purposes of preparation of report, then the report will not be presented to Members until such time as the required information is available. There may still be occasion whereby a request for further information which could not have been reasonably predicted results in

decisions being deferred. The matter of the content of the required information is one that could perhaps be subject to the mediation procedure referred to in paragraph 4.1.3) above.

3.14 Issue 6 – Information – Recommendation

It is recommended that as part of the draft policies and procedures, guidance should be made available to applicants which provides, amongst other things, that (1) the relevant report will not be presented to Members unless all the information required by officials has been provided by applicants and (2) should there be any dispute as to the requirement for a particular information required by officers, other than matters of an operational matter or professional judgement, then such a dispute is a matter which may be referred to the mediation resolution procedure to be put in place in respect of these matters.

3.15 Issue 7 – Capital Monitoring

The wider financial implication of disposing of Castle Toward at less than market value was recognised as an issue. The Council as part of Capital planning assumptions and protocols had factored in an anticipated capital receipt within its Capital programme. Although this is standard practice in the public sector and accords to accounting regulations, the interpretation of this approach led to some confusion with various differing views on whether disposing of the asset at less than market value was a real “loss” or a paper based transaction.

During the course of its scrutiny of the Castle Toward matter, the Committee became aware that capital receipts are intended to form a significant part of the finance for the Council’s capital programme during the financial year 2016/17. The Committee was unable to ascertain if there was any Member monitoring of capital programme income/receipts and programme expenditure. Given both the significance of receipts to the ability of the Council to undertake the full capital programme, the Committee considered it appropriate to recommend that the Council reviews existing arrangements for Member monitoring of capital programme income/receipts and programme expenditure ensuring that progress updates provide any associated implications.

3.17 The current process also fails to recognise on-going revenue costs such as maintenance and security which may have a material impact on overall realisation value and are an important consideration in any decision making.

3.18 Issue 7 Capital Monitoring Recommendation: Officers to review capital monitoring reporting arrangements to ensure Members are provided with timely information in relation to capital receipts including underlying detail, disposal timeline, on-going costs and their impact on realisation value and progress status.

4.0 RECOMMENDATIONS

- 4.1 It is recommended that the Council should request officers to provide for Member comment and approval draft policies and procedures relating to requests by community groups to purchase Council property, whether made informally or in accordance with the provisions of Part 2 of the Land Reform (Scotland) Act 2003, and in relation to asset transfer requests submitted by community groups in accordance with the provisions of the Community Empowerment (Scotland) Act 2015.
- 4.2 It is recommended that the Council should invite officers as part of their development of draft policies and procedures for Council approval to provide options in relation to a proposed scheme of delegation in relation to such matters.
- 4.3 It is recommended that within the draft policies and procedures, officers should present to Members options in relation to limitations on the percentages and amounts of any available discounts to be available in respect of such requests.
- 4.4 It is recommended that as part of the policies and procedures to be developed, officers provide options on a quick and informal mediation resolution procedure with a view to avoiding the necessity of community bodies requiring to exercise appeal rights in terms of the relevant legislation.
- 4.5 It is recommended that officers are instructed to contact the Scottish Government, highlighting the disparity referred to and seeking Scottish Government assistance whether by amending the relevant guidance to accord with the type of advice issued by the State Aid Unit or amending the nature of the advice provided by the State Aid Unit so that authorities are able to ensure following advice from the State Aid Unit that they are complying with the requirements of the Guidance.
- 4.6 It is recommended that as part of the draft policies and procedures, there should be developed a pro-forma style of report which should set out clearly and concisely the information required by Members, including the conclusions of any officer assessments of information provided by applicants, to enable them to make fully informed decisions on all matters on which they require to make decisions and that the availability of the report should be such that Members have a sufficient period to allow them to consider fully the terms of the report. Members should also be provided with a link to an online repository of detailed information available to Members should they require more than the basic information provided in the report.
- 4.7 It is recommended that as part of the draft policies and procedures, guidance should be made available to applicants which provides amongst other things that (1) the relevant report will not be presented to Members unless all the information required by officials has been provided by applicants and (2) should there be any dispute as to the requirement for a particular information required by officers, then such a dispute is a matter which may be referred to the dispute resolution procedure to be put in place in respect of these matters.

- 4.8 Given the significance of receipts to the ability of the Council to undertake the full capital programme during 2016/17, it is recommended that the Council instruct Officers to review capital monitoring reporting arrangements to ensure Members are provided with timely information in relation to capital receipts including underlying detail, disposal timeline and progress status

5.0 Conclusion

It was the Council's democratic prerogative to determine the response to the SCCDC bid for Castle Toward. It is the view of the committee that the Council's approach to the SCCDC bid was transactional in nature and a more collaborative approach could have been beneficial. The proposed policy and process recommendations should enable the necessary shift in approach, promote transparency, facilitate engagement and ensure the Council is best placed to deal with Community Empowerment requirements.

6.0 IMPLICATIONS

- 6.1 Policy: Potential for impact on Asset Management Strategy and financial policies.
- 6.2 Financial: Potential for impact on Capital Program
- 6.3 Legal:
- 6.4 HR:
- 6.5 Equalities:
- 6.6 Risk: There are financial, legal and reputational risk associated with these recommendations. The Council must ensure it is best placed to meet the needs of their community whilst balancing legal obligations and fiscal prudence.
- 6.7 Customer Service: Revised policies and processes should improve customer engagement experience.

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For further information contact: Kevin Anderson, Chief Internal Auditor.
01369 708505