

ARGYLL AND BUTE COUNCIL

PERFORMANCE REVIEW AND SCRUTINY COMMITTEE 27TH AUGUST 2015

CASTLE TOWARD - A RETROSPECTIVE

EXECUTIVE SUMMARY

This paper identifies the issues raised in the consideration of the Castle Toward Scrutiny Report submitted to the meeting of the PRS Committee on 28th May 2015.

It is recognised that the attempt by the South Cowal Community Development Company - a registered charity - to effect the purchase of the Castle Toward Estate from Argyll and Bute Council under the terms of the Land Reform (Scotland) Act 2003 was compromised from the start by the disparity between the Council's requirement for maximum cash realisation of the asset and the resource available to SCCDC. This ultimately resulted at the Council Meeting 12th. February 2015 in the unedifying adversarial and confrontational denouement to the process which left all diminished.

INTRODUCTION

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

At the PRS Committee meeting 28th May 2015 the Castle Toward - Scrutiny Report was submitted by the Executive Director of Customer Services as a basis for the Committee's considerations.

In addition the Chair was provided with copious backup material already within the purview of the Elected Members.

A comprehensive examination of the information and interpretation of that information which informed the Council's decision making was undertaken.

RECOMMENDATIONS

- * a strategy be defined with regard to communities within Argyll and Bute wishing to exercise the opportunity to acquire available assets owned by Argyll and Bute Council. The strategy will encompass the new arrangements for the transfer of assets to the Third Sector and the Community Empowerment Act 2015. The default position of such a strategy would be to favour the community
- * information provided to Members should be unequivocal.
- * the existing protocols relating to Capital Planning and Budgeting should be examined and developed to ensure transparency of decision taking as a result of the dynamic associated with the inclusion of anticipated Capital Receipts in the budget process.

DETAIL

*** Valuation**

It is appropriate to consider the final act in the process which took place at the Council Meeting 12th February 2015. Members were provided with a briefing note which was equivocal in its presentation of the Savills valuation. This valuation, which the Officers again demonstrated confusion over at the PRS Committee Meeting 28th May 2015, was in fact the only substantive, intrusive valuation of the property and was underpinned by Arup's in depth phase 1 and 2 surveys . The Members were also provided with a critique of the Savills report by an "external specialist". This perverse report was provided by DMH Baird Lumsden, the Council's selling agent who could hardly be expected to provide an objective review.

The Executive Director of Customer Service advised the PRS Committee that the Council was required only to take note of the DMH Baird Lumsden and District Valuer's views of market value.

It is remarkable that the formal input of two globally respected organisations was not considered "material". They were hardly likely to compromise their international reputations over Castle Toward.

Consideration of the substance of all three reports and the spectrum of value they indicated may have given the Council pause.

Appendix 1 details the comparative caveats of the three valuations.

*** Loss**

The belief that any discounting of the District Valuer's valuation would result in loss was a generally held view.

It was established that any adjustment of the Castle Toward valuation in the asset register would have no fiscal impact. However, the Executive Director of Community Services explained that there would be a direct impact on the Council's Capital Budget, in particular the allocation for Education. This consequence is also identified in the Economic Assessment.

£2.2 million was allocated to the Capital Budget at the Council Meeting 16th February 2012 by a specific motion: "to assume capital receipt from the sale of Castle Toward in 2013/14 of £2.2m net of costs." This was clearly an assumption too far: as a result the amount was "reprofiled" to 2016/17 on 29th August 2013. The Chair expressed concern that such a significant, speculative amount would be factored into the Capital Budget. The incorporation of anticipated capital receipts was confirmed as standard practice and accords to accounting regulations.

The Chair expressed discomfort with such an intrinsically fluid budgeting process, but recognised it as another peccadillo of the public sector suggesting the need for transparency of the decision taking pursuant to changes in the Capital Plan during the operating year.

Subsequently the Interim Head of Strategic Finance has advised that capital receipts are “not the major funding source” and the capital budget is managed “in the round”.

On 18th March 2010 and for the next three years capital receipts were identified as running at £250,000 per annum: not a major funding source. Over the next three years capital receipts are budgeted at £1.2m (2015/16), £7.99m (2016/17) and £8.705m (2017/18). clearly there has been a sea change in capital budgets, allowing greater risk and less certainty.

The implication of this Capital Planning approach is clear: there was a major disincentive for any discount to SCCDC. Arguably the process could have been concluded much earlier with a candid definition of the respective positions.

*** State Aid**

The position of low to medium risk with regard to a challenge to any transaction under the strictures of State Aid was recognised as a responsibility of SCCDC; who, having taken the advice and input of HIE and SLF, in addition to that provided by the Council, had confidence to proceed. This confidence was not shared by the Council.

*** Economic assessment**

The Economic Assessment was recognised as a solid piece of work which identified the socio-economic benefits as outweighing the value of any discount. It did, however, identify the dependence on additional external funding for the ongoing development of the project. It has to be recognised that this is not unusual with regard to community buyouts.

*** Best Value**

It was confirmed that the value of the socio-economic benefits of the project would be considered as additive to any cash consideration in assessing the disposal as satisfying the principles of Best Value. On the basis of the work carried out by the Council’s Economic Development Services to quantify the socio-economic benefits of the SCCDC Business Plan, the requirement to meet Best Value would be met, albeit with an element of risk.

*** Delegation of Responsibilities**

The decisions taken by the Council and the Policy and Resources Committee with regard to the disposal of Castle Toward were reviewed and noted.

*** Audit Scotland**

It has been indicated that Audit Scotland have had access to all the reports provided to members with respect to this matter and were present during the final decisive meetings. As Audit Scotland indicated a continuing interest in the sale of Castle Toward in their 2013-14 Audit, their reported comfort in the conclusion to this matter should be confirmed in the published 2014-15 Audit.

CONCLUSION

It was the Council's democratic prerogative to determine the response to the SCCDC bid for Castle Toward.

The overarching objective of achieving the maximum cash in the disposal of the Estate was evident throughout the process and contributed in no small part to the rather sad final motion at Council 12th February 2015.

It is to be hoped that if the Council again has the opportunity to work with a community within Argyll and Bute as engaged, empowered and enthused as South Cowal, the strategy shall be in place for a less divisive conclusion.

Ian M.M. Ross
Chair, Performance Review and Scrutiny Committee

13th August 2015

APPENDIX 1

In the briefing report to the Council 12th February 2015 regarding the valuations submitted by DMH Baird Lumsden, the District Valuer and Savills, the Savills valuation is caveated by the following quote "as stated above we accept responsibility for our Report only to the Addressees and no third party may rely on our Report." This allows the Council to ignore the Report. This is a form of the standard clause used in Valuation Reports. What was not reported, were the caveats written into the DMH Baird Lumsden and District Valuers report.

DMH Baird Lumsden

The following are direct quotes:-

- * the valuation inspection is designed to provide a limited report on the property.*
- * unable to report that any part of the buildings, property and its dwellings are free from defect.*
- * fixed equipment will not be tested, no warranties given. Services such as water, gas, electricity and drainage will not be tested.*
- * the purpose of the inspection is to give an opinion of value*
- * no responsibility is accepted to any third party for the whole or any part of its content.*
- * consideration be given to the need for a more detailed inspection and report.*
- * we would recommend a more detailed inspection and report*

District Valuer

The following are direct quotes:-

- * no responsibility whatsoever is accepted to any Third Party who may seek to rely on the content of the report.*

** market tested is without doubt is a weighty factor in my considerations*

** the building services have not been tested and it is assumed that they are in working order and free from defect.*

** no responsibility can therefore be accepted*