

Report on Option To Take Ownership of Site of former West Kirk, Rothesay

1.0 EXECUTIVE SUMMARY

- 1.1 This report is to update Members on the demolition of the West Kirk, Rothesay, and to report on the legal options for taking ownership of the building, explore the potential end uses of the land, and to recommend a course of action in accordance with the resolution of Full Council in September 2015 which was. *“Members endorse the decision of the Special Bute and Cowal Area Committee, and authorise officers to explore the legal options for taking ownership of the building, demolishing any remaining parts of the building, potential risks and costs to the Council, the potential end uses of the land, and report to P&R Committee with a proposed course of action.”*
- 1.2 The West Kirk, having no owner, had become dilapidated and unsafe. Engineers inspected and confirmed the building had unpredictable stability. Given the immediate threat to public health Building Standards instructed contractors to remove the roof of the Church. This work was carried out in the autumn of 2015. Once this was carried out, the Spire was inspected and found also to be unstable. Contractors were appointed to carefully take down the Spire. Given the sites restricted size and public accessibility, it became necessary to take down the remainder of the building and ultimately clear it from the site in order to ensure the demolition material did not create a further hazard to public safety. This work was completed in May 2016 and the attached photographs at Appendix 1 show the cleared site.
- 1.3. The costs expended by the Council (£220,692) are not recoverable because the site has no owner and were funded by the 2015/16 budget. The Council could take ownership of the remaining land, and legal services having explored options conclude that the best method to do this would be to apply to the Court to make a vesting order under Section 1021 of the Companies Act. It is estimated this would take 3-6 months and cost approximately £1500.
- 1.4 Officers have considered potential uses for the site. It would be possible to incorporate the site into the existing car park, but there is no obvious need or benefit to doing this. It would be possible, with restrictions, to deliver a residential development, but there is currently no likelihood of funding for affordable housing and, the very limited potential return and questionable market sentiment would make the risk of a market housing proposal seem

unjustified. There is no obvious potential or demand for commercial reuse. Some type of open space would be a suitable use for the site but this would incur, albeit minimal, additional expense for the Council. A community use, perhaps simply as open space or public art, might be the most appropriate use and likely to be eligible for funding options. If such a community group and use emerged the Council could assist with taking ownership at that juncture if required. In the short term, as no one is responsible for the site, a very limited herbicide maintenance regime for the site by Development and Infrastructure will prevent it becoming a further environmental issue although expectations will need to be managed.

2.0 RECOMMENDATIONS

It is recommended that Members:-

- Note the removal of public danger from the West Kirk and the current safe and clean condition of the cleared site.
- Members to consider whether they wish to take ownership of the site and if they do legal services recommend doing so by applying to the Court to make a vesting order under Section 1021 of the Companies Act.
- Members agree that Development and Infrastructure Services should include the site on a very limited maintenance regime.

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3.0 INTRODUCTION

- 3.1 The purpose of this report is to update Members on the demolition of the West Kirk, Rothesay, and to report on the legal options for taking ownership of the building, explore the potential end uses of the land, and to recommend a course of action in accordance with the resolution of Full Council in September 2015.

4.0 RECOMMENDATIONS

- 4.1 It is recommended that Members:-

- Note the removal of public danger from the West Kirk and the current safe and clean condition of the cleared site;
- Members to consider whether they wish to take ownership of the site and if they do, legal services recommend doing so by applying to the Court to make a vesting order under Section 1021 of the Companies Act.
- Members agree that Development and Infrastructure Services should include the site on a very limited maintenance regime.

5.0 DETAIL

- 5.1 As member will recall the West Kirk, Rothesay was a grade B listed church in Rothesay Conservation Area at the rear of the Council car Park on Chapel Hill Road. Over a number of years, the building, having no owner, had become dilapidated and unsafe. Engineers inspected and confirmed the building had unpredictable stability. Given the immediate threat to public health Building Standards instructed contractors to remove the roof of the Church. This work was carried out in the autumn of 2015. Once this was carried out, the Spire was inspected and found also to be unstable. Contractors were appointed to carefully take down the Spire. Given the sites restricted size and public accessibility, it became necessary to take down the remainder of the building and ultimately clear it from the site in order to ensure the demolition material

did not create a further hazard to public safety. This work was completed in May 2016 and the attached photographs at Appendix 1 show the cleared site.

- 5.2 All works were considered by Building Standards to be the minimum required to secure public safety. Historic Environment Scotland was fully informed of the process of works. Efforts were made to salvage appropriate material. Slate has been stored for reuse and the Spire's weather vane has been given to the local museum.
- 5.3 Total expenditure by the Council on the building has been £220,692.84 exc VAT which came from the 2015/16 budget. As there is no owner of the building these costs are not recoverable.
- 5.4 Officers have explored the options for taking ownership of the building / site. The building was owned by a company which has now dissolved. The Crown Estate declined to take ownership.
- 5.6 The Council could undertake to take ownership through three methods;

- **an 'a non domino' disposition**

An 'a non domino' disposition is granted by one party (who does not require to hold title to the land) to another person. Once the title has been registered and the ground has been occupied peaceably and without judicial interruption for a period of ten years the Disponee is held to have title to the ground.

The problem for anyone trying to do so is to convince the Keeper of the Registers of Scotland to issue a Land Certificate even with exclusion of indemnity. Secondly that the exclusion of indemnity means it is unlikely that any developer could use the property as security for a loan to develop the property or re-sell the land;

- **applying to the Court to make a vesting order under Section 1021 of the Companies Act**

The Companies Act 2006 deals with the power of the court to make a vesting order. The court, on application by a person who either claims an interest in disclaimed property by the Act in respect of disclaimed property, may make an order for the vesting of the property in any person entitled to it by way of compensation for such liability. "Interest" in the context of Act is not defined. It may be the case that 'interest' would not necessarily be restricted to a heritable interest. That being so the Council could argue that we have an interest in the property in respect our obligation under the Building (Scotland) act 2003 to take action in respect of dangerous buildings, it would be up to the sheriff to decide whether he agreed; or

- **thirdly through a Compulsory Purchase Order (CPO)**

Compulsory purchase is an option. The timescales and costs involved with the CPO will depend under what statutory powers the Council seek to acquire the property. Most likely a Planning Purpose would be required and this may not be clear or take time to establish through the planning process. Any valid objections will require to be considered at the Public Local Enquiry or hearing.

5.7 The Council's legal service has considered all these options and recommend that the quickest and least expensive option is applying to the Court to make a vesting order under the Companies Act. Legal services estimate the cost to be in the region of £1500 and to take 3 to 6 months. The process is not without risk but it is hoped that the Court will accept that a local authority which has incurred expenditure in terms of its statutory obligations has such an interest. The other options described are likely to cost considerably more, take much longer and have risks attached to likely success and potential effectiveness in the case of the 'a non domino' disposition.

5.8 Council officers have also considered potential uses for the site.

5.9 The site is gently sloping in line with the surrounding land toward the sea, and is 0.08Ha in size. It is adjacent and surrounded on two sides by the Council Car Park on Chapel Hill Road from which it can be accessed although it is currently separated from the car park by a heel kerb. To the north west and on the boundary of the site is the gable of a residential tenement block.

5.10 Options for reuse might include:

- **Extension of car parking.**

The site could be easily incorporated into the existing car park and it is estimated it could provide approximately 10 extra spaces. The cost of doing this would be relatively minimal if the existing street infrastructure (drainage / lighting) could remain in place and all that was required was a foundation and metalled surface. However anecdotal evidence suggests the car park is not currently working at capacity, therefore there is no pressing need for the additional spaces and there is likely to be limited or no increase in revenue from the car park if charges were applied.

- **Residential redevelopment**

The site is just large enough for a small residential development, and any such use would benefit from a sea view, if somewhat restricted. However given the need for amenity or garden space, and parking requirements, it is unlikely that more than one house of a flatted block of 4 – 6 units could be accommodated. In addition it is likely there would need to be some re-

organisation of the current circulation arrangements of the car park to achieve an adequate safe residential access.

Alternatively the site could be enlarged by surrendering some or all of the current car park, but given that it currently serves the neighbourhood shop this may not be considered acceptable.

In terms of affordable demand, there is currently no requirement identified in the Housing Needs and Demand Assessment for affordable housing within Rothesay and the Strategic Housing Investment Plan has no short term Housing Association investments. The level of social rented accommodation at 29% of total households in Bute is higher than national average and implies a potential oversupply. Waiting lists suggest a balance of demand and supply, but anecdotal evidence from Housing Associations suggest they have struggled to fill properties.

In terms of market housing, market evidence suggests there is currently an oversupply of property in a depressed market. There are approx. 149 properties on the market, with an average sale price on Argyle Street over the last five years of approximately £52,000 reflecting the Bute average. There are not infrequent transactions below £20,000. These are very low property values and are reflected in the mean income which is significantly below Scottish and Argyll and Bute average.

In conclusion, whilst it would be possible to re-develop the site for a residential development, there are certain limitations given the site's size and location adjacent the car park. There is unlikely to be any early funding for affordable housing and, unlikely to be early market demand for private housing. Moreover, given the currently achieved sales values, when build costs are accounted for, there is unlikely to be any significant revenue generation even accounting for limited land values.

- **Commercial redevelopment**

The site is too small to allow for any obvious commercial development, and would have to take account of its position immediately adjacent residential properties. There is unlikely to be any market interest and the cost of new build premises would most likely result in un-competitive rental levels.

- **Open space**

The site lends itself to a small low maintenance open space which would add amenity to the car park, local residents and users of the footpath to the rear of and above the car park. This would not generate income and would be an additional revenue requirement in terms of maintenance and

development, but would be a small improvement to the local area and avoid potential ongoing later discussion regarding the site's use.

- **Community Use.**

The West Kirk itself was previously of interest to local community groups but largely to preserve the building. It is unlikely these groups would now be interested. Nevertheless the site might be an opportunity for another local community group to pursue a suitable initiative. Most obvious might be small community growing space, community garden or art project. This might also have potential to align itself in some way with the former building on the site which would add further community benefit. The site would potentially be large enough for a small community building if required. Such groups are often able to raise funding and third sector ownership is being generally encouraged. If such interest manifested itself, it is likely that the group could pursue ownership independently but it would be open to the Council to assist them by taking ownership in order to pass to the community.

5.11 In summary, it would be possible to incorporate the site into the existing car park, but there is no obvious need or benefit to doing this. It would be possible, with restrictions, to deliver a residential development, but there is currently no likelihood of funding for affordable housing and the very limited potential return and questionable market sentiment would make the risk of a market housing proposal seem unjustified. There is extremely limited potential or demand for commercial reuse. Some type of open space would be a suitable use for the site but this would incur, albeit minimal, additional expense for the Council in development and maintenance. A community use, perhaps simply as open space or public art, might be the most appropriate use and likely to be eligible for funding options. If such a community group and use emerged the Council could assist with taking ownership at that juncture if required.

5.12 If the Council does nothing regarding the site, the site is currently safe. The main risk is a likelihood that it may over time become overgrown and a potential eyesore. This would not be a Council responsibility unless it became extreme, although recent history might encourage public complaint. Simple inclusion of the site in the Development and Infrastructure Services' maintenance regime would adequately overcome this by applying a very limited herbicide treatment, although it is important that expectations are managed.

6.0 CONCLUSION

6.1 The West Kirk, Rothesay has been demolished, and the site cleared to ground level in the interests of maintaining public safety. The site has been

left at grade with the adjacent car park, clean and tidy as shown in the Appendix 1 photographs.

- 6.2 Options for obtaining ownership of the site have been evaluated by legal services and it is recommended that applying to the Court to make a vesting order under Section 1021 of the Companies Act would likely to be the most effective, cost efficient and quickest solution.
- 6.3 The potential for reuse of the site has been evaluated and it is recommended the most appropriate way forward is to explore the potential for a community use of the site which if it emerged could, if required be supported by the Council choosing to take ownership of the site at a later stage in order to transfer to the community group. Meantime very minimal maintenance is recommended to avoid the site becoming another environmental issue.

7.0 IMPLICATIONS

- 7.1 Policy – None.
- 7.2 Financial – None if no further action taken.
- 7.3 Legal – None if no further action taken.
- 7.4 HR – None.
- 7.5 Equalities – None.
- 7.6 Risk – If no further action taken, the site over time becomes overgrown leading to public complaint and reduced amenity.
- 6.7 Customer Service – None.

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LOCATION PLAN WITH AREAS



PANORAMA OF CLEARED SITE