

**COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015 – KILMORY WOODLANDS –
PART OF KILMORY HOME FARM - REVIEW OF ASSET TRANSFER REQUEST –
DECISION RECOMMENDATION**

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to advise the Asset Transfer Review Sub-Committee of the Policy and Resources Committee that Kilmory Woodlands (KW) have submitted an application for a review of the decision made on 17 December 2019 to refuse KW'S Asset Transfer Request (ATR) for a 99 year lease of part of Kilmory Home Farm for £1 per annum.
- 1.2 There is a legal obligation on the Council to carry out such a review within 6 months of the date of the application for a review being received (unless otherwise agreed between the parties) namely 30 July 2020. However, due to the ongoing Covid 19 restrictions the parties have agreed to extend that deadline until 30 September 2020.
- 1.3 Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) requires that in carrying out a review, the local authority must consider the request in the same way as the original process utilised in consideration of the original ATR, taking into account the same factors and benefits of the request and alternative proposals.
- 1.4 The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 set out that it is for the local authority to determine whether the review can be determined on the basis of the information supplied with the review application or whether further written submissions, or a hearing are required.
- 1.5 A review of an asset transfer decision cannot be delegated to officers. Therefore, following a recommendation from the Council's Asset Transfer Group (ATG) in line with asset transfer governance arrangements agreed by the Council in September 2017, the final decision the review requires to be carried out by Members of the Policy and Resources Asset Transfer Sub-Committee (excepting those on the standing sub-committee who made the decision in regard to the initial Asset Transfer Request).
- 1.6 The ATG's detailed analysis and assessment of the grounds of review carried out in line with the requirements of the Act, corresponding regulations, and Scottish Government Guidance concluded that:
- KW submitted no new material evidence in their review request; and

- The issues under consideration were not complex in nature and the review could be determined on the basis of the information supplied with no requirement for further written submissions or a hearing.

1.7 It should be noted that positive correspondence has been ongoing with Mid Argyll Rugby Club separately from the review process and some alternative solutions currently under investigation however this cannot be weighted in determination of this review.

RECOMMENDATIONS

It is recommended that the Asset Transfer Review Sub-Committee of the Policy and Resources Committee:

- 1.8 Note the application for review and agree that the review can be determined on the basis of the information supplied and there is no requirement for further written submissions or a hearing; and
- 1.9 Confirm the original decision of the Policy and Resources Asset Transfer sub-committee to refuse the ATR submitted by Kilmory Woodlands seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum (in accordance with the recommendation of the Executive Director with responsibility for Commercial Services and the ATG).

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2. INTRODUCTION

- 2.1 The purpose of this report is to advise the Asset Transfer Review Sub-Committee of the Policy and Resources Committee that Kilmory Woodlands (KW) have submitted an application for a review of the decision made on 17 December 2019 to refuse KW'S Asset Transfer Request (ATR) for a 99 year lease of part of Kilmory Home Farm for £1 per annum.
- 2.2 There is a legal obligation on the Council to carry out such a review within 6 months of the date of the application for a review being received (unless otherwise agreed between the parties) namely 13 July 2020, However due to the ongoing Covid 19 restrictions the parties have agreed to extend that deadline until 30 September 2020.
- 2.3 Part 5 of the Community Empowerment (Scotland) Act 2015 requires that in carrying out a review, the local authority must consider the request in the same way as the original process utilised in consideration of the ATR, taking into account the same factors and benefits of the request and alternative proposals.
- 2.4 The Asset Transfer Request (Review Procedure) (Scotland) Regulations set out that it is for the local authority to determine whether the review can be determined on the basis of the information supplied with the review request or by written submissions, or a hearing.
- 2.5 A review of an asset transfer decision must be carried out by Councillors and cannot be delegated to officers. Therefore the final decision on any request for a review of an ATR shall be carried out by Members of the Policy and Resources Committee, excepting those on the standing sub-committee who made the decision in regard to the initial Asset Transfer Request. The relevant Governance arrangements for this are already in place.

3. RECOMMENDATIONS

It is recommended that the Asset Transfer Review Sub-Committee of the Policy and Resources Committee:

- 3.1 Note the application for review and agree that the review can be determined on the basis of the information supplied, after further assessment, and there is no requirement for written submissions or a hearing; and

- 3.2 Confirm the original decision of the Policy and Resources sub-committee to refuse the ATR submitted by Kilmory Woodlands seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum (in accordance with the recommendation of the Executive Director with responsibility for Commercial Services and the ATG).

4. DETAIL

KW REVIEW

- 4.1 On 17 December 2019 the Asset Transfer sub-committee of the Policy and Resources Committee (ATSC) refused the KW's Asset Transfer Request (ATR) for a 99 year lease of part of Kilmory Woodlands at £1 per annum. In making that determination, the ATSC set out that officers should explore other avenues with KW (short of an ATR for a 99 year lease) that could be utilised to advance their proposal.
- 4.2 However, where the Council refuse an asset transfer request the community transfer body may apply in writing to the Council for a review of that decision within 20 working days of the date of the decision notice On 13 January 2020, KW submitted a request for a review of the decision to refuse their asset transfer request. The review requires to be concluded prior to considering other avenues to advance the proposal.
- 4.2 There is a legal obligation on the Council to carry out such a review within 6 months of the date of the application for a review being received (unless otherwise agreed between the parties) namely 13 July 2020. However, due to the current pandemic an extension to that deadline was agreed between the Council and Kilmory Woodlands until 30 September 2020.
- 4.3 The application for review must include a statement setting out their reasons for requiring a review (a copy of the review request & statement of reasons is attached as appendix 1). KW's statement sets out inter alia the following reasons:
- The council's lack of consultation with Kilmory Woodlands; and
 - That the council has not given sufficient weight to the proposals put forward in the original ATR.
- 4.4 In addition, the application for review must include what by procedure if any (or combination of procedures) KW considers the review should be conducted. They have intimated that:
- They wish to meet the Asset Transfer Sub Committee of the Policy and Resources Committee determining the review to provide more detail behind the basis for their application for review.
- 4.5 It should be noted that Section 86 (10) of the Community Empowerment (Scotland) Act 2015 requires that a review of an asset transfer decision must be carried out by Councillors and cannot be delegated to officers. On that basis, on 5 September 2017 the Council determined that any review of an ATR made should be determined by a standing sub-committee of the Policy and Resources Committee, excepting those members of the Committee who made the decision in regard to the initial Asset Transfer Request.

ASSET TRANSFER GROUP ASSESSMENT AND RECOMMENDATION

- 4.6 The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 require a number of steps to be carried out prior to determining the review procedure and these were carried out within the relevant timescales, specifically:
- An acknowledgement of the application for review was sent to KW within 10 working days or receipt of the review;
 - Notice of the review was given to anyone who made representations in relation to the original request within 10 working days in writing or newspaper advert circulating in the locality; and
 - The review documents and notices were published online (and will remain available until the review is determined).
- 4.7 Interested parties had 10 working days to make representations from the date of the notice, however no further representations were received.
- 4.8 On 18 March 2020, the Council's Asset Transfer Group assessed the grounds of the review documentation and determined that:
- KW have submitted no new material evidence in their review request;
 - The issues under consideration are not complex in nature and the review can be determined on the basis of the information supplied with no requirement for further written submissions or a hearing; and
 - The Asset Transfer Review Sub Committee of the Policy and Resources Committee should confirm the original decision to refuse the ATR submitted by Kilmory Woodlands seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum for the reasonable grounds for refusal set out in the original decision. which were:
 1. The request or accompanying documentation was not sufficiently robust to give confidence that the plans and benefits will be achieved, it is not clear whether anticipated funding sources have been applied for and none have been awarded; the request has not adequately identified relevant costs including initial investment, ongoing running costs and end of project costs or how the project will be funded in the future;
 2. There is currently no access to the site which is crucial to its development. While the group have obtained a letter offering access rights there is no detail of what this will entail or what cost they might incur when trying to use the access. Access is some way from the town and entry to the site other than through the new Industrial Estate is limited to a private road off the main road or through the council car park and garden;
 3. While the asset has been identified surplus to requirements and is zoned for community use, it is integral to the development of the Kilmory Industrial Estate as set out in the Council's Concept Framework Master Plan 2015. The benefits to be achieved by the request would be outweighed by the proposal potentially adversely affect and jeopardise the development of the Kilmory Industrial Estate. As part of that development the Service require to retain rights of way

to enable the installation of power and water to allow for the development set out in the framework plan, and as the plan is revisited and amended as required in relation of the layout of the phases, some of the land may be required to be incorporated into the development plan; and

4. The consideration of the project related benefits, sustainability, equality and best value within the asset transfer request was weak and 99 year lease would provide the community transfer body with security and exclusive right to the land while concerns remained about the deliverability of the project. In addition any other development of the site or other groups wishing to utilise the site would be required to fit within the confines of Kilmory Woodlands aims and objectives.

4.9 It should be noted that positive correspondence has been ongoing with Mid Argyll Rugby Club separately from the ATR review submitted by KW and some alternative solutions currently under investigation however this cannot be weighted in determination of this review.

4.10 If the original decision is upheld then officers remain committed to working constructively with local interested groups to improve the quality of information and proposal in future.

FURTHER PROCEDURE

4.11 Following submission of a review the local authority may consider they have enough information to determine the review. If that is not the case they may decide what further procedure to use to obtain the information they require to make a determination (e.g. further written submissions, a site visit and/or a hearing session).

WRITTEN SUBMISSIONS

4.12 If the Council determines that further written submissions are necessary, it is required to send a further notice to KW setting out:

- Matters on which further representations are required;
- The date on which they should be submitted to the Council; and
- The name and address of each person the notice is sent to.

Any information provided to the Council in response to the notice must be copied into everyone else the notice was sent to who then have 10 working days to send any comment on that information to the Council.

HEARING SESSION

4.13 If the Council determines that they should hold a hearing session, they are required to send a notice to KW, interested parties and any other party they wish to provide information setting out the matters to be considered at the hearing. The parties invited have 10 working days to advise if they plan to attend the hearing and the Council must inform parties who have so advised the date, time and place the hearing will take place. The Council can also require those attending to submit a

written statement of case. Hearing session rules are set out the review procedure regulations.

- 4.14 It should be noted that the hearing session is intended to be a discussion, led by the Council on the particular matters set out in the notice. Those parties attending will not normally be allowed to question each other on their statements and the Council will be able to stop anything being raised if they consider it is not relevant or is repeating previous points.

ADDITIONAL EVIDENCE

- 4.15 If the Council proposes to take into consideration any new evidence not obtained through written representations or hearing sessions they must not reach a decision without giving KW and other relevant parties the opportunity to comment on that evidenced.

DECISION ON THE REVIEW

- 4.16 Having carried out a review the Council may then confirm the original decision, modify it or any part of it, or substitute the original decision. They must issue a new decision notice, publish it online and inform anyone who made representations of their decision and where the notice can be inspected.
- 4.17 If the original decision to refuse the request is upheld, KW may appeal that decision to the Scottish Ministers.

5. CONCLUSION

- 5.1 KW have submitted an application for a review of the decision made on 17 December 2019 to refuse KW'S Asset Transfer Request (ATR) for a 99 year lease of part of Kilmory Home Farm for £1 per annum. There is a legal obligation on the Council to carry out such a review within 6 months of the date of the application for a review being received namely 13 July 2020, however due to the ongoing Covid 19 the parties have agreed to extend that deadline until 30 September 2020.
- 5.2 The final determination in relation to the review and the procedure to be used to carry out the review requires to be determined by the Asset Transfer Review Sub-Committee of the Policy and Resources Committee excepting those members of the Committee who made the decision in regard to the initial Asset Transfer Request.
- 5.3 It is considered that the review can be determined on the basis of the information supplied and that there is no requirement for written submissions or a hearing and therefore recommended that the Asset Transfer Review Sub-Committee of the Policy and Resources Committee confirms the original decision of the Policy and Resources sub-committee to refuse the ATR submitted by Kilmory Woodlands seeking a 99 year lease of part of Kilmory Woodlands for £1 per annum for the reasonable grounds of refusal stated above.

6.0 IMPLICATIONS

- 6.1 Policy – In line with Council policy on Asset Transfer Requests

- 6.2 Financial – Possible loss of strategic asset;
- 6.3 Legal - In line with Community Empowerment (Scotland) Act 2015
- 6.4 HR - None
- 6.5 Fairer Scotland Duty: None
- 6.5.1 Equalities - protected characteristics – Decision reached in line with Community Empowerment (Scotland) Act 2015
- 6.5.2 Socio-economic Duty: Decision reached in line with Community Empowerment (Scotland) Act 2015
- 6.5.3 Islands –None
- 6.6. Risk – As above
- 6.7 Customer Service - None

Executive Director with responsibility for Commercial Services: Douglas Hendry
Policy Lead: Rory Colville

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APPENDICES

Appendix 1 – Request for Review and Statement of reasons Submitted by KW
Appendix 2 – Council’s Asset Transfer Group Review Assessment Document