Argyll and Bute Council

Scrutiny Report

March 2022

DRAFT

Community Asset Transfer

Contents

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1. Executive Summary

Introduction

1. As part of Argyll and Bute Council's (the Council) 2021/22 scrutiny plan, approved by the Audit & Scrutiny Committee (the Committee) in June 2021, we have undertaken a scrutiny review of the Council's Community Asset Transfer process.

2. Throughout this report references to 'the Panel' refers to the chair of the Committee and two Committee members who conducted this review. They were:

   - Martin Caldwell (Panel Chair)
   - Councillor Trail
   - Councillor McGrigor

3. The Panel was supported by council officers and relevant external parties who gave willingly of their time to help deliver the review. We would like to extend our appreciation for the cooperation and assistance received from all witnesses invited to provide evidence over the course of the review.

Objectives

4. The agreed objectives of the scrutiny review were to:

   - ensure the Council's guidance is consistent with legislation and national guidance
   - ensure the Council's process is supportive to community transfer bodies
   - ensure there is adequate engagement with community groups to assess feedback
   - ensure that the action plan from Audit Scotland's Best Value Assurance Report is being progressed.

Background

5. The Council's Best Value (BV) report issued by the Accounts Commission in May 2020 stated that community focus groups highlighted that:

   There is 'a perception that the Council's current asset transfer process is complex and does not fully support community empowerment to allow community groups to progress transfer requests without significant support.'

   and recommended that:

   'The council should work with communities and community groups to understand and address their concerns in respect of the current asset transfer arrangements.'

   In response to the BV report the Council have implemented a BV Action Plan with one of the actions being to 'Review and simplify the community asset transfer process'.

6. Part 5 of the Community Empowerment (Scotland) Act 2015 (The Act), sets out the key rights and duties for community transfer bodies and relevant authorities and provides a framework for the asset transfer process.

7. Historically, asset transfer was only available for land or buildings which a public authority has decided to dispose of, and has decided is suitable for community use. The Act puts more power

in the hands of communities by allowing them to request whatever publicly held property they believe will be most suitable to deliver their objectives. Therefore community transfer bodies who meet the qualifying criterial can make applications to relevant authorities to acquire land and property which is not listed for sale.

8. The Act requires each relevant authority to establish, maintain and make available a register of land which it owns or leases to the best of its knowledge and belief. This register is available to view within an area of the Council's website dedicated to community asset transfers along with links to other relevant guidance and tools.

9. The Council has developed an "expression of interest" process which seeks to resolve community requests as simply as possible out with the statutory Asset Transfer process and runs parallel with the Asset Transfer process. This process assists community transfer bodies wishing to investigate the possibility of developing a full asset transfer request or other alternative means of managing community assets. A transfer request can be for ownership, lease or other rights.

10. As at 30 June 2021, the Council reported to Scottish Government that it had received 70 expressions of interest since January 2017. Of these:

- 14 are active
- 53 have been resolved or withdrawn
- 3 developed into asset transfer requests, one of which was successful and two refused.

11. The Council's Social Enterprise Development Officer is the single point of contact to provide assistance to community transfer bodies. There is an internal process guide to ensure consistent evaluation of expressions of interest and asset transfer requests received.

12. The Council's Asset Transfer Group consists of representatives across various council services. The group meets monthly to review progress with expressions of interest and asset transfer requests, review the Best Value Assurance Report action plan and the published asset register and consider any other relevant business.

13. The Community Asset Transfer process was approved for inclusion in our scrutiny plan for 2021/22 at the meeting of the Council's Audit and Scrutiny Committee on 15 June 2021.

Scrutiny Initiation Briefing – 13 August 2021

14. In August 2021 scrutiny officers circulated a briefing paper to the Panel which provided background on the community asset transfer process. The Panel met to agree the scope and identify invitees to give evidence at a series of meetings.

15. The agreed scope was to consider whether the community asset transfer process:

- complies with relevant legislation and guidance
- supports community transfer bodies through the expression of interest and asset transfer process
- uses feedback from community transfer bodies to inform improvement actions that will address the findings of the Best Value Report.

16. The Panel agreed that they should meet with appropriate representatives of the groups set out in Exhibit 1.

Group	Key Areas for Discussion
Council Officer(s)	• Council compliance with legislation and national guidance. • How the expression of interest pre-application stage assists community transfer bodies prepare for a full asset transfer request. • How an asset transfer request is assessed. • How representation at review panels is decided. • Whether feedback from community groups is used to inform improvement actions. • Progress in addressing the action plan from the Audit Scotland Best Value Assurance Report.
Audit Scotland (author of Best Value Assurance Report)	• Whether guidance published by the Council is considered compliant with statutory requirements. • Whether community transfer bodies can easily access information and support from Council officers. • Whether sufficient feedback had been sought from community transfer bodies to inform the Best Value Assurance Report. • What specific areas/issues were highlighted as being complex through feedback received from community transfer bodies.

2. Scrutiny Meetings

Scrutiny Meeting One – Council Officers – 05 October 2021

17. The first scrutiny meeting consisted of the Council's Social Enterprise Development Officer, who is the single point of contact for community groups and supports the Community Asset Transfer request process and the Estates and Property Development Manager who deals with any property related matters for the Council and chairs the Asset Transfer Group. The key messages reflecting the views of the Council officers who attended, from this meeting are set out in Exhibit 2.

Exhibit 2 – Scrutiny Meeting 1 – Council Officers - Key Messages

Theme	Detail
Scottish Government and Council Guidance	Scottish Government provides two guidance notes, the "Community Empowerment (Scotland) Act 2015: community transfer bodies' guidance" and a 16 page summary guide both of which have been written with communities in mind. Council officers have selected key sections from this guidance to further simplify and publish on the Council's website for public use. General feedback from events and talks is that the webpages are very helpful. However, Audit Scotland stated in the Best Value report that "feedback from Community Groups highlights a perception that the Council's current Asset Transfer process is complex and does not fully support community empowerment". The Council's Legal Services have been fully involved throughout the community asset transfer process development and there is a high level of confidence that the Council fully complies with Scottish Government guidance and legislation.

	The Council's website contains all of the statutory elements that are required to be published, including additional links to further guidance and resources. There is information exchange with other Councils, this enables learning from each other and evaluation of how the process is managed at other Councils whilst meeting the statutory requirements. The legislation is still relatively new and Council processes are evolving. An Asset Transfer Request must be in writing but it is not necessary to use the form provided by the Council. Community transfer bodies are encouraged to use the expression of interest process, this allows the Council to provide support and information on what may be the best approach to meet the communities need. The value of assets involved tend to be low and there has not been a request close to the State Aid barrier to date, there is unlikely to be any significant impact following the change to Subsidy Control which currently has a threshold of approximately £335,000 over the current and two previous years.
Expression of Interest (EOI)	The EOI process is not a requirement of the Act but is a recommendation in the Scottish Government Guidelines, many other Councils offer similar support. It is not a pre-application stage to a formal asset transfer request (ATR), it is an option groups can choose to use to investigate their idea further without necessarily requiring a formal ATR as other solutions to address their needs are often identified thus negating the need to submit a formal ATR. Every EOI is different, some are easy to quantify but some are vague in terms of their request or identified outcome, however the Council tries to help groups find a solution or clarify what outcome the community is looking for. The EOI process guides the groups towards the best way to achieve their objectives without necessarily resulting in a formal ATR. In addition the process helps groups understand the full extent of their interest and the associated operational requirements should they wish to progress. If what a group is suggesting seems unrealistic they receive feedback and suggestions for improvement, this allows the group to make a more informed decision of whether they wish to proceed, seek alternative solutions or withdraw from the process. EOI forms gather initial high level information. Part of the assessment process looks at ongoing capacity within the group and resilience to continue to manage or develop services with the asset for the benefit for the wider community. EOIs are not rejected, the final decision is made by the group on whether to take the request forward, however, a positive outcome is supported wherever possible. It can be difficult to measure whether an EOI remains active or not as groups are often slow to respond and therefore unsure if they have decided whether to continue or not.

	The annual Scottish Government return identifies how many EOIs have been received, how many have progressed to full ATR and how many have resulted in an alternative positive outcome. These statistics show that very few EOIs progress to formal ATR, however this is not necessarily a negative result as positive outcomes are often achieved by other means. At present the Council do not capture information in relation to the final outcome where a full ATR is not achieved. General support and information regarding funding opportunities is offered to any group qualifying as a community transfer body (CTB). Groups that do not qualify as a CTB are also supported although they would not be entitled to use the formal legislation. Groups are also directed to other Council services such as Business Gateway and partner agencies such as Just Enterprise for further/specialist advice and support. The Council does not provide financial support to groups to progress their EOI or ATR, however they do facilitate a joint valuation of the property concerned. Officers will advise of other funding sources and available assistance e.g. Business gateway will with the preparation of a business plan.
Asset Transfer Request	Community Asset Transfer information provided on the Council's webpage is based on the legislation to ensure compliance with the Act. The Community Empowerment Act is about empowering communities voices to be heard, their requests listened to and considered. It does not provide a guarantee that a request will be approved but it does give them certain rights to be heard and not dismissed. Community groups can submit a request for assets which are currently in use by the Council, there is no requirement for the asset to be identified as being a surplus asset, however, this could possibly make their request a bit more challenging. An ATR can be submitted at any time by a CTB and it is their decision whether or not to take forward. Council Officers will provide support and advice in order to ensure that any ATR application submitted by a CTB is as strong as possible to provide the best chance of succeeding. If the CTB can then alleviate some of the concerns at the outset this gives them a stronger more robust ATR going forward. Formal ATRs are concluded when a decision has been reached or an appeal has been heard. If unsuccessful, officers will continue to engage with the groups to find an alternative positive outcome for their request. Financial and Legal Services are represented on the Asset Transfer Group (ATG). They will assess their relevant areas within the application and if required will request further information depending on the scale of the asset the CTB are looking to take over. An updated matrix is used for evaluation of all ATRs.

Review Panels	Members of the Policy and Resources Committee are responsible for determining how to run review panels. A review panel can be a complete review, an open public meeting or review of additional information provided by council officers or the CTB. The ATG will provide an asset re-evaluation report to help guide decision making.

Each case is reviewed and considered on its individual merit rather than taking a consistent approach.

Both review panels held were conducted as a desk-top exercise with additional information presented, there was no representative from the CTBs present at either review panel. |
| Feedback From Community Groups | There has been no customer survey for ATR or EOI's undertaken to date, however, feedback received at courses or events for communities has been positive.

Some changes have been identified and these are reviewed by the legal team prior to publishing to ensure ongoing compliance with the Act. Specific changes are being made following the BV3 comments to aid community engagement and understanding.

Officers have attended and contributed at training, events and consultations organised by Community Ownership and Support Service (COSS, a subsidiary branch of the Development Trust Association that is funded directly from Scottish Government to support communities and LAs in delivering asset transfers). Council officers also review websites of other Councils to benchmark our information provision and processes with other Local authorities, we have similar processes to others but also do some things that others don't.

Officers attended a national event for local authorities to review the process and feed into a review of the Act, a similar event is planned for community groups to get wider feedback. It is thought that a paper will be produced at the end of the current parliament covering any required updates or changes to the Act. |
| Best Value Assurance Report Action Plan and Progress | Positive feedback has been received from groups regarding the information available on the Council's website. The web pages have been updated in light of the BV3 report with a focus on the EOI pages to simplify the language used and remove some of the technical information, replacing it with links to provide further information or clarity as required. This is a recent change and there has been no feedback to date.

The EOI is a supportive tool for groups to use that enables them to decide whether they wish to proceed to a full ATR or not. The panel meeting has provided a very different view to what is recorded in the Audit Scotland BV3 report. |
| Promotion of Asset Transfers | The BV3 report requires the Council to promote asset transfers, this has been taken on board. One specific area that the Council has focussed on is |

	that they are actively looking at ways to try and promote toilets that are at risk of closure and how groups can work in partnership with the Council to take responsibility for this asset. Similar opportunities will start to appear on the Council's webpages as they arise. Surplus Assets are marketed commercially by the Estates service to obtain best value for them. The details are published on the Council's website to allow community groups the opportunity to view and form their proposals should they wish to apply for an ATR. However, the focus of the Act is on the community need rather than the property.
Other relevant information	Legislation requires officers to respond within a fixed period of time, if there were more than 2 or 3 ATRs in a year the service would struggle to resource this. Around one third of the Social Enterprise Officer's time is spent on EOIs and supporting groups to progress enquiries. The Council provide limited time monitoring completed ATR's as all responsibility is transferred with the asset. If another option is taken forward using a joint approach, the Council can provide guidance and support to the group.

Scrutiny Meeting Two – Audit Scotland – 18 November 2021

18. The second scrutiny meeting consisted of representatives from Audit Scotland, this included the Audit Director and two Senior Audit Managers. The key messages from this meeting, reflecting the views of Audit Scotland, are set out in Exhibit 3.

Exhibit 3 – Scrutiny Meeting 2 – Audit Scotland - Key Messages

Theme	Detail
Scottish Government Guidance	Observations made by the panel regarding the complexity of government guidance are well made, however, this is often the nature of guidance documents. Unfortunately, community groups often do not have the capacity or time to deal with complex guidance. The Government return could include more information regarding positive outcomes that have not resulted in a full community asset transfer.
Argyll and Bute Council Guidance and Procedures	The BV3 report recognised that there is guidance in place but that it may be over burdensome and could be streamlined. The Council has taken Audit Scotland's comments on board and is engaging with communities to make the whole process more straight forward. The Council aims to simplify the guidelines for community groups by either slimming down the guidance further, changing it or producing something that runs alongside it to make it easier for people to work with. The guidance has to be provided for transparency reasons but this can be off-putting for community groups. Incorporating the guidance into the process and early engagement between the Council and community groups is therefore of utmost importance. This helps to establish what the community group are looking to achieve and then progress the

	requirement in meaningful segments using the officer's technical expertise to support the group through the process.
Feedback from Community Groups used to inform Argyll and Bute Council's Best Value Assurance Report	The BV3 report was cleared with SMT to agree factual accuracy prior to publishing.
	One of the elements of the BV3 report was to look at how the Council engages with the community, how active it is in promoting community engagement and what the perceptions are from the community in terms of the level of engagement. It was not intended to look specifically at community asset transfers.
	There was no survey used as part of the BV3 audit, the work involved meeting with a number of community groups or their representatives drawn from across Argyll and Bute area with a mix of island and mainland based groups to gain an understanding of how they perceived community engagement. There is no definitive data available to share with the Council.
	One of the themes to emerge was that of mixed feelings regarding the Community Asset Transfer process and this was documented in the report as a perception as the asset transfer process had not been audited. The purpose of the report content was to reflect back to the Council for consideration on how to move forward and better understand why the community groups were of this opinion.
	Audit Scotland acknowledged that there may be an element of bias in the perception depending on the results of applications or enquiries made by the groups that were consulted.
	As well as the feedback from communities there is corroborative feedback from some of the elected members where they were aware of communities enabled to engage with the Council and take forward community asset transfers.
	Audit Scotland did not look at the Council's website in any great detail when preparing the BV3 report.
	The website is due to promote assets for community participation in 2022 on a trial basis as part of the improvement actions.
	It would be beneficial to request feedback from community groups on how clear and easy it is to access and navigate the website to make it as user-friendly as possible and achieve a positive outcome.
	It would also be beneficial to indicate that a community asset transfer is not the only option and there are other solutions that may be more appropriate. Some solutions may involve further partnership working between community groups where more than one community group is interested in a property e.g. library within a café.

Other observations/ comments	Audit Scotland acknowledged that not all applications for community asset transfers come to fruition and that was fundamental, demonstrating the complexity of the process and also because community asset transfer is not necessarily the best outcome as a better solution might present itself as noted above in the Scottish Government guidance detail of Exhibit 3. The Council should reflect on the support provided to community groups considering community asset transfer and establish whether they are comfortable with the level provided and whether it is considered to be a partnership approach or client and customer relationship dealt with at arms-length. The Council could benefit from discussing and comparing processes with Glasgow City Council in terms of how they have set up their processes, their arrangements and their team to deal with not just community asset transfers but more about finding the right solution and working with community groups in terms of some of the challenges.

3. Overall Conclusion and Findings

19. Based on the information obtained over the course of the review the Panel has concluded that:

- the Community Asset Transfer process is compliant with statutory requirements
- the process enables opportunity for engagement with community transfer bodies
- the process is supportive to community transfer bodies and communities

20. The review has identified eight findings which have been discussed with management. These, and the management responses, are detailed in Exhibit 4.

Exhibit 4 – Findings

No.	Recommendations	Management Response
1	The legislation is still relatively new and processes are evolving. Some variations in processes exist between Councils due to interpretation of the legislation. Information exchange takes place with other Councils for learning and evaluation purposes however Audit Scotland suggests communicating directly with Glasgow City Council to learn from some of the challenges they have overcome.	COSS have established a Quarterly Forum "**RA Quarterly Group"** which representatives of the Asset Transfer Group plan to attend. This will give the opportunity to learn from other councils and discuss how others resolve any issues. Next meeting 7th March 2022.
2	The annual Scottish Government return identifies how many EOIs have been received and how many asset transfers have been received. These statistics show that very few EOIs progress to formal ATR, however this is not necessarily a negative result as positive outcomes are often achieved by other means. There is no	Data is collected on numbers with notes of resolution. Work is ongoing to develop quarterly highlight reports that give further detail of outcomes. The follow up outcomes of assets previously transferred will be added on a periodic basis to the quarterly reporting.

No.	Recommendations	Management Response
	data capture of all outcomes and the degree of resolution achieved, therefore, a method or format should be created to identify the outcomes secured.	
3	An EOI is not a pre-application stage to a formal asset transfer request (ATR), it is an option that groups can choose to explore their idea further without necessarily requiring a formal ATR. Other solutions often present themselves that will address the needs of the group thus negating the need to submit a formal ATR. The information provided on EOI does not make this explicit on the website.	Actions have been taken to clarify the processes and the options available. We have clarified our descriptions of the processes and try to be consistent in our use of language when discussing / describing the processes on offer.
4	Review panels were held for two rejected ATRs, these were conducted as a desk-top exercise with additional information presented to support the appeal. There was no representative from the CTBs present at either review panel. The option of a default presence of CTBs should be investigated.	Currently this is a decision that sits with the Policy and Resources sub group. They decide on the format of the review and can request participation from the group if this was considered to assist with the process.
5	No customer surveys have been undertaken to date, however, feedback is received when attending courses and events and this has been positive. More in-depth feedback from community groups should be considered, it may be useful to approach COSS to obtain advice on how to structure such feedback.	The Communities and Partnership Team (CPT) have been working with COSS to deliver some introductory training courses. The Scottish Government and COSS have been undertaking community consultation. We will review the feedback from this and then consider what further consultation is needed and add this to the CPT training programs.
6	The Council is actively looking at ways to promote asset transfers, toilet facilities in particular with other opportunities to follow as they arise.	This action is being developed and with the approval of the Asset Transfer Group will be implemented in 22/23.
7	The BV3 report recognised that Council guidance is in place but that it may be over burdensome and could be streamlined as community groups often do not have the capacity, time or capability to deal with complex guidance. Audit Scotland did not review the Council's website in any great detail during their review, however, the web pages have been updated as a result of the BV3 report with a focus to simplify the EOI pages, and there has been no feedback to date.	Action noted and will be raised at COSS events along with regular catch up meetings with COSS representatives.

No.	Recommendations	Management Response
	The Council's guidance is based on complex guidance issued by Scottish Government and therefore may deter groups from applying. Council officers should consider raising the issue with the COSS group with a view to submitting a collective request to Scottish Government to review and potentially simplify the guidance.	
8	It would be beneficial to indicate that a community asset transfer is not the only opportunity available to CTBs as there are other solutions that may be more appropriate. Some solutions may involve further partnership working between CTBs where more than one CTB is interested in a property e.g. library within a café. This type of solution should be added to the information available on the Council's website.	This information has been added to the website. We will continue to monitor and look for ways to highlight further opportunities as we develop these resources.