

Community Asset Transfer timeline - Polton Bowling Club Request

Report by Kevin Anderson, Acting Director, Resources

1 Purpose of Report

The purpose of this report, as requested by the Community Asset Transfer Committee at its meeting of 30 April 2019, is to set out the series of events, communications and decisions that led to the site of Polton Bowling Club being pursued as a community asset transfer, and later designated as a Strategic Housing Investment Plan site for 18 units of social housing. The report is based on a review of documentation provided by the range of council services involved. It concludes with recommendations for service improvement.

2 Background

2.1 Community Empowerment Act (Scotland) 2015

On 2 October 2018 Council approved a Community Asset Transfer Framework to assist with the determination of CAT requests and agreed to establish the Community Asset Transfer Committee to determine initial CAT requests and the Community Asset Transfer Review Committee to consider any review applications. Each Committee is to comprise six elected members.

This change in policy reflected the Scottish Government's move forward from a voluntary approach to a more formal asset transfer process with the introduction of the Community Empowerment (Scotland) Act 2015. The Act introduced a right for community groups to make requests to all relevant authorities (which includes local authorities) for any land or buildings they feel they could make better use of.

Part 5 of the Act came into force on 23 January 2017 and sets out the formal asset transfer process that must be adhered to if a valid request is received under the Act by the Council. The Council must comply with the Asset Transfer Regulations of the Act. The new Community Asset Transfer Framework helps ensure the Council complies with the legal requirements of the Act.

CAT applications are administered and assessed by the Community Management Assessment Group (CMAG) of officers from a set of Council services using the assessment framework approved by Council. The CMAG initially included Legal, Property, Financial, Estates, Land & Countryside, Sport and Leisure, Education and Communities, Adult Health and Care staff and is chaired by the Acting Director Resources. The Housing Service have subsequently been represented since December, 2018.

In deciding whether to agree to or refuse a CAT request, the Council must consider the following:-

- (a) the reasons for the request;
- (b) any other information provided in support of the request;
- (c) whether agreeing to the request would be likely to promote or improve:-
 - economic development
 - regeneration
 - public health
 - social wellbeing
 - environmental wellbeing, or
 - whether agreeing to the request would be likely to reduce socio-economic inequalities
- (d) any other benefits that might arise if the request were agreed to;
- (e) how the request relates to the Council's duties under Equalities Legislation; and

- (f) any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request.

In reaching its decision, the Council must compare the benefits of the community transfer body's proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request; another proposal made by the Council, such as designation for social housing; continuing the existing use or disposal on the open market.

As well as assessing the benefits which the proposed CAT may deliver the Council must also assess whether the community transfer body is able to successfully deliver the project, and make it sustainable.

Importantly, the Act requires the Council to agree a CAT request unless there are reasonable grounds for refusing it.

2.2 Strategic Housing Investment Plan 2019/20-23/24

In 2016 the Scottish Government announced its intention to support the development of 50,000 new affordable homes in Scotland by March 2021. Meeting this target is ambitious and will require increased investment by the Scottish Government, Local Authorities and Registered Social Landlords and a step change in the pace of housebuilding in order that it is achieved. The delivery of more affordable housing remains a high priority for the Council, which has delivered over 1,000 new council houses in Midlothian, and has committed to a development plan for a further 1000 new council houses.

The purpose of Midlothian's Strategic Housing Investment Plan (SHIP) is to set out strategic investment priorities for affordable housing over a 5 year period to achieve the outcomes set out in the Local Housing Strategy (LHS). The SHIP is also the key document for identifying strategic housing projects towards meeting the Government's 50,000 affordable housing target. This document is updated annually to present up to date information on affordable housing investment plans

3 Timeline of events

3.1 October 2017- Bowling club closure proposed by sport and leisure service as a budget saving.

22 June 2018 – Expression of Interest received from Bonnyrigg and Sherwood Community Development Trust (Sam Elliot is the chair)

30 July 2018 – discussed at CMAG meeting, Director Resources to discuss with elected members.

27 August 2018 – CMAG meeting “Polton Bowling Green/Pavilion – Education Resources officer to arrange a visit and contact Property Strategy Manager for surveys etc. Education interested in the site as an office based for Early Years staff (approx. 30). If this gets the go ahead the decision needs to be formalised through the group and council for transparency. KIC Dance and Bonnyrigg and Sherwood Development Trust both still interested and may submit formal applications”.

31 August 2018 - Director of Education contacted the housing service to determine if it had an interest in this site.

4 September 2018 – Construction team enquired as to the initial planning view of this site for residential development.

4 September 2018 – Planning respond to note that the prospect of residential development could be considered

14 September 2018 – formal application received from Bonnyrigg after School Club for ownership of Polton Bowling site.

20 September 2018 – due diligence checks carried out with request for further information.

September / October 2018 - BASC and Communities Team staff corresponded as the application was developed, gathering letters of support, constitution, companies house information, accounts, building floorplans.

7 November 2018 – Communities Team asked by BASC to provide a letter to STV to confirm they had initiated a CAT process, as BASC had made a grant submission.

13 November 2018 – SHIP passed at Full Council included this site.

27 November 2018 – Construction confirm approval of SHIP to the Estates Team (NB. this was not highlighted to the Communities Team)

5 December 2018 - BASC submit pre planning application to Council

6 December 2018 – acknowledgement date of CAT set by Council

13 December 2018 - CAT application acknowledgment letter sent to BASC

18 December 2018 - public notice of CAT request published by Council, comments to be received by 1 February 2019

18 December email to Housing Service from Communities Team asking for confirmation of status of the site.

20 December 2018 – all elected members emailed by Communities Officer to advise asset transfer had been accepted for consideration

27 January 2019 - resident's letter raising concerns on the CAT application received

28 January 2019 – Initial assessment carried out, noted to speak to Housing to find out what the level of intent was for this site

29 January 2019- email to Housing from Communities asking for confirmation of status of the site.

29 January 2019 - pre-application planning enquiry response email sent to BASC

1 February 2019 – response from Bonnyrigg and Lasswade Community Council re parking concerns on the CAT application.

11 February email from Communities to Housing asking for confirmation of the status of the site in relation to the SHIP

4th March 2019 – Initial site assessment for Bonnyrigg After School Club.

4.1 Resource

There are no specific resource issues arising from this timeline report.

4.2 Risk

The failures of internal communication highlighted in this report led to:

- an ineffective meeting of the CAT Committee at which elected members were left unable to make a decision
- frustration from the CAT applicant as they considered that they had been misled for some months by Council staff
- reputational damage to the council
- loss of trust in the CAT process

4.3 Recommendations to mitigate risk

The following recommendations arise from a review of the timeline, and a wider consideration of feedback from applicants, members and officers involved in the asset transfer process to date. It is recommended that:

- The CMAG reports become a standing agenda item at the Capital Asset management group chaired by the Chief Executive to resolve any conflicts between the different strategies being pursued across the Council Directorates
- all SHIP sites named locations should be clearly identified on the publicly accessible Council asset register
- designation within the SHIP should be made a clear reason for refusal of a CAT application in guidance to applicants
- Advice notes from services which are members of the CMAG regarding the status of sites should be clearly explained by staff from these services to applicants directly rather than through the Communities team
- Applicant advice should clearly set out that applying for external funding prior to achieving a transfer is done by applicants at their own risk and will not form a requirement on the Council to make a specific decision within any external timeline.
- Applicant advice will also clearly set out that incurring costs for architects , planning applications, conditions surveys , consultancy's will be met by applicants at their own cost and will not be met by the Council. This advice will also make clear that incurring such costs in advance of agreement to transfer is undertaken at the applicants own

risk and as such cannot be reclaimed should an application be refused .

•Applicant advice should also be amended to make clear the role of Fields in Trust (FIT) as legal supervisor of public playing fields in all Scottish Councils. This should also make clear that any additional application and legal fees, where FIT have such rights, will need to be met by applicants.

4.4 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- Community safety
- Adult health, care and housing
- Getting it right for every Midlothian child
- Improving opportunities in Midlothian
- Sustainable growth
- Business transformation and Best Value
- None of the above

4.5 Key Priorities within the Single Midlothian Plan

The community asset transfer process supports the strategic priorities of the Single Midlothian Plan.

4.6 Impact on Performance and Outcomes

This review of timeline and risk is intended to support improvements in performance

4.7 Adopting a Preventative Approach

The proposed changes to the asset transfer guidance to applicants and to internal communications and governance arrangements are intended to prevent a recurrence of these events.

4.8 Involving Communities and Other Stakeholders

This review of the timeline of events has taken into consideration the views of the applicant as expressed at the CAT committee, in writing and verbally.

4.9 Ensuring Equalities

There are no specific impacts on protected characteristics groups arising from this report

4.10 Supporting Sustainable Development

There are no specific impacts on sustainable development arising from this report

4.11 Digital Issues

There are no digital issues arising from this report.

5 Recommendations

As Housing Services have now been included in the CMAG communication issues set out here should be mitigated. The due diligence system for CAT has been updated to include specific references to the SHIP and other Directorate's interests.

It is recommended that the Committee agree that:

- The CMAG reports become a standing agenda item at Capital asset management group chaired by the Chief Executive to resolve any conflicts between different strategies being pursued across the Council Directorates
- all SHIP sites named locations should be clearly identified on the publicly accessible Council asset register
- designation within the SHIP be made a clear reason for refusal of a CAT application
- Advice notes from services which are members of the CMAG regarding the status of sites should be clearly explained by staff from these services to applicants directly rather than through the communities team
- Applicant advice on the CAT site to clearly set out that applying for external funding prior to achieving a transfer is done by applicants at their own risk and will not form a requirement on the Council to make a specific decision within any external timeline.

- Applicant advice to clearly set out that incurring costs for architects , planning applications, conditions surveys, consultancy's will be met by applicants at their own cost and will not be met by the Council
- Applicant advice to be amended to make clear the role of Fields in Trust (FIT) as legal supervisor of public playing fields in all Scottish Councils. This will also make clear that an additional application and legal fees ,where FIT have such rights, will need to be met by applicants

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