

## **Written submission from Dumfries and Galloway Council**

Dumfries and Galloway Council's responses to the four questions from the Committee are as follows:

### **1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?**

Response: No

### **2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?**

Response: Where an asset is surplus to Council requirements, it is valued on the basis it will be sold on the open market. The valuation is carried out by RICS Registered Valuers, based on comparable sales evidence in accordance with the RICS "Red Book". When the asset is actually disposed of, the agreed sale price will depend upon a number of factors, such as: offers received, interest (if any) from community group and the business case put forward from the group for the asset. Where the asset has been marketed and no community interest registered, the disposal price will generally be the highest offer received.

There are also instances where assets are transferred to community groups, where there were no plans to market the asset for disposal; the Council has transferred various assets in the last few years, and these are noted on the enclosed document. Sometimes, when an asset has been, or is about to be, marketed for disposal, a community group expresses an interest to acquire the property at less than best consideration; in such circumstances, the

Council's Disposal Policy allows that the property be taken off the market for 18 months to allow the group to develop a business case. Where properties are disposed of or transferred to a community group, it is rare that the consideration would be financial, but the criteria set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010, in terms of contributing to any of the purposes of: economic development or regeneration, health, social well-being, or environmental well-being, in respect of the whole or any part of the area of the local authority or any persons resident or present in that area are considered by the Council. (References to "well-being" are to be construed as for the purposes of section 20 of the Local Government in Scotland Act 2003(2).)

### **3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?**

Response: Dumfries and Galloway Council has a Disposal Policy and a Community Asset Transfer process to encourage the disposal of assets to Community Groups. The Council's priority to "be an inclusive Council" includes a specific objective "to empower our communities to make the most of their assets".

I enclose a copy of the Council's Community Asset Transfer process together with a summary of recent community asset transfers and disposal of assets at less than best consideration.

The funding of the Council's Capital Investment Strategy also includes generating receipts from the sale of surplus assets. Previously, the target to be generated each year was £750K; however, from 2015/16, this is reduced to £500k per annum. There is therefore a balance which the Council has to strike between disposal of assets to community groups and generation of capital receipts on surplus assets. However, not all assets are of interest to community groups and, presently, it is possible to reasonably maintain this balance.

#### **4. What is your experience of disposal and what difficulties has the authority encountered?**

Response: Many properties which are marketed for disposal can be very difficult to sell, and some do sit on the open market for a considerable period of time with limited interest; the marketing price is therefore reconsidered periodically. This has been particularly true in recent years, with a general downturn in the market and also, many of the Council's more valuable and saleable surplus assets having already been disposed of.

In terms of disposals or transfers to community groups, it can sometimes be the case that groups are interested in "saving" a building, without necessarily having a business case developed or considered for viable sustainable use of the asset in question. Where this situation arises, and consistent with our Council's priority to be an Inclusive Council, all reasonable steps are taken to assist Community groups bring forward a sustainable business case. Likewise, as noted, the Council allows interested community groups up to 18 months to develop a business case for transfer of the asset; whilst this can be extended by the Council, the Council does not wish to see valuable assets deteriorate through long periods of vacancy.

In terms of land assets specifically, it has not generally been the case that there is community group interest in obtaining greenfield or brownfield land from the Council; community group interest is predominantly in built assets.

I trust you find the foregoing responses and the enclosures to be of help to the Committee in concluding its Stage One consideration of the draft Bill.

#### **Annex 1**

##### **Recent Community Asset Transfers**

As part of the Community Facilities Review process for 2013/14 and 2014/15 the following are community facilities which have been transferred or are due to transfer to community groups. There are also many properties which are run by management committees on older leases (particularly in the Nithsdale area).

##### **Pre-2013:**

- St Ninian Hall, Isle of Whithorn; Isle Futures, Asset Transfer

2013/14 (all transferred via the standardised agreement – lease):

- Hutton Hall
- Noblehill Community Centre (Dumfries Town Hand Community Hall)
- Stakeford Community Centre (Glenaros Church)
- Glenkens Community Centre
- Kirkcudbright Community Centre
- Whauphill Hall (Whauphill Community Association)

2014/15:

- Canonbie Hall, Annandale & Eskdale – Full cost Lease

At the moment the Council is in the process of agreeing the transfer of the following via a standardised agreement:

- Ecclefechan Hall
- Nelson House
- Annan Community Facility
- Sanquhar Community Centre
- Thornhill Community Centre
- Glenlochar Community Centre
- New Galloway Town Hall
- New Luce Village Hall
- Portpatrick Hall – Standardised agreement, then asset transfer

The Council is also seeking to asset transfer the following properties for less than best consideration:

- Stakeford Community Centre (Glenaros Church)
- Noblehill Community Centre (Dumfries Town Band Community Hall)
- Waverley Hall, Creetown (Creetown Initiative)
- Portpatrick Hall (Portpatrick Trust)

- Drummore Hall (Mull of Galloway Trust)
- Glenkens Community Centre

The following properties which the Council considers to be surplus to its requirements are not yet being marketed for sale due to community interest and may ultimately be disposed of at less than best consideration:

- Dryfe Road Offices, Dryfe Road Lockerbie
- Former Johnston Primary School, St Mary's St, Kirkcudbright

The Council's disposal policy permits that a community group has up to 18 months to develop a business case for asset transfer; this period may be extended at the Council's discretion.

Unless stated otherwise, all transfers have been to the specific facility's Management Committee.

There are no instances of the Council having refused to enter into agreement, or seeking to refuse consideration of an asset transfer.

The Council approved a Community Asset Transfer Process in July 2014, a copy of which is enclosed.

### **Power of Well-Being**

Recent examples (since January 2013) where the Council has considered well-being when considering disposal of a property at less than best consideration are:

- 22 January 2013 (item 10) and 18 March 2014 (item 10): Disposal of land to the Rear of Dumfries Academy.

The Council agreed to dispose of 1,400m<sup>2</sup> and 590m<sup>2</sup> of land to the Peter Pan Moat Brae Trust for nominal consideration. The Committee decisions and the reports can be found at:

<http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meeet=21&arc=71>

and

<http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meeet=31&arc=71>

- 19 March 2013 (item 16): Former Dumfries Academy Dining Hall

The Council agreed to lease the former Dumfries Academy Dining Hall, Academy St/Lovers Walk Dumfries to the Inspired Community Enterprise Trust Ltd, at a nominal rent, subject to appropriate terms and conditions. The committee decision and the report can be found at:

<http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meet=22&arc=71>

- 18 June 2014 (item 12): Disposal of High Cemetery Lodge, Craigs Road, Dumfries

The Council noted the two offers received by the closing date set and agreed to accept the higher offer received. Well-being was considered in reaching this decision, although the Council accepted the higher offer. The Committee decision and the report can be found at: <http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meet=36&arc=71>

- 18 November 2014 (item 14): Birchvale Theatre, Dalbeattie

The Council agreed is to dispose of the Birchvale Theatre, Dalbeattie Primary School to Birchvale Players for £1. The decision and the report can be found at item 14 of: <http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meet=35&arc=71>

- 18 November 2014 (item 13) Moffat Memorial Building, Noblehill Park, Dumfries

The Council agreed to grant a lease for up to 20 years for use as a Men's Shed at a nominal rent. The Agenda and the report can be found at item 13 of:

<http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meet=35&arc=71>

## **Annex 2**

### **Dumfries & Galloway Council Community Asset Transfer Process**

#### **1. Background**

On 19 March 2013 the Policy and Resources Committee agreed a Disposal Policy for Dumfries & Galloway Council. This includes the option for 'complex disposal at less than best consideration' whereby ownership of a property is transferred to another body for, usually, a nominal sum.

Whilst the Policy provides for the legal aspects, this process provides guidance for officers and community groups to ensure a consistent approach with due diligence and transparent decision making hence the need for an agreed Community Asset Transfer Process. Furthermore, the Policy provides a maximum 18 month timescale for groups to demonstrate significant progress from expression of interest towards transfer of ownership. This process provides clear steps to allow projects to move through the requisite steps within that time frame.

It is recognised that Council properties which are deemed surplus to requirements for service delivery can continue to play a key role in communities. However, this potential must be matched by viable community groups with suitable skills and a

sustainable business plan that is not dependent on ongoing Council revenue funding.

## **2. Purpose of Community Asset Transfer**

The selling of a public asset to a community group for a nominal sum is governed by the Disposal of Land by Local Authorities (Scotland) Regulations 2010. These Regulations, provide that “where the Capital Value of the land is greater than £10,000, but the proposal is to dispose of the land for less than 75% of the Capital Value (this includes Disposal by lease), the Council should:

- appraise and compare the costs, other dis-benefits and benefits of the proposal;
- be satisfied that the disposal for that consideration is reasonable;
- and agree that the disposal is likely to contribute to any of the purposes of economic development or regeneration; health; social well-being; or environmental well-being; in respect of the whole or any part of the area of the local authority or any persons resident or present in that area. (references to “well-being” are to be construed as for the purposes of section 20 of the Local Government in Scotland Act 2003(2).

It is considered that community empowerment, resilience and capacity building can all be encompassed within social wellbeing. Although the legislation refers to ‘land’ the provisions apply to buildings as well.

## **3. The Community Asset Transfer Process**

The Process for Community Asset Transfer (CAT) is outline below and summarised in Appendix 1 which also sets out roles and who makes decisions. This both guides community groups through their own development, where needed, whilst also ensuring that due consideration of the regulatory requirements can be evidenced.

It should also be noted that the timescales are indicative. It is necessary that organisations are able to demonstrate significant active progress since, where this is not evident, then the Council may explore other disposal routes.

### **3.1 Preliminary Activity**

The success of a Stage 1 application will be determined during this phase. Although the Stage 1 application only requires an outline business plan, having a clear vision and refined business plan will help to ensure the success of suitable applications.

### **Community**

- Groups can be galvanised around various visions. However, to satisfy the wellbeing requirements, it would not be sufficient for a group to be motivated to ‘save’ an asset. A viable and sustainable vision, supported by a robust business plan, is also needed. These take time to develop and be refined. An outline business plan should be prepared to support a Stage 1 application.

Guidance on the content expected from a full business plan is contained in the support notes for a Stage 2 application.

- Where a group is newly formed, it may be prudent for it to consider managing the asset through a short term management agreement in order to develop organisational capacity, refine the vision and test the business plan prior to taking on the financial risks of ownership. This short term arrangement should be reviewed annually for evidence of significant progress
- Where grant funding will be a core element of a business plan, such as with a development project, it is essential that groups engage with potential funders at this early stage. Funder requirements can have a significant influence on the shape and structure of a project.

## **Council**

Council support will be provided through Community and Customer Services. Officers will:

- provide information, advice and support to community groups considering CAT whilst clearly explaining the decision making process. This will include clarity on the support available from the Council during the process and the timescales that must be adhered to by both parties
- confirm if the asset has already been declared surplus to CCS or Council needs
- liaise with the Estates team to confirm the status of the property in terms of Title Deeds
- provide accurate running costs for the building
- assist in building the capacity of community groups, where that is requested. This may include the establishment of a constituted group, developing or enhancing partnership working with local groups and organisations, or a skills / training assessment to ensure that the organisation is ready and prepared to manage the asset in the future.
- give advice on developing a vision for the asset (with reference to Section 2 above), the scope of any projects and potential funding routes. This could include providing support to identify how the asset meets the organisations objectives, its ability to meet the needs of the wider community now and in the future, how viable the project is and how sustainable the asset will be
- advise groups on consultation methods to provide sufficient evidence of community support for the proposals. This may include an introduction to the National Standards for Community Engagement, support to plan and deliver a community meeting, assistance to develop an online survey or advice on how to gather letters of support.

- provide information on the condition of the asset, such as existing condition surveys, asbestos registers or legionella test records. If necessary, provide up to date condition surveys to support funding bids.

### **3.2 Stage 1 – Suitability**

The first stage in the process results in a decision on whether to proceed to the more detailed assessment at Stage 2. The first stage allows the community group to submit its proposals in outline. The application requirements and assessment criteria are shown in Appendix 2.

1. Community group submits initial application. If more than one group is interested then notification of a closing date for applications may be considered. Any decision will also consider which application presents the greatest potential community benefit in addition to other factors.

2. On receipt of application, the Officers will:

- a. check that the application is competent
- b. confirm if the property has already been declared surplus
- c. confirm that clear title exists
- d. review the most recent condition survey, identify any significant issues and liaise with other Departments if that is necessary. Preference will be given to organisations able to lever external funding to improve the condition.
- e. confirm whether TUPE rights apply where a member of Council staff is employed in relation to an asset

Where these checks reveal any issues that could prohibit or prevent asset transfer then they need to be resolved before the application can be considered further.

3. Views of Area Committee Chair and Ward Members will be sought on the application.

4. The Head of Resource Planning and Community Services will review information in support of the application and the viability of the organisation before making an assessment on the suitability of the asset for transfer, the strength of the outline proposal (particularly potential community benefit), and the standing of the organisation. The possible outcomes are detailed below and the reasoning for the decision will be clearly communicated to the applicant:

- a. application suitable to proceed to Stage 2
- b. application suitable to proceed to Stage 2, subject to the property being formally declared 'surplus with complex disposal at less than best consideration',
- c. recommendation that the organisation consider an annual management agreement years before re-submitting a Stage 1 application



d. reject the request.

5. Area Committee Chair and Ward members will be advised of the decision.

### **3.3 Stage 2 – Detailed Assessment (6 to 12 weeks from Stage 1 decision)**

The organisation has the opportunity to submit a detailed application based on a “sound” business plan. The application requirements and assessment criteria are shown in Appendix 2.

1. Community group submits Stage 2 application. If more than one group is interested then notification of a closing date for applications may be considered. Any decision will also consider which application present the greatest potential community benefit in addition to other factors.

2. Application assessed with officers from other Departments where that is appropriate. Applicants should use the Stage 2 application form with reference to the detailed Guidance Notes:

- Section A: Pass/Fail
- Section B/C: consideration of benefits/dis-benefits of proposals with regard to evidenced community wellbeing, viability and sustainability, particularly financial sustainability.

3. It may also be that viable disposal options other than for less than best consideration exist. Should this be the case then the preferred Stage 2 application will be reviewed against other options by the Strategic Asset Board to assess which option presents the greatest community benefit. Recommendations from the Group will be included in any report to the Policy and Resources Committee.

4. Head of Resource Planning and Community Services confirms the assessment and recommendation.

5. Report to relevant Area Committee to seek a recommendation prior submitting to Policy and Resources Committee

6. Report to the Policy and Resources Committee for decision. This will contain a summary of the application, assessment and officer recommendation. The possible outcomes are detailed below:

a. Approval of transfer to applicant at less than best consideration.

b. Conditional approval of transfer to applicant at less than best consideration. (Where a business case is contingent upon the securing of external funding. Conditional approval will be time limited, subject to the likely time frame for funding applications.)

c. Reject the application with the reasons and outcome officially minuted. The organisation will be formally written to confirm the reasons for the decision detailing the timescales for the group being able to re-apply.

Note: where a Stage 2 application is rejected, the organisation may not reapply against the same asset within a period of 12 months. It is essential that organisations work closely with Council Officers in the Preliminary and Stage 1 period to ensure that a quality application is produced. Re-applications within 12 months may be considered where there has been a material change which would significantly alter the original application.

### **3.4 Stage 3 – Implementation (4 to 8 weeks from the Stage 2 decision)**

1. Organisation commences implementation of business plan, including the making of funding applications (where relevant).
2. Council finalises legal aspects of transfer, including TUPE arrangements where appropriate.
3. Organisation provides evidence that any conditions have been met in full.
4. Final report to Policy and Resources Committee, where required.
5. Transfer implemented.

### **3.5 Stage 4 - Handover**

Organisation commences operations. Any ongoing support required from Council officers can be covered by an SLA.

## **4. Glossary Term**

### **Definition**

Clear Title

That the Council has the right to dispose of an asset and that the asset is free of any encumbrances which would restrict or prohibit this.

Community Asset Transfer

Legal ownership of an asset is transferred from a public body, such as a council, to another organisation for 'less than best consideration'. This is permitted under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 as long as the proposals pass tests of reasonableness and community benefit.

Community Group

The formality of a group may change as a vision develops into a business plan. Initially, a group may be nothing more than a community of interest. However, by the time a Stage 1 application is submitted, it should be formally constituted as a voluntary organisation. The final form of a group can be

influenced by the business plan and intended funding route, however it needs to be a “legal entity” which is able to own Property.

#### Competent Application

Organisations must meet certain criteria for a Stage 2 application to be considered. This includes things like being formally constituted. An application will only be considered once evidence for all the conditions in the Stage 2 process have been sufficiently evidenced.

#### Declared Surplus

Historically, the Council owns many properties which have been used to deliver services. Before an asset can be disposed of, the Council goes through a formal process to agree that it is no longer needed and can be declared surplus to requirements.

#### Sustainable

Community groups will need to generate income to sustain their activities and be able to maintain an asset into the future. Whilst any business plan will contain assumptions and forecasts, in the context of the Stage 2 assessment, it should appear to have a reasonable chance of success over at least a 3-5 year period.

#### TUPE

The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) protects employees' terms and conditions of employment when a business is transferred from one owner to another. Employees of the previous owner when the business changes hands automatically become employees of the new employer on the same terms and conditions. It's as if their employment contracts had originally been made with the new employer. Their continuity of service and any other rights are all preserved.

Wellbeing

Wellbeing is a subjective evaluation of how we feel about and experience our lives. Wellbeing, positive mental health and mental wellbeing are often used interchangeably, although 'wellbeing' is also used in a broader sense to include physical health.

Community wellbeing includes characteristics familiar from the literature on social capital e.g. trust, tolerance, participation, influence, mutual aid, social networks and social support. Other indicators of collective wellbeing are 'collective efficacy' i.e. coming together to solve problems or improve things, intergenerational solidarity and informal social control e.g. neighbourhoods where adults keep an eye on children and young people.

Less than best consideration

Assets have a value: the price they could sell for on the open market. However, it is recognised that outright purchase of an asset, such as a community building, is beyond the reach of many voluntary organisations. Regulations allow ownership to be transferred for less than the market value and this can be done for a nominal sum such as £1.

## **5. Additional Information What Sources Who**

## **How**

Development Trusts  
Association Scotland

The national body for development trusts in Scotland, supporting you to unlock the potential within your community.

[www.dtascot.org.uk](http://www.dtascot.org.uk)

Development Trusts  
Association Scotland

To have and to hold:

The Development Trusts Association guide to asset development for community and social enterprises

<http://mycommunityrights.org.uk/wp-content/uploads/2012/04/To-Have-and-To-Hold.pdf>

# Appendix 1 : Community Asset Transfer Process

