

Community Asset Transfer Review Sub-Committee

General Legal Advice

The Community Empowerment (Scotland) Act 2015 ('the 2015 Act') brought into existence a right for certain bodies to request to buy, lease, manage, occupy or use land owned by the Council. A valid request may only be refused on reasonable grounds.

In Renfrewshire, these requests are dealt with in the first instance by a panel of officers.

If a request is refused for any reason, the 2015 Act provides that the applicant may apply for a review of that decision. The Community Asset Transfer Review Sub-Committee is charged with carrying out that review.

Although the mechanism by which the original decision may be challenged is termed a 'review', it is important to note that the Sub-Committee is not confined to looking at the terms of the original decision. Rather, it is being asked to make the decision again, of new. That allows it to bring in any relevant consideration and not just those dealt with in the original decision.

The Sub-Committee will either:

- agree to the request on the conditions proposed by the applicant;
- agree to the request on conditions different from those proposed;
- refuse the request.

Who May Make a Request?

The first step in determining a request for review is to consider whether it is valid in terms of the 2015 Act. To constitute a valid request, it must come from a '**community transfer body**'.

In order to qualify, a body must be, either:

1. A **community-controlled body**, as defined in s.19 of the 2015 Act. That means, a body (whether corporate or unincorporated) having a written constitution that includes all of the following—

- (a) a definition of the community to which the body relates,
- (b) provision that the majority of the members of the body is to consist of members of that community,
- (c) provision that the members of the body who consist of members of that community have control of the body,
- (d) provision that membership of the body is open to any member of that community,
- (e) a statement of the body's aims and purposes, including the promotion of a benefit for that community, and
- (f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

2. A body that falls within a class specified by the Scottish Ministers by order.

The Scottish Ministers have specified two such classes: **'community bodies'** or **'crofting community bodies'**, as these terms are defined in the Land Reform (Scotland) Act 2003. The latter is not likely to apply in Renfrewshire, so is not discussed here.

'Community bodies' are bodies that are either:

- **a company limited by guarantee**, that has special provisions in its articles of association;
- **a Scottish charitable incorporated organisation** (an "SCIO") with special provisions in its constitution. SCIOs are a particular type of charitable organisation. **Most charities are NOT SCIOs**, so it is not enough to fall within this class simply to have charitable status. An applicant will be able to confirm if it is registered as an SCIO;
- **a community benefit society** with special provisions in its registered rules.

The special provisions required in each case are numerous. In the case of an SCIO, the specified provisions required to be in its constitution in order to qualify as a community transfer body are:

- (a) a definition of the community to which the SCIO relates,
- (b) provision enabling the SCIO to exercise the right to buy land under the community right to buy provisions,

- (c) provision that the SCIO must have not fewer than 10 members,
- (d) provision that at least three quarters of the members of the SCIO are members of the community,
- (e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,
- (f) provision ensuring proper arrangements for the financial management of the SCIO,
- (g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
- (h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—
 - (i) may withhold information contained in the minutes, and
 - (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
- (i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.

If an SCIO's constitution does not fit all of these criteria, it does not qualify to make an asset transfer request under this second head. Unless it fits the requirements set out at 1. above, therefore, the request should be refused.

Valid Requests

If the request is valid, the Sub-Committee may go on to consider the terms of the request. The legislation provides that the request should be approved, unless there are reasonable grounds to refuse it. There is no definition as to what would constitute reasonable grounds for refusal, but the 2015 Act does specify the factors that the Sub-Committee must take into account in coming to its decision. These are:

- (a) the reasons for the request,
- (b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
- (c) whether agreeing to the request would be likely to promote or improve—

- (i) economic development,
- (ii) regeneration,
- (iii) public health,
- (iv) social wellbeing, or
- (v) environmental wellbeing,

(d) whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,

(e) any other benefits that might arise if the request were agreed to,

(f) any benefits that might arise if the authority were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,

(g) how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (e),

(h) how any benefits such as are mentioned in paragraph (f) relate to other matters the authority considers relevant (including, in particular, the functions and purposes of the authority),

(i) any obligations imposed on the authority, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request, and

(j) such other matters (whether or not included in or arising out of the request) as the authority considers relevant.

The last of these headings is potentially wide-ranging and therefore allows the Sub-Committee to bring anything it reasonably considers to be relevant to bear on the decision.

The Sub-Committee may decide to ask for written representations from either the applicant or Property Services on any issue that it considers may be relevant and that it requires more information on. It may also fix a hearing, if it considers that certain issues require to be addressed in person.

The Decision

When a decision is made, members will be asked to confirm the reasons for it, to allow a decision notice to be produced. If the decision is to agree to the request with different conditions from those proposed or to refuse the request, the applicant may appeal the decision further to the Scottish Ministers.

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