

From: Portpatrick Harbor Community Benefit Society
Sent: 14 July 2020 10:30
To: Scottish Ministers
Subject: Appeal for Portpatrick Harbour Community Benefit Society

Dear Sirs,

Portpatrick Harbour Community Benefit Society (Scottish registered charity no SC035754)

Correspondence address; Harbour office, Portpatrick Harbour, Portpatrick, Wigtownshire, DG98AN,

Registered address; Montpelier Limited Chartered Accountants (Galloway) Ltd 1 Dashwood Square Newton Stewart DG8 6EQ,

Appeal of Decision taken on 5 December 2019 and outcome of review of that Decision on 16 June 2020.

This letter hereby gives notice to Scottish Ministers that we seek an appeal under Section 88 of the Community Empowerment Act Scotland 2015 in respect of the refusal decision issued on 5th December 2019 with regard to our Asset Transfer application for Portpatrick Village Hall and subsequently the decision to uphold that decision by review panel of Dumfries and Galloway council on 16th June 2020.

In summary,

- We believe that our application has systematically been obstructed and misrepresented by Officers of the Communities Directorate of Dumfries and Galloway Council.
- The evidence provided within this appeal shows that documentation has been withheld, omitted, and misrepresented, to Councillors on both the initial and review panels by Officers preparing the reports. This has been to the detriment of our application which has the community's clear and overwhelming approval.
- We can evidence how both initial and supplementary representations which were completely valid and presented by supporting members of the community, were both removed and omitted from public view and omitted from reports supplied to Councillors.
- Furthermore, a small cluster of defamatory representations against our application (which can clearly be seen to come from a common source sharing almost identical text) were posted on the Dumfries and Galloway Council's website despite our charity's objections. Our charity required to make both stage one and two complaints about getting these defamatory and

damaging remarks removed. We have included a copy of these representations so that you can see exactly what was printed and how a clear campaign was being allowed, by Officers of Dumfries and Galloway Council, to defame the name of our charity and damage our application.

- Several supplementary representations against our application were included in the Officer report placed before the Councillor Panel at the review. The members of the panel asked where the representations were as they were omitted from the review pack and therefore, they were unable to verify their content. Council Officers stated that the authors of the representations "had not given their express permission for the content of their representations to be shared with anyone" and therefore the Councillors were not allowed to see the representations by Officers.
- Included below in the document pack is a petition containing over 180 signatures which was raised by Portpatrick Community Council upon hearing the review decision and the manner in which our community application was being treated by Dumfries and Galloway Council once again.
- We believe that our charity's financial planning and vision for the Village Hall is entirely realistic and totally relevant to the current financial and social environment today.
- The narrative held within the stage 2 CAT application form clearly delineates the intended path with which we plan to make the Hall both a viable and sustainable asset for our community when brought under the umbrella of our charity's management whilst working along with several other community assets.
- The financial appendix for the Hall when compared to the existing original business plan for the Harbour, highlights the financial advantages of such a collaboration of assets under the charity, but it also highlights extensively the obstacles and negative elements which require to be carefully navigated. It should be noted that the cat 2 application form and financial appendixes together make up the business case/plan. This is based on the "Here for Growth " consultation document which was professionally conducted and delivered to the community by both Portpatrick Community Council and Porpatrick Harbour Community Benefit Society at a public meeting which is documented in these files.
- With regard to the allegation of our application being responsible for causing community division, the submitted minutes of public meetings along with the newsletters submitted in our application, evidence how our registered charity is fully engaged and entirely active in community engagement within the community of Portpatrick. We attach a

"Letter of Intent" dated August 2016 which clearly identifies our charity's involvement along with the Portpatrick Community Council at that time in finding a way forward for the future of Portpatrick Village Hall through community engagement and due diligence. In addition to this, several letters of support from other bodies, community groups and businesses within the community, clearly evidence this and can therefore dispel any such unfounded allegation.

- It is fair to say that the evidence provided here shows a systematic abuse of the Community Empowerment Act Scotland 2015 by Officers of Dumfries and Galloway Council's Communities Directorate. Having unsuccessfully attempted to pressurise our community into taking over Portpatrick Village Hall in 2015 (see attached minutes of meeting and emails) Council Officers subsequently drove the formation of a new entity (PCDT) with a small number of business people who had vested interest. This entity was to be capable of fulfilling the Council's desires of ridding themselves of the village Hall. Council Officers subsequently made agreement to pass the asset of the Village Hall over to the newly formed "Portpatrick Community Development Trust" (a Company Limited by Guarantee) without the community having had any knowledge or having had any consultation in the matter. Please refer to the attached email.

Since that point, Dumfries and Galloway Council Officers have repeatedly obstructed our community's wishes and they have systematically impeded our valid application in favour of their own choice, which we believe was neither legitimate or valid as it was neither consulted or supported by our community.

Background

Portpatrick Harbour Community Benefit Society (PHCBS) formed in Sept 2015 and has an extremely active and engaged membership of 554 community members who fully support the charity's objectives.

The population of Portpatrick currently stands at an approximate 600 resident members of the community.

The charity was formed openly by our community to safeguard and promote our community assets.

In 2016 PHCBS completed a successful Asset Transfer of Council owned toilets and land at Ward Shore, Portpatrick .

PHCBS currently works alongside and enjoys the support of many other community groups in Portpatrick including -

Portpatrick School and PTA;

The Society plays an integral part in arranging our annual community Christmas fair at which we invite and involve the School PTA to run the teas, coffee and

cakes stall. They fully engaged this opportunity to raise much needed funds for the school and in doing so raised over £500.00 on the day.

The Society also engaged the local school children to attend the Community Hub and experience the new sea life touch tanks which had been installed. Handling such sea life as Lobsters and crabs etc, under the supervision of a local expert, the children are now set to appear on the new BBC "Our Coast" TV series. This is a new community focused version of the popular "Coast" series which will soon be aired in the New Year on BBC1.

Portpatrick Lifeboat station and crew;

The Society works hand in hand with the Lifeboat station and crew to support and host Portpatrick Lifeboat week each year. This annual event alone raises over £25,000.00 for the Lifeboats.

The crew also work closely with the Society to support the community in times of need. Utilising the new community Hub which stands proudly on the Harbour with its independent emergency generator and defibrillator as an emergency centre, Portpatrick is prepared and equipped to face any community emergency such as have been experienced in the past due to severe weather etc.

Portpatrick Golf Club;

The Golf club and its membership have been big supporters of the Society since its foundation in 2015. The Society is currently assisting the Golf Club Committee in their quest to become a fully incorporated and legal entity by sharing our experience and advice in the process, along with signposting them to the relevant Third Sector professional advisers.

Portpatrick Parish Church;

The Society works closely with the parish church in many ways, ranging from supplying and installing the church Christmas tree each year, through to supporting the women's rural and church fetes. The Society is also involved in raising funds to support the church building.

Portpatrick CoastGuard station and crews;

HM Coastguard crews based on the Harbour also join the combined emergency response team with the RNLi and our charity to support the wider community. All groups benefit from utilising the Community Hub on the harbour. Offering a large open space and diverse array of digital facilities, the Hub is used as everything from a training facility, emergency support and refuge centre through to a fund-raising base. The Coastguard crews and their skills are heavily involved in acquiring and erecting the three large Christmas trees which the Society installs around the village each year. The Society also supports raising funds for the Coastguard to support their work.

Local businesses;

The Society has managed to bring the local businesses in Portpatrick together through a combined effort and collaboration between all. The charity works hard to promote the village, and as such, it is instrumental in staging and supporting numerous events throughout the year which stimulate the local economy and promote the local employment base.

The businesses have in return supported the charity which provides the focal point through which to achieve such events, each business happily contributing financially towards furnishing the Hub with ten monitors and a cinema projector when it was built. This collaborative project is set to grow and flourish and it has the ability to involve, utilise and in return, support the Village Hall under this umbrella.

Portpatrick Community Council;

The charity works hand in hand with the Community Council to ensure that our community is supported in whatever respect is required.

This Christmas, like the past three since our charity's formation, the community of Portpatrick has enjoyed a fantastic display of Christmas lights on the buildings around the Harbour and village square. Three large Christmas trees placed at the church and around the village provide a real feel of Christmas spirit.

A free Christmas cinema showing films for the kids at the fantastic new Community Hub and a Christmas fair and parade to envy the largest of towns or cities are all made possible by our combined community efforts.

The Christmas fair, attended by all of the above groups and hundreds of supporting residents, raised over £3,500.00 in just one day! These funds are then poured back into our community to support it via funding such things as the defibrillator for the Community Hub, play equipment for the school, night vision goggles for the Coastguard team, mobility scooters for community members and much much more.

Portpatrick Community Resilience Team;

The Official Portpatrick Community Resilience Team is made up from the four main groups in the village working in unison from the Harbour Hub/Resilience Hub.

Portpatrick Community Council

Portpatrick Lifeboat crew

Portpatrick Coast Guard

Portpatrick Harbour Community Benefit Society

Together this team has formed a group of over 150 volunteers from within the community. Covering all aspects of community resilience, the team have recently been attending to over 130 vulnerable residents during the Covid-19 pandemic by providing four hot meals per week with the assistance of 6 local restaurants. Services such as prescription runs etc are also facilitated to ensure the wellbeing of our community.

This clearly evidences the cohesion within the community of Portpatrick and the level of volunteer engagement which the charity is actively involved in.

In addition, our charity's application for Asset Transfer of Portpatrick Village Hall has also received the full support of Portpatrick Community Council.

This comes after the Community Council held several community engagement meetings dating back to 2016 (see attached minutes) regarding the future of the Village Hall, which our charity attended and fully participated in (minutes attached).

The Community Council could therefore see through the representations made by the community at these meetings that an overwhelming amount of support and trust existed for our charity.

In addition to the existing number of representations already made on behalf of our charity's application by our community, we wish to enclose an additional two signed registers of support. The first register was signed by 200 members of our community last year, the second by a further 180 this year. Should any doubt still remain as to the extent and level of support which our application for Asset Transfer of Portpatrick Village Hall has received, Please visit the Third Sector Dumfries and Galloway website, here you will see our Resilience Team in action and the support it draws.

<http://thirdsectordumgal.org.uk/volunteers-week-portpatrick-community-resilience-team/>

Asset Transfer Process

Report prepared by Dumfries and Galloway Communities Directorate Sept 2019

We contest the validity of the following grounds which were set out for refusal as listed in 10.4.1 of the Finance, Procurement and Transformation Committee decision agreed on 29th Oct 2019.

1. "Due to having a low score as detailed in paragraph 3.12 in the report that went to Wigtown Area Committee on 4th September 2019 and also due to the division in the local community"

The report referred to above was compiled by Council Officers of the Communities Directorate. They formed a panel of their number and subsequently marked our application against a set criterion to produce a score.

Submitting the results of that process along with their recommendation to the Local Area Committee on Sept 4th, 2019, the Officers severely marked down our application, remarking in the following comments marked in red that;

1. "There is little / no evidence of engagement with local partners, stakeholder and Community Planning Partners"

The minutes of Portpatrick Community Council meeting on 7th May 2019, which were included in our application as part of the evidence of engagement and consultation for our application, were omitted by Officers preparing the report along with several other documents during the scoring process. These documents were also never published online as required by the Community Empowerment Act, nor were they made available to Councillors making the decision on the application in the report pack for the meeting.

The minutes of the Community Council meeting on 7th May 2019, show Dumfries and Galloway Council's own Community Development Officer Mr Jamie Ferguson and his colleague Mr Harry Thompson both attended the very Community Council meeting highlighted above when our application was announced. Both Officers witnessed the overwhelming response and level of support for our charity's application which was announced and discussed at the meeting which

was attended by almost 100 residents who unanimously applauded its announcement.

Mr Ferguson is on record, commenting how "such positive support is a key requirement in the CAT process".

The councillors sitting on both Committees on September 4th and 29th October to decide our application, did not have this information along with several other documents as they were not presented along with our application. They were therefore presented with an incomplete, inaccurate, and unfairly biased representation of our application which was prepared by Council Officers without our consent and despite our objection.

In addition to the missing minutes of the Portpatrick Community Council meeting on 7th May 2019, the Society newsletter no 6 and the extensive content held within it, were also not included in the Officers report. The newsletter clearly evidences the level of community engagement and support for our application as well as highlighting the extent of our volunteer base and positive impact which the charity has on the community.

2. "Information relating to financial planning appeared weak, as did the potential for collaborative working and the use of volunteers".

The charity accounts which were submitted by us, were omitted from the application and report presented by Council Officers. When compared with our original business plan for the harbour, which was also supplied, these clearly evidence our charity's financial credentials and proven ability to deliver in the face of adversity.

The information held within the stage 2 CAT application narrated our business model/plan. This clearly identified the extremely poor financial accounts presented by Dumfries and Galloway council for the asset over several years. The financial appendix to our existing business plan shows how the charity plans to make the Hall work through collaborative events with its other community assets.

3. "The application lacked ability to work with volunteers and other groups".

Our application contained the following documents which clearly evidenced our intentions and ability to carry these out with the support of the community whom the charity is already fully engaged with.

- A stage 2 application form containing the overarching narrative of the application. This includes the detailed breakdown of how our charity will develop the Hall as part of our community's infrastructure along with several other community assets already held.
- A copy of the professional due diligence documentation "Here for Growth" which was commissioned and paid for by Portpatrick Community Council at a cost of £1,400.00. This document highlighted, in depth, both the negative and positive elements of our community's situation in relation to the hall.

- Minutes of public meeting evidencing our community and stakeholder engagement, consultation and support for our application.
- Three years of our charity accounts evidencing our financial stability, growth and undeniable ability to deliver on previous business plans with the full support of our community.
- A large number of letters of support for our application which come from stakeholders and community groups within the village, such as Portpatrick RNLI, Portpatrick Community Council along with many local business and residents.
- A recent newsletter further evidencing our community and stakeholder engagement, consultation and progress with the new Community Hub.
- Our original business plan for Portpatrick Harbour which when compared with the three years of charity accounts supplied, clearly evidences our charity's outstanding performance and the positive impact which it has imparted on the local community which it serves.
- A financial appendix to the original business plan which outlines the future financial plans for the Village Hall. Please note (the detailed narrative for the overarching plan to accompany the figures are held within the Stage 2 CAT application form included).

This plan, it must be highlighted, was based on the extremely poor, fragmented and financially negative accounts produced by Dumfries and Galloway Council for the Hall over the past five years. Despite this, our financial plans and narrative clearly explained how the Village Hall could benefit from the management of PHCBS along with the previously council owned Toilets and Ward shoreland already transferred to our charity under Asset Transfer in 2016/17.

It should be noted that the financial figures provided were in fact so poor that the "Hear for Growth" document noted above highlighted how Portpatrick Village Hall could neither be viable or sustainable as a standalone asset and would therefore require additional support.

Both primary and review Council Officer reports go on to unjustifiably insinuate, without any corroboratory evidence, that the PHCBS application is somehow contributing to division and some form of fracture within the community.

As previously outlined, a large portion of our application along with supporting documents were not properly brought into consideration during this scoring process. Indeed, a large number of the accompanying documents were never properly displayed or conveyed as required by the Local Authority in line with the Community Empowerment (Scotland) Act 2015 Communities Transfer Bodies Guidance sect 9. Published: **23 Jan 2017** ISBN: 9781786527509

This apparent lack of due diligence on behalf of the Officer select panel has resulted in the panel making flawed statements and judgements in relation to

our application. Their report which was never consulted with our charity prior to publication, was then passed on to the deciding Councillors who were influenced by its content which did not fairly or accurately represent our application in any form.

It should be noted that our charity was compelled to make both stage one and two complaints to Dumfries and Galloway council with regard to the handling of our application. This came after our charity experienced a substantial degree of obstruction by Officers in the Communities Directorate in having our documents included in the application. In addition to this we experienced a substantial level of contempt towards our application from the Officers within the Communities Directorate who deliberately prevented us from having any meaningful meetings with them or active input or involvement in this process or report which they went on to present to Councillors.

The Officer report prepared for the Council meeting held on 4th September 2019, therefore did not have our approval. Despite our raised concerns and subsequent complaints at the level of misrepresentation of our application, Officers continued regardless and submitted the report to both the Wigtown Local Area Committee on September 4th, 2019 and the Finance, Procurement and Transformation Committee 29th October 2019.

Review of original decision by Local Authority 16/06/2020

Dumfries and Galloway Council held a review of the original decision at a meeting on 16/06/2020.

The report for the review panel was once again prepared by the same Officer department as the original application hearing and the content of the report was neither consulted nor shared with our charity prior to submission.

PHCBS first gained access to the report on 12/06/2020 after it was published on the council website. We immediately objected to the content of the report which we highlighted once again completely misrepresented our case in an almost identical manner to the original hearing. A letter was sent to Councillors to outline our concerns, Officers advised at the start of the review meeting that Councillors should ignore the correspondence and only follow the guidance laid down in the Officer report to the Committee prepared for them.

The review report stated that eight supplementary representations had been received of which two were in favour of and six were against our application. No such supplementary representations were sent to us to comment on in line with the requirement of the guidance for the Community Empowerment Act.

PHCBS received an email from council Officer Colin Freeman, the author of the report prepared for Councillors on 27/05/2020, which stated it contained ALL the supplementary representations received. Of the four supplementary representations received, three were in support and only one objected to the application?

On inspection of Dumfries and Galloway Council's Asset Transfer web page, we also discovered that these supplementary representations were omitted as were

almost every original supporting representation in favour of the application! The charity raised this matter with the council Officers involved but received no response to our correspondence whatsoever.

We have included in the supporting documents referred to, as evidence, a number of copies of original emails showing how many members of our community went to the trouble to make both representations and supplementary representations which were submitted in a perfectly valid manner to Dumfries and Galloway Council. These submissions were made within the allowed timescales but were never posted online and completely omitted from the Officer report and this entire process. A substantial number of people claim to never have received any opportunity to make a supplementary representation as no notice was sent to them by Dumfries and Galloway council as is required under the Act.

At the review meeting

The review panel debated the supplementary reviews mentioned in the report. A number of councillors questioned the validity of the six representations presented against the application and asked to see them as they were not in the pack supplied to them. Councillors were told by Council Officers present that they were not allowed to see or discuss the content of the six supplementary representations against the application as "the authors had not given their express permission for the content to be revealed or to be seen or shared with others"!

One Councillor asked how he was meant to form a full and informed view without being able to see the content of the supplementary reviews submitted. Officers Colin Freeman and Liz Manson advised that the reviews could simply be taken into account as having been received "against" despite their content not being openly available or shared!

The Council Officer report stated that the applicant PHCBS had refused to attend a "mediation" as requested. The report also stated that the applicant refused to accept help to strengthen the application in the early stages. These points were used to highlight how the applicant was supposed to be party to causing division within the community. One Councillor questioned how this opinion was formed and asked exactly what evidence actually existed to back the claims, no answer or evidence could be produced or presented at the meeting.

The statements and documents within the original application clearly showed how Portpatrick Harbour CBS had arrived at their final application after taking professional Third Sector advice in open public meetings at substantial cost. The charity made a clear statement to councillors on a number of occasions that it did not wish to engage into any other process out with the Community Empowerment Act and that it did not recognise the need for mediation as it had acted openly and transparently having conducted its business through the open format of community meetings attended by hundreds which were held and chaired by the Community Council explicitly for the matter of the future of the Village Hall.

The PHCBS Committee made it very clear that as Trustees of a registered charity they had a duty to protect the public reputation of the charity under charity law. Therefore, exposing the charity to public collaboration with any such body as Portpatrick Community Development Trust (PCDT a newly formed body who had

also made application for Portpatrick Village Hall) and who had received over 200 representations made against it after it failed to attend any of the public consultation meetings around the Hall, was deemed unacceptable. The charity also exercised its right for the application to be heard on its own merits and in the same form as it had originally been consulted with the community of Portpatrick who warranted this course of action at open public consultation.

It is clear when watching the video of the review meeting held on 16/06/2020 that the Council Officers first provide all of the material for the report and that they then provide all of the guidance for the meeting. This brings into question how this review could in any way act impartially or independently? Councillors were directly told to follow to the letter the information held within the report produced by the same Officers and ignore our objections? You can access the review meeting through the following link; https://youtu.be/5oQM5mk_MMA

Requests relating to appeal process

PHCBS has serious concerns for the management of the supplementary representations for this appeal due to the evidence of continued mismanagement and issues which we have outlined above with Dumfries and Galloway Council. We would therefore ask for an independent body to be appointed to ensure that ALL those who submitted original representations be identified and directly contacted and given the fair opportunity to make further representation on this matter.

PHCBS asks Ministers to explore the evidence provided which we believe clearly supports our claims.

The minutes of the public meetings which were chaired by our statutory representative Community Council clearly evidence the engagement process and support for our charity's application, we ask Ministers to refer to these and if needed, contact the Community Council for confirmation.

Our charity's wish is that this appeal process be carried out in accordance with the requirements laid down in the guidance for the Community Empowerment Act Scotland 2015.

PHCBS would very much welcome a site visit to Portpatrick by the Minister panel where we will happily show our community's progress to date and gladly discuss our plans and provide any additional evidence required to assist this process.

The charity is happy to provide any other material to the Ministers as they deem necessary to carry out this appeal. The Trustee representatives of the charity are happy to attend and represent the charity at any hearing should it also be felt necessary.

Yours sincerely

Calum Currie (Chair)

For and on behalf of;
Portpatrick Harbour Community Benefit Society

Appendix files 1 & 2 to follow by separate emails due to size.

This email has been scanned by the Symantec Email Security.cloud service.
