



## Report to the Scottish Ministers

# COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

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Report by Steve Field, a reporter appointed by the Scottish Ministers

- Case reference: CAT-210-1
- Site address: former council depot, Lime Grove, North Berwick, East Lothian, EH39 5NH
- Appeal by North Berwick Community Development Company against the decision by East Lothian Council
- Application for asset transfer dated 27 August 2018, refused by notice dated 11 April 2019 and confirmed on 15 November 2019, following review
- The development proposed: development of a community hub
- Date of site visit: a site inspection was not considered to be necessary

Date of this report and recommendation: 18 May 2020

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## Proposed community asset transfer of the former council depot, Lime Grove, North Berwick, East Lothian, EH39 5NH

• Case reference	CAT-210-1
• Case type	Community asset transfer review appeal
• Reporter	Steve Field
• Appellant	North Berwick Community Development Company
• Local authority	East Lothian Council
• Other parties	None
• Date of application	27 August 2018
• Date case received by DPEA	8 January 2020
• Method of consideration and date	Written submissions
• Date of report	18 May 2020
• Reporter's recommendation	Dismiss the appeal and refuse the community asset transfer request

### The proposal

The proposal is that East Lothian Council transfers ownership of the former council depot in Lime Grove, North Berwick to the North Berwick Community Development Company (NBCDC) to enable NBCDC to develop a community hub. NBCDC is a private limited company, incorporated in 2018. The hub would comprise an arts space, youth facility, café, soft play facility, bunkhouse, gardens and an amphitheatre. The company has offered to buy the site at the market value of around £3,000,000. A further £3,850,000 would be required for construction, fit out and initial cash flow support. It is estimated that the proposed facility would generate a social return of more than £6,000,000 over 25 years.

### The application site

The site extends to 1.2 hectares and comprises a nineteenth century farm steading and associated open ground, used most recently by the council as a depot but now vacant. The site is located 1.5 kilometres to the east of the town centre. Housing adjoins the site to the south, east and west. A golf course to the north separates the site from the coast. The appellant considers the site to be the last brown field site in the town.

### Consideration by the council

The asset transfer request was registered by the council on 27 August 2018 and refused on 11 April 2019. This initial decision was upheld on 15 November 2019, following review. NBCDC appealed to Scottish Ministers on 12 December 2019.

## The appellant's case

NBCDC's analysis of community need identifies the main issues for the town as pressure on services from rapid population growth, an ageing population, a large proportion of young people, young people with additional support needs, high levels of inequality, and various health issues.

Proposed benefits of the community hub include the following:

- Economic and regeneration: generation of a capital receipt for the council, creation of jobs through construction and operation of the hub, the social return on investment noted above and redevelopment of a derelict site.
- Public health and wellbeing: opportunities for apprenticeships and volunteering across a range of indoor and outdoor activities.
- Environmental wellbeing: promoted through conserving wildlife on the site, developing community gardens and encouraging active travel; an environmental impact assessment would also be carried out.
- Socio-economic benefits: improved access to services for disadvantaged members of the community, reduced ticket prices for volunteers and additional funding from the sale of the site for the council, enabling it to reduce inequalities throughout East Lothian.

In general terms, key benefits are expected to include increased cultural engagement, improved mental health for older people, increased wellbeing, attainment and skills for young people, improved well being for young families, increased social cohesion across all age groups and increased skills and access to jobs. Specific business plan objectives are to establish a dedicated young people's facility, with an objective to increase youth participation in the town from 50 to 200 individuals a week, develop a soft play facility with 150 users a week and establish a programme of stage performances with 150 users each year.

NBCDC identifies seven restrictions on the use of the site: an agreement prohibiting development on part of the site, title restrictions requiring the site to be used for public recreation and allowing access to a neighbouring cottage, the presence of a number of residents' garages, the presence of protected species, and planning policy protecting residential amenity. None is regarded as an insurmountable constraint.

The company also identifies a number of potentially negative consequences of the proposed transfer, including displacement of activities from other sites, loss of a potential site for house building, loss of the existing buildings and lack of funding leading to a vacant site or unused building. Again, NBCDC considers that these issues could be dealt with adequately.

The company identifies three key stages of delivery: land acquisition and design, development and practical completion and opening and operation. It is recognised that different skills will be required at each stage and the company will bring on board additional community and professional support, as required. Key support will come from SKS Consultants, who prepared the business plan, JGA architects and a solicitor, to be appointed. A project manager will also be appointed following site acquisition. The postholder will report to the project management group, a sub-group of the board. A full risk assessment will take place. Best practice advice would be sought from advisory groups and comparable, established community initiatives. Following completion, the hub would

employ a manager, two café managers, 10 support staff and café assistants and three trainees. All but the hub manager and trainee posts would be part-time.

Community engagement took place over a three-year period preceding the submission of the application. This included public meetings in January 2017 and February 2018, attended by 170 people and 100 people respectively. Both meetings provided support for the development of the Lime Grove site to meet community needs. An online survey generated 368 responses and identified 17 potential activities which could be provided by the hub. The community council, community centre and six community groups have expressed their support. NBCDC had 653 members at the time of the application.

Both the North Berwick Trust and Scottish Land Fund have indicated that NBCDC is eligible to apply to them for funding. Other funders will also be approached. The North Berwick Trust is seen as the main potential funder. It is intended that the hub will be financially sustainable with income coming from the bunkhouse, café, soft play, theatre hire and the youth facility. A five-year operational plan, updated annually, will address governance, financial targets and staffing. A financial plan, active travel plan and marketing plan will also be produced. Good internal and external communication is regarded as essential. A steady-state trading position would be established by year three with cash flow support required through grant funding until then. By year five, a £12,000 annual refurbishment budget and three-month trading reserve will be available. VAT planning will take place once the transfer has taken place.

The business plan outlines an alternative funding model whereby the North Berwick Trust would acquire the site and take ownership of the community hub with a Scottish Charitable Incorporated Organisation (SCIO) established to deliver services. The advantage of this approach is considered to be the provision of greater security for the trust. The disadvantage is seen as potentially limiting opportunities to secure additional funding.

In addition to the trust, key partners are identified as the council, community centre, North Berwick Youth Project, East Lothian Youth Theatre and North Berwick and Area Children and Youth Network. Letters of support have been provided from the youth network, youth project, Fringe by the Sea and North Berwick Drama Circle.

The social return on investment noted above is calculated using the New Economy Manchester model and is based on unique annual beneficiaries in year one comprising: theatre and film (200 people), older people (150), young people (225), young families (50), café (200), volunteering (20), emotional learning for school age children (30), skills and access to jobs (six) and apprenticeships (four). Proposed activities for young people would increase the reach of the existing youth project from 50 regular participants to over 200.

NBCDC finds support for the proposed transfer in a range of plans and strategies, as follows: North Berwick Coastal Partnership Plan, East Lothian Partnership Plan (single outcome agreement), East Lothian Health and Social Care Partnership Plan, National Performance Framework, Scotland's Economic Strategy, National Volunteering Strategy, Scotland's Social Enterprise Strategy, Creative Scotland Strategy and National Youth Work Strategy.

NBCDC is critical of the council's decision making, believing that it has not been clear why the application was turned down nor shared the basis on which the decision was taken and has simply adopted its previous position on review.

## The council's case

The council provided two statutory grounds for refusal. The first indicates that there is insufficient evidence to show that the transfer would promote or improve economic development, regeneration, public health, social wellbeing, environmental wellbeing or provide other benefits. The second is that, in coming to its decision, it has also taken account of other relevant matters including funding, governance, sustainability, deliverability and community support.

The business plan is considered well-structured but provides insufficient evidence that the necessary funding can be secured or that the North Berwick Trust, as the main potential funder, is a realistic source. It is also unclear whether the trust would be asked to provide a grant or to buy the site and lease the hub to NBCDC. It is noted that the appellant regards the funding environment as very competitive, whilst the perception of the town as well-to-do may inhibit funding. The council is concerned that financial failure could impact on council budgets.

The council recognises that the board has the commitment, experience and skills to deliver the hub but is concerned that the legal structure to lead the acquisition is not clear, nor is it clear who the ultimate owner would be, nor how succession planning would be determined. Alignment with North Berwick Trust's objectives is not regarded as being the same as alignment with the objectives of the wider community. It is noted that part of the site cannot be sold without approval by the Court of Session.

The commitment to support volunteering is recognised but there is concern about how this would be sustained in order to deliver the proposed level of services. The council is concerned that it did not receive any letters of support from prospective partners, which raises concerns about deliverability.

Running costs are considered to be a conservative estimate and financial risks are not dealt with adequately. There are also concerns about lack of revenue funding in the early years of the project, whether potential displacement and duplication issues have been addressed fully, whether the site is sufficiently accessible and whether the potential benefits could be delivered in other ways.

The council recognises that community consultation has taken place but considers response rates low relative to the population of the town. It is also concerned that there is a lack of evidence regarding the need, scale, cost and synergy with other community activities and no evidence of commitment to occupancy or use of the hub from prospective partners or community groups. Engagement by NBCDC with the council itself is regarded as limited and the authority is not persuaded that planned activities align with council strategies or services.

The authority states that the issues it has raised in relation to funding, governance, deliverability, sustainability and community support all impact negatively on the ability of the community hub proposal to promote or improve economic development or regeneration.

If the appeal is upheld, the council proposes that a number of conditions be imposed on the transfer to ensure that it is not disadvantaged financially if circumstances change.

The council has produced letters from the Lime Grove Association and three local households. The Lime Grove Association is broadly supportive of the transfer but expresses concern about issues in relation to transportation, residential amenity, nature conservation and financial sustainability. The residents raise similar issues along with matters relating to compatibility with existing facilities, lack of demand, lack of support, impact on the adjacent Rhodes Farmhouse, a category 'B' listed building, lack of consultation with residents and poor accessibility.

### **Reporter's conclusions**

In line with Scottish Government guidance, I have assessed the request against the criteria set out in section 82 of the Act, national outcomes, best value themes and a check list of matters listed in the guidance in relation to assessment of outcomes.

In relation to section 82 criteria, I find that the development of a community hub has the potential to:

- support economic development, regeneration, public health, social wellbeing and environmental wellbeing;
- provide opportunities for third sector organisations to extend their reach into the community, including through the delivery of new services;
- return a brown field site to productive use;
- reduce inequalities of outcome that result in socio-economic disadvantage;
- be developed and operated without drawing on public sector finances;
- attract community support, including from a number of existing groups;
- be well-managed by the NBCDC board, subject to the requisite professional support; and
- provide a significant capital receipt to the council.

There are a number of issues raised by local residents best dealt with through the planning application process. In addition, as part of the site is inalienable common good land, should Ministers be minded to uphold the appeal, it would be necessary to check that the transfer was legally competent.

I also find that there is a lack of:

- information as to how the proposed facilities and services relate to need, existing provision, alternative methods of delivery or alternative sites;
- evidence of detailed engagement with the council and community centre to ensure compatible provision for the community;
- detailed information as to how interest from local groups would translate to activity and income at the proposed hub;
- evidence that The North Berwick Trust is able to provide the significant level of funding anticipated or, alternatively, is willing to acquire the site and take on ownership of the building; and
- evidence that a sustainable revenue funding plan is in place in either the short or longer term.

This assessment of the strengths and weaknesses of the proposals leads me to conclude that the transfer cannot be supported in relation to section 82 criteria.

The Scottish Government's guidance in relation to alignment with national outcomes recommends that community asset transfer requests align with one or more outcome. I find that the proposals would contribute to outcomes regarding the development of strong, resilient and supportive communities and tackling significant inequalities. They would also have the potential to contribute to a number of other outcomes. However, the weight I attach to this alignment is compromised by my findings in relation to uncertainty about financial aspects of the proposals and likely levels of demand and usage.

In relation to best value, I find that the proposals demonstrate best value in relation to vision and leadership, governance and accountability, sustainability and equality but not in relation to effective partnerships, use of resources and performance management. I attach sufficient weight to the areas where best value is not demonstrated that, overall, I conclude that the proposals would not represent best value.

In terms of the Scottish Government's recommended assessment of outcomes, I find that the proposals would not have a detrimental impact on the council's asset management or financial strategies but would result in a moderate to weak contribution to outcomes listed in the guidance.

Overall, I conclude that there is potential for the proposed community asset transfer to deliver significant benefits in relation to criteria set out in the Act, national outcomes and best value but, based on the evidence overall, the business case to support the transfer is moderate to weak in strength. On that basis, I do not find reasonable grounds to recommend that the council's review decision on the asset transfer request be overturned.

## **Recommendation**

I recommend that the appeal be dismissed and the community asset transfer request be refused.

However, should Ministers be minded to uphold the appeal and agree to the request, I recommend it is established that the Dalrymple disposition does not preclude the transfer of ownership of the site from the council and that Ministers consider any appropriate conditions be attached to protect the council's position, should circumstances change significantly following transfer.

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DPEA case reference: CAT-210-1

The Scottish Ministers  
Edinburgh

Ministers

In accordance with my minute of appointment dated 27 February 2020, I have prepared a report on an appeal against the refusal by East Lothian Council of a community asset transfer request from the North Berwick Community Development Company in relation to the former council depot, Lime Grove, North Berwick, EH39 5NH. The community development company proposes to use the former depot site for the development of a community hub. It was not possible to conduct a site inspection because of the Scottish Government's Covid-19 restrictions. However, I consider that I was presented with sufficient information to enable me to form a fair and balanced recommendation and that a site inspection was not necessary.

My report takes account of the appellant's asset transfer request, dated 27 August 2018, the council's decision to refuse the request on 11 April 2019, the appellant's request for a review, the council's decision to confirm its original decision, dated 15 November 2019, the appellant's appeal submission, dated 12 December 2019, and the council's response to the appeal, dated 7 January 2020. I have also taken account of key documents associated with these principal stages of the request, refusal, review and appeal, along with representations from third parties.

My report is laid out in four chapters. The first outlines background information, the second summarises the appellant's case, the third summarises the council's case and the fourth sets out my conclusions and recommendation.

## **Abbreviations**

The Act: The Community Empowerment (Scotland) Act 2015

The council: East Lothian Council

The company: North Berwick Community Development Company

COSS: Community Ownership Support Service

DTAS: Development Trust Advice Service

ELC: East Lothian Council

The guidance: Asset Transfer under the Community Empowerment (Scotland) Act 2015

Guidance for Relevant Authorities, Scottish Government, 2017

MSP: Managing Successful Programmes

NBC ward: North Berwick Coastal (council) ward

NBCDC: North Berwick Community Development Company

SCIO: Scottish Charitable Incorporated Organisation

SNH: Scottish Natural Heritage

The trust: North Berwick Trust

## **CHAPTER 1: BACKGROUND**

### The proposal

1.1 The proposal is that East Lothian Council transfers ownership of the former council depot in Lime Grove, North Berwick to the North Berwick Community Development Company (NBCDC) to enable NBCDC to develop a multi-functional community hub.

1.2 The site is considered by NBCDC to be the only one in the town suitable for this purpose. It is proposed that the community hub would include a flexible, multi-functional, performing arts space and a dedicated 150 square metres youth facility, designed to quadruple services to young people in the town, community gardens and an outdoor amphitheatre. In order to generate revenue, a 100 square metres soft play facility for under-10s, community-run, 40 seat café/bar and a 32-bed bunkhouse/hostel to support tourism would also be provided. It is proposed that the community hub would be self-financing. All spaces would be made as flexible as possible so they can be adapted to changing demand and needs.

1.3 The depot is valued by the council at between £2,400,000 and £3,650,000, depending on whether restrictions on the title are removed (see paragraph 2.11 below). NBCDC proposes to acquire the asset at market value. The company estimates that the development will cost £3,750,000 with a further £100,000 required for fit-out and initial cash flow support. It is expected that the community hub will generate a social return with a value of £6,022,450 over 25 years.

1.4 The town has a population of 6,600. The wider North Berwick Coastal ward has a population of 13,700.

### The application site

1.5 The site extends to 1.22 hectares and comprises a range of vacant buildings and associated yard space that appears to have been built in the nineteenth century as a farm steading. The buildings were constructed originally with stone walls and slate or pantile roofs. The site is located on the eastern side of the town, to the north of the A198, approximately 1.5 kilometres from the town centre. The Rhodes Park housing estate adjoins the site to the south-west. Housing in Lime Grove, from where access to the site is taken, is located to the south-east. Rhodes Cottages are situated to the east. The Glen golf course separates the site from, initially, Haugh Road and then Milsey Bay on the Firth of Forth to the north. A footpath on the western boundary of the site leads to the East Beach. NBCDC's business plan describes the site as 'the last brownfield site in North Berwick'.

### North Berwick Community Development Company

1.6 North Berwick Community Development Company is a private limited company, incorporated in 2018.

### Statutory context

1.7 Sections 77 to 97 of The Community Empowerment (Scotland) Act 2015 (the Act) introduced a right for a community transfer body to make a request to councils and a range

of other public bodies for the transfer of ownership, lease or other rights of land or property. The community transfer body must specify the benefits which it considers will arise if the request is agreed and how much it is prepared to pay for the asset. The Act requires the relevant authority, the council in this case, to assess requests against specified criteria and to agree to the request unless there are reasonable grounds for refusal.

1.8 A community transfer body is defined in the Act as being either a community-controlled body or a body designated by the Scottish Ministers. A community transfer body making an asset transfer request for ownership must be incorporated as a company, a Scottish Charitable Incorporated Organisation (SCIO) or a community benefit society with a minimum of 20 members and a provision for transfer of its assets upon winding up. An asset transfer request must be accompanied by a copy of the community transfer body's constitution or other governance documents.

1.9 The relevant authority must decide whether to agree or refuse the request. The specified criteria which must be taken into account in determining the application are as follows:

- 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 – (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 in socio-economic disadvantage;
- e. any other benefits which 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 and how those benefits compare with those arising from the asset transfer proposal;
- g. how any benefits from an alternative proposal relate to other matters the authority considers relevant (including, in particular, the functions and purposes of the authority);
- h. 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
- such other matters (whether or not included in or arising out of the request) as the authority considers relevant.

1.10 Decisions must be made in a way that encourages equal opportunities. The authority must agree to the request unless there are reasonable grounds for refusing it. During the period when the request is being determined, the authority cannot dispose of the asset to anyone other than the community transfer body.

1.11 The Scottish Government has published Asset Transfer Guidance for Relevant Authorities, 2017 and Asset Transfer Guidance for Community Transfer Bodies, 2017 to support those involved in both parts of the process.

1.12 Also relevant is The Local Government in Scotland Act 2003. Section 1 of this legislation places a duty on local authorities to make arrangements which secure best value. Section 11 allows local authorities to dispose of land for less than the best consideration. The Disposal of Land by Local Authorities (Scotland) Regulations 2010 set out the criteria to be met by councils proposing to dispose of land for a consideration less than the best that can reasonably be obtained. These criteria require appraisal and

comparison of the costs, and other disbenefits, and benefits of the proposal. The local authority must also be satisfied that the disposal for that consideration is reasonable and that the disposal is likely to contribute to the promotion or improvement of economic development or regeneration, health, social wellbeing or environmental wellbeing.

### Consideration by the council

1.13 The asset transfer request was registered by the council on 27 August 2018. The request was refused by the council on 11 April 2019 for two reasons:

- There is insufficient evidence that the proposal will result in, or is likely to promote, or improve economic development, regeneration, public health, social wellbeing, environmental wellbeing or any other benefits and, accordingly, it is not unreasonable to refuse the request.
- Furthermore, the council has taken into consideration other matters it considers relevant including funding, governance, sustainability, deliverability and community support.

1.14 NBCDC subsequently requested a review of the decision, as provided for by the Act. The review was carried out by the council's Petitions and Community Empowerment Review Committee on 10 October 2019. The committee agreed to uphold the decision to refuse the request. The decision of the review committee was issued on 15 November 2019.

1.15 The company appealed the council's decision to Scottish Ministers on 12 December 2019.

### Structure of report

1.16 Chapter 2 of the report summarises the case for the North Berwick Community Development Company in support of the asset transfer request. Chapter 3 summarises the case for East Lothian Council in refusing the request. Chapter 4 sets out my conclusions on the appeal and provides my recommendation as to how it should be determined.

## CHAPTER 2: THE APPELLANT'S CASE

2.1 The case for the North Berwick Community Development Company (NBCDC) is set out in the community asset transfer request and supporting information including a business plan, registered by the council on 27 August 2018, and the appeal submission, dated 12 December 2019, and supporting information. The appellants case is summarised in paragraphs 2.2 to 2.35 below.

### Community need

2.2 NBCDC's asset transfer request summarises an analysis of community need carried out during 2017/18. The principal issues are identified as:

- Increasing pressure on services and infrastructure, including demand for leisure and cultural activities, arising from a 10.7% increase in population in the period 2001-2018.
- An ageing population with residents in the North Berwick Coastal (NBC) ward expected to increase by 31.1% by 2027 and 56% by 2031.
- An increasing number of residents living with dementia and associated social isolation which could be helped by access to an arts space.
- A disproportionate population growth in the 0-15 cohort resulting from new housebuilding reflected in improved provision for teenagers being ranked the highest priority in the 2017 East Lothian Residents Survey and a need for training and education of 16 -24 year olds who are otherwise disadvantaged or excluded.
- The relative wealth of the town in relation to the rest of East Lothian masks high levels of inequality which reduces social cohesion and potentially affects the health and wellbeing of people who are disadvantaged.
- In the NBC ward, 145 people have poor mental or physical health or learning or physical disabilities.
- Over 300 young people in the ward have been assessed as having additional support needs.
- Scottish Index of Multiple Deprivation statistics show a high level of inequality in the ward.
- Four data zones in the ward are within the 10% most access deprived in Scotland.

### Proposed benefits

2.3 NBCDC advises that the community asset transfer aims to deliver benefits in relation to economic development, regeneration, public health, social wellbeing, environmental wellbeing and reducing inequalities.

2.4 In terms of economic development, the benefits are identified as follows:

- The council will receive a significant capital receipt upon transfer of the asset.
- Construction will create significant employment, particularly as it is proposed to use the procurement process to prioritise the use of local suppliers, trades and materials and create work experience opportunities.
- In the short-term, the company would employ a project manager and, longer term, a minimum of 10 full-time equivalent jobs and three waged traineeships.

- Using the New Economy Manchester approach to calculate social return on investment, it is estimated that the project would deliver benefits worth over £6,000,000 to the community over 25 years at a rate of approximately £241,000 a year.
- All economic benefits would be at no cost to the council and could not be matched in terms of breadth and depth by a commercial buyer.

2.5 Regeneration benefits would be the redevelopment of a derelict site whilst addressing the inadequacy of social infrastructure for the growing community.

2.6 Public health and wellbeing would be addressed in the following ways:

- Provision of opportunities for apprenticeships and volunteering in the construction phase, including becoming part of the East Lothian Works scheme as a placement venue and providing a platform for retired adults to train young people.
- Creating similar opportunities through development of the outdoor space, such as training in horticulture, woodwork, the arts, wildlife and environmental issues. This would enable people, as individuals and groups, to feel more empowered, healthier, integrated and in touch with their environment.
- Once the community hub is open, there would be further opportunities for employment and volunteering. Facilities would be dementia-friendly and welcoming for disabled people. The café and arts space would encourage people of all ages to mix together, reducing social isolation. There would be opportunities to organise activities and events, access new cultural, educational, health and leisure opportunities and develop community enterprise.

2.7 Environmental wellbeing would be promoted as follows:

- Conserving and enhancing the natural heritage of the site, including for great crested newts and, potentially, bats by providing significant areas of open ground, creating additional ponds, using sustainable urban drainage and species-specific drainage systems.
- Taking advantage of the ecological value of the site and its stunning views to promote outdoor education and recreation as measures to alleviate social isolation.
- Developing dementia-friendly community gardens which will also provide educational and volunteering opportunities.
- Encouraging walking and cycling to the site, including from the town centre. It is hoped that, in time, the site will be served by public transport and the path to the beach will be upgraded for cycle use.
- An environmental impact assessment will consider matters such as traffic calming and mitigation measures in relation to potential light and noise pollution.

2.8 NBCDC considers that the community hub would help the council to deliver its socio-economic policies in the eastern part of the county, through the following:

- Improving access to local services for socio-economically disadvantaged members of the community.
- Delivery of services in partnership with the Kindness Co-operative, set up by the community centre to help those in need and crisis. This will involve targeting

services at those who are disadvantaged or disengaged through offering free places for activities and events and through bursary schemes.

- Creation of a payback programme for volunteers providing reduced-price access to the arts and cultural performances.
- Provision of a capital receipt to the council, helping it to reduce inequalities across East Lothian.
- Through negotiation, delivering services to the most socially and economically disadvantaged.

2.9 Overall, the various outputs enabled by the project are expected to realise the following key benefits:

- improved social and cultural engagement for all ages;
- increased social cohesion, reduced loneliness and improved mental health for older people;
- increased confidence, motivation and wellbeing amongst young people;
- improved mental health and wellbeing for young families;
- increased community cohesion and improved mental health for all ages;
- increasing confidence, academic attainment and skills for school age children; and
- increasing employability skills and access to jobs.

#### Business plan objectives

2.10 Specific objectives set out in the business plan are as follows:

- establish a dedicated young people's facility and new children's soft play facility;
- increase youth participation from 50 to 200 unique weekly users;
- develop children's soft play usage to 150 unique weekly users;
- establish a programme of 'show-in-a-week' young people's stage performances with 150 unique users each year; and
- offer a wider and deeper variety of youth opportunities for the 200 unique weekly users of the youth facility.

#### Site restrictions

2.11 The company identifies a number of restrictions on the use of the site. These are:

- A National Trust Conservation Agreement requiring that 0.22 hectares on the north-west side of the site should not be built on. NBCDC indicate that it plans to protect and enhance this area.
- Garages used by local residents in the south-east part of the site. The company would work with users to determine the future use of this area.
- A title restriction allowing access to 1 Rhodes Cottages, which is located to the north-east of the site. NBCDC would allow the cottage owners to retain this access.
- A 1906 title restriction (the Dalrymple Disposition) requiring that the land which is the subject of the disposition is used as a public park and as a place for recreation. The company plans to protect and enhance the area. The request form also quotes advice from the council that the company could apply to the Lands Tribunal to remove this restriction under sections 20 to 24 of the Title Conditions (Scotland) Act 2003 (the 'sunset rule provisions').

- The presence of great crested newts, which was confirmed by a survey in 2014. NBCDC proposes to seek advice and a licence from Scottish Natural Heritage (SNH) in order to ensure the newt population is not harmed. The breeding pond on the west side of the site is outwith the area where buildings or hardstanding areas are proposed.
- The possibility of bat roosts in the existing buildings. Again, advice would be sought from SNH, a survey carried out, if required, a licence sought, if necessary, and bat boxes erected as mitigation for the loss of any roost.
- Planning policy requiring that any development of the site respects the residential character of the area. The company's architects will work with the community to minimise the impact of both the development and operation of the proposed community hub.

### Potential negative consequences of transfer

2.12 NBCDC identifies eleven potentially negative consequences of the asset transfer. These are:

- Displacement of activities from other sites. The company gives two examples of consultation with local groups to ensure that the proposed hub does not impact negatively on their existing activities. The first is with NB Movies where the chair of the voluntary organisation is quoted as saying that 'cinema screenings in the hub would be...in fulfilment of NB Movies' objective of providing cinema facilities for the people of the town'. The second is the work through the business plan to consider possible impacts from the proposal to provide a bunkhouse, soft play facility, café and lettable accommodation in the hub. In each case, this concludes that there would not be a significant issue: there is no comparable accommodation or soft play area in the town, the café would not compete with town centre cafés because it would be 1.5 kilometres from the town centre and the company is working with the management of the existing community centre to ensure the two facilities complement each other.
- Moving the youth project from the Hope Rooms in the town centre could reduce central provision and leave the existing accommodation underused. It is proposed that management of the project would transfer to the community hub in order to coordinate provision whilst retaining services in the town centre.
- Loss of a potential housing site. NBCDC believes the community view is that the proposals would provide much-needed facilities for a growing population.
- Loss of existing buildings. There are no listed buildings on the site but the company would retain buildings of interest, where possible.
- Reduced wildlife habitat. Professional advice, including commissioning a site survey, will be sought on conserving and enhancing the natural heritage of the site.
- Loss of residential amenity. Lime Grove Residents' Association has been consulted and supports the proposals. Consultation will continue and potential issues will be addressed through the appropriate statutory processes. The project architects, JGA, have a good record of working with communities.
- Project failure leading to a vacant site or unused development. The company believes the business plan is comprehensive and robust. However, the project would not commence unless adequate funding is secured. Furthermore, the project would be developed in phases with each phase adding sustainable facilities.
- Lack of funding. The company would mitigate this risk by applying to the North Berwick Trust for funding.

- An overspend prevents completion of the building. NBCDC believes that a combination of an experienced board with appropriate expertise, appointment of professional advisers, inclusion of a 10% contingency in the budget and identification of works which could be deferred or reduced in cost would prevent this happening.
- The community hub is not financially viable in its early years. Again, it is considered that the business plan is robust in showing financial viability with varied income streams. Also, as noted above, the board comprises a team of people with a track record of delivering successful projects.
- Some local residents would lose their garages. Although this would happen if the site was sold to a house builder, the company would work with residents to establish the future use of this part of the site.

### Key stages of delivery

2.13 The company identifies three key stages of delivery:

- Stage 1: land acquisition and design.
- Stage 2: development and practical completion.
- Stage 3: opening and operation of a financially sustainable facility.

NBCDC recognises that different skills will be required at each stage. It will carry out a skills audit to establish where and when the existing group may need to be supplemented with recruitment from the community or on a professional basis, as appropriate. Additionally, the business plan has been prepared by SKS Consultants who have an impressive record of working with community enterprises and continue to work with the board.

2.14 In relation to stage 1, the company has engaged with other groups who have completed successful community buy outs or asset transfers to benefit from their experience and has consulted the Development Trust Association Scotland (DTAS), the Community Ownership Support Service (COSS) and Scottish Land Fund. The Coastal Communities Museum is cited as an example of a successful initiative in terms of governance, partnership working, and engagement from which the company can benefit, not least as some individuals involved are also involved in the community hub project.

2.15 NBCDC expects to recruit additional board members at stage 2 with skills and a good track record of delivering successful building projects. The project architects, John Gilbert Architects, have significant experience of working with community organisations, asset transfer projects and delivering within tight funding parameters. Following acquisition of the site, NBCDC will employ a project manager to drive the project forward and manage the professional team in line with the Managing Successful Programmes (MSP) framework. The project manager would report to a project management group comprising three board members. In order to minimise risk, each area of the project will be analysed to identify risks, control procedures and monitoring controls. Continued engagement with stakeholders will take place. The project will also follow the Royal Institute of British Architects Plan of Work model for building design and construction. A solicitor will be appointed to oversee legal matters.

2.16 In order to deliver stage 3, NBCDC, supported by the project manager, will recruit and train the team to operate the hub. The team would comprise a full-time hub manager,

two part-time café managers, 10 part-time support staff and café assistants and three full-time trainees.

2.17 Further board members would be recruited at stage 3, ideally with business, financial, human resources and legal expertise. It is anticipated that external professional advice would also be required in some areas. The board would meet monthly and would be supported by finance and human resources sub-committees.

### Community engagement

2.18 NBCDC's asset transfer request form provides a chronology of community engagement over a three-year period between July 2015 and June 2018. This shows support from the community council, community centre management committee, North Berwick Youth Project, East Lothian Youth Theatre, East Lothian Works (an employability initiative for young people) the Arts Centre Steering Group, Law Primary School Parent Teacher Council and Stepping Out (a project which supports people with mental health issues).

2.19 Community engagement focussed initially on the creation of an arts centre. This followed a 'Three Wishes' survey carried out by the North Berwick Coastal Area Partnership in summer 2015 which led to the establishment of an Arts Centre Steering Group. However, a subsequent public meeting, in August 2016, attended by over 100 people, accepted that there was no suitable site for an arts centre and, also, that the community wanted to see wider provision. The Lime Grove Asset Transfer Group was set up in December 2016 as a sub-group of the North Berwick Coastal Area Partnership.

2.20 An initial public meeting in January 2017, attended by 170 people, and a second meeting in February 2018, attended by more than 100 people, supported the development of the Lime Grove site to meet community needs. 368 people responded to an online survey which identified 17 activities that could be provided at the proposed community hub. A stall set up in the High Street over three weekends engaged with over 250 people, the majority of whom supported the proposal. NBCDC had 653 members at the point the transfer application was made to the council.

### Funding

2.21 NBCDC intends to apply to the North Berwick Trust and Scottish Land Fund for grants to acquire the site. Both have confirmed that the company is eligible to apply. It is anticipated that the majority of funding for the development phase will also come from the North Berwick Trust but funding will also be sought from other sources, including community shares and local supporters.

2.22 It is intended that the hub will be financially sustainable with the various activities attracting income from a range of sources in order to pay staff and to run and maintain the building. The company plans to build up cash reserves equivalent to three months operating costs. Key income assumptions in the business plan are summarised below. Figures show lower and upper annual gross income.

- Bunkhouse: £138,240 - £184,320.
- Café: £98,850 - £147,675.
- Soft play: £32,720 - £56,440.

- Theatre hire: £85,520 - £114,510.
- Youth facility: £15,000 (annual rental charge).

2.23 The North Berwick Trust is seen as the lead funding partner of the project. NBCDC advises that the mission of the trust is to work in partnership and use its resources to meet identified need and improve quality of life for residents of North Berwick. It is considered that the proposed community hub would address directly the trust's strategic aim of enhancing recreational, cultural and sporting activities and facilities. The business plan indicates that, were the trust to offer a grant for acquisition and construction, this would provide leverage to help secure additional funding, such as up to £1,000,000 from the Scottish Land Fund and £500,000 from other charities and trusts. This would also demonstrate the trust's commitment to community empowerment and minimise any administrative commitment.

2.24 The business plan also suggests an alternative approach whereby the trust acquires the site and owns any future building, with a Scottish Charitable Incorporated Organisation (SCIO) established to deliver activities. The SCIO would be granted a full repairing and insuring 25-year lease at a peppercorn rental. It is expected that this model would reduce opportunities to secure additional external income but could provide the trust with comfort regarding any perceived risk.

2.25 The hub manager will be required to develop a five-year operational plan, updated annually, to address governance, process, staffing, links to a separate financial plan and targets for all business areas. An active travel plan will also be produced and promoted. Good internal communication between board, staff, trainees and volunteers would ensure everyone is working towards a clear vision. All external stakeholders will receive regular progress reports with an emphasis on communication through social media. A marketing plan will include the establishment of separate web sites for the hub and bunkhouse, developing a strong social media presence, real-time, online bookings and payments and paid for digital advertising, such as with Facebook. A risk analysis in the business plan considers risks such as failure to develop a strong board or full funding and identifies potential mitigation in each case.

2.26 In terms of financial planning, it is proposed that initial cash flow support would be in the form of external grant funding. A steady-state trading position would be established by year three of trading. A £12,000 annual budget for capital refurbishment and three months trading reserve will be made in year five. VAT planning will be put in place once ownership and governance arrangements have been finalised.

#### Displacement and competition

2.27 The business plan provides comment on potential displacement and competition in relation to the proposed income generating elements of the community hub. The bunkhouse is expected to have some impact on the short-term commercial letting market but it is noted that this was seen as desirable in the community consultation process. Local caravan and camp sites are reported to be close to capacity in high season, implying impact on this sector would not be severe. It is also noted that a bunkhouse would be better suited to group provision. The business plan notes that there are soft play cafes in Dunbar and Haddington but no facility of comparable scale outwith Edinburgh. It is accepted that the café market is crowded but also stated that there are no cafes in the town with associated

play or other community facilities, something that was well supported through community consultation.

2.28 The main concerns about potential competition and displacement relate to North Berwick community centre. However, the business plan notes that community centre staff are keen to work with the proposed hub to ensure complementary offers in terms of hall hire with the anticipated income stream from the potential cross-over market estimated at £12,000 and displacement being only part of that. It is concluded that actual levels of displacement would be limited.

### Partnerships

2.29 Key potential partnerships are listed in the business plan as follows:

- North Berwick Trust: key potential funder following its realisation of a capital receipt from the sale of community owned land.
- East Lothian Council: site owner and looking to work with NBCBC to deliver the best outcomes for the community.
- North Berwick Community Centre: see comments at paragraphs 2.12 and 2.28 above.
- North Berwick Youth Project: a potential key tenant occupying a larger bespoke space for local young people.
- East Lothian Youth Theatre: keen to run classes if suitable premises are available. It is also suggested that two private local dance operators would be interested in using facilities with a stage.
- North Berwick and Area Children and Youth Network: links to colleges and universities.
- East Lothian Works: developing employability skills for young people in arts, catering, theatre and hospitality.

2.30 The company has submitted letters in support of the community asset transfer proposal from Fringe by the Sea, the North Berwick Drama Circle, North Berwick and Area Children and Youth Network and North Berwick Youth Project.

2.31 Fringe by the Sea supports the staging of events at the proposed hub and believes this provides scope to generate income from stage hire and ticket sales. North Berwick Drama Circle looks forward to being part of the plans for the community hub and believes it would be a valuable resource as there is no dedicated, accessible theatre space with professional facilities in the town. The youth network is supportive of the proposals as they provide an opportunity to expand the facilities it provides, as well as offering work placements, apprenticeships and intergenerational work.

### Outcomes

2.32 As I noted at paragraph 2.4 above, NBCDC uses the New Economy Manchester social impact calculator to estimate a £6,022,450 social return over 25 years (£240,898 each year). This is based on a total of more than 800 unique annual beneficiaries in year one, broken down in relation to nine outputs and associated outcomes, as follows:

- Increased access to theatre and film, leading to improved social and cultural engagement for all ages: 200 people.

- Activity and engagement for older people creating increased social cohesion, reduced loneliness and improved mental health: 150 people.
- Increased activities for young people providing increased confidence, motivation and wellbeing: 225 people.
- Space for young families to meet and play, increasing mental health and wellbeing: 50 people.
- Café providing community cohesion and social activity, improving mental health and wellbeing for all ages: 200 people.
- Volunteering opportunities improving mental health and wellbeing for all ages: 20 people.
- Emotional learning for school age children to increase confidence and academic achievement: 30 people.
- Formal learning opportunities and qualifications, increasing skills and access to jobs: six people.
- Apprenticeships increasing skills and access to jobs: four people.

2.33 The business plan sets out the a programme of provision for young people and how this would relate to current levels of provision in the following areas of activity: drop-ins, activity sessions, drama, provision for young people with a disability, holiday programmes, one to one work, inter-generational working, recording and rehearsal space and office space for staff. Additional impacts are not quantified but it is expected that the proposed activities would increase the reach of the Youth Project to over 200 people annually from the current 50 regular participants.

### Strategic context

2.34 The business plan lists 10 strategies which, it is considered, provide support for the proposed community asset transfer. These are:

- North Berwick Coastal Partnership Plan, 2016: contributions would come from working with young people to improve facilities and opportunities, supporting communities to make healthy choices, developing intergenerational work and supporting older people.
- East Lothian Partnership Plan, 2017-2027 (single outcome agreement): the project would support outcomes relating to delivery of strong resilient communities, people contributing to a thriving community life in a high-quality environment and people enjoying healthier lives.
- East Lothian Health and Social Care Partnership Strategic Plan: the community hub will help to address the prevention of ill health and anticipation of support needs at an early stage.
- Scottish Government National Performance Framework: the community hub would help address high-level outcomes concerned with confident young people, healthier lives, strong, resilient and supportive communities and older people accessing appropriate support as well as national indicators for improving mental wellbeing and increasing cultural engagement.
- Scotland's Economic Strategy: the community asset transfer request is in line with the Scottish Government's support for community-led projects.
- National Volunteering Strategy for Scotland: the hub would help to increase volunteering opportunities for young people, dismantle barriers to volunteering and closing the opportunity gap and improving the overall volunteering experience.

- Scotland's Social Enterprise Strategy 2016-2026: the project would support the aim of sustainable economic growth, tackling inequalities, and building a fairer Scotland through social enterprise.
- Creative Scotland's Strategy: the hub would be consistent with aims to strengthen opportunities for excellence and diversity and develop collaboration and partnership.
- Scotland's Youth Employment Strategy: the community hub would offer a number of modern apprenticeships.
- National Youth Work Strategy 2014-2019: the hub would provide a bespoke youth space to enable growth of the Youth Project.

### Council decision making

2.35 NBCDC is critical of the council's decision making, asserting that it has not stated on what basis it has refused the asset transfer application, not shared the assessment used to come to its decision and, on review, has simply adopted the position arrived at initially.

## CHAPTER 3: THE COUNCIL'S CASE

3.1 The council's case is set out in its decision notice, dated 15 November 2019, on the request for a review of the decision to refuse the asset transfer, made on 11 April 2019, and its response, dated 7 January 2020, to NBCDC's appeal, and supporting documents. The council believes the decision notices clearly set out the rationale, reasoning and considerations behind its decisions. It also asserts that the review was a democratic and rigorous process which complied with the legislation. The council's case is summarised in paragraphs 3.2 to 3.18 below.

3.2 The decision notice reflects the review carried out by the council's Petitions and Community Empowerment Review Committee on 10 October 2019. It is set out in six parts, as follows:

- statutory grounds for refusal;
- funding;
- governance;
- deliverability;
- sustainability; and
- community support.

### Statutory grounds for refusal

3.3 There are two statutory grounds for refusal. These are:

- '1. On consideration of the business plan and supporting documentation, ELC consider that there is insufficient evidence that the request will result in or is likely to promote or improve (i) economic development; (ii) regeneration; (iii) public health; (iv) social wellbeing; (v) environmental wellbeing or any other benefits and, accordingly, it is not unreasonable for ELC to refuse the request.
- 2. Furthermore, in accordance with s82(3)(j) of the Act, ELC took into consideration such other matters that ELC considered relevant which included the funding, governance, sustainability and deliverability of the proposal and the community support for the proposal.'

### Funding

3.4 In terms of funding, the council considers that, although the business plan is well structured, there is insufficient evidence that the significant initial, short-term and long-term funding can be secured. In particular, it is noted that, whilst acquisition and build costs are almost wholly reliant upon the North Berwick Trust, there is no evidence that this is a realistic source. Furthermore, although other potential funding sources are identified by NBCDC, the values quoted would not meet projected costs.

3.5 The council considers it to be unclear whether the trust would buy the site and lease it to NBCDC or fund the acquisition through a grant. In the latter case, it is not clear that this option would enable the company to lever sufficient additional funds to deliver the project. It is noted that the business case describes the funding environment as increasingly competitive and that the perception of North Berwick as an affluent community would inhibit funding.

3.6 The council considers that its assessment of financial issues is in line with Scottish Government guidance which states that this should be proportionate and appropriate to the scale and type of project involved. The authority is concerned that financial failure of the project could potentially impact on council resources and budget.

### Governance

3.7 In relation to governance, the council agrees that NBCDC has the commitment, skills and experience to deliver the project. It is also acknowledged that the business plan sets out clearly the purpose, roles and duties of the proposed community hub board. It is also noted that the site is referred to in the Local Area Partnership Plan. However, the authority is concerned that it is not clear what legal structure will be adopted to lead the acquisition and development of the site, nor who the ultimate owner will be, nor have sufficient details on succession planning been provided. The council also states that it is not confident the necessary measures have been put in place to ensure that the proposal promotes or improves economic development or regeneration.

3.8 Also in relation to governance, the council is of the view that, whilst strategic objectives may be aligned with North Berwick Trust's objectives, these are not representative of the wider community. It is noted that part of the site is held by the council 'under the common good' meaning it could not be sold without obtaining the authority of the Court of Session.

### Deliverability

3.9 Turning to deliverability, the council recognises the commitment to provide supported, worthwhile volunteering opportunities across a range of roles but is concerned as to how this would be maintained to deliver the proposed, significant level of operational activities.

3.10 The council notes that it did not receive any letters of representation from delivery partners identified in the business plan. Commitment of this nature is considered to be critical to demonstrate deliverability. It is also noted that a 2014 feasibility study for an arts centre on the site showed an annual £90,000 loss. There is also concern about inclusion of a proposal for a learning academy when East Lothian Works advises it does not have plans for such a service and no plans for NBCDC to become accredited to deliver this service. Furthermore, North Berwick High School is regarded as a role model for its collaboration with Skills Development Scotland to create pathways to work. On this basis, the council is not convinced there is demand for an additional service of this nature. These concerns about deliverability also impact on the ability to promote or improve economic development or regeneration.

### Sustainability

3.11 The authority's decision notice also provides views on the sustainability of the project. It is noted that there is evidence of market research but the council is concerned that running costs are a conservative estimate with a particular concern about funding during the period before a profit is forecast in year three and that foreseeable financial risks are not properly dealt with. There is concern that displacement and duplication issues have not been addressed fully and that the site is not sufficiently integrated into the community, particularly in relation to access for less able or affluent groups. The council also believes that insufficient thought has been given as to whether the proposed benefits could be

delivered in a different way. Again, it is considered that these concerns would impact on economic development and regeneration outcomes.

### Community support

3.12 The council acknowledges that there has been community consultation through public meetings, consultations and surveys but is concerned at the low level of responses in relation to the population of the town. Furthermore, there is considered to be no evidence of commitment to occupancy or use of the hub by prospective partners or community groups. This is seen to reflect limited support for the proposal. The council advises that this information was requested when the application was received but it did not receive a detailed response. The council notes that NBCDC claim that 757 community letters of support have been presented to the council but these were not part of the original application or the request for a review. It is considered that these should not be considered as part of the appeal process. However, these letters have not been produced as evidence to support the appeal.

3.13 Although the council is identified as a potential partner, it feels engagement has been limited and is not persuaded that the hub would support the council's strategies. It is also of the opinion that there is a lack of evidence regarding the need, scale, cost and synergy with other community activities. Specifically, on the latter point, there appears to have been no consideration of the education authority's expansion plans for the high school which include drama and performance facilities, accommodation also proposed as part of the community hub offer. There is a wider concern that NBCDC has not engaged with council services generally to provide an understanding of impact on services, need and displacement. Additional concerns relate to a lack of evidence that the hub would include services to communities other than North Berwick, particularly given the overheads involved, and lack of engagement with neighbours.

3.14 This perceived lack of community support also impacts on the ability of the community hub proposal to promote or improve economic development or regeneration.

### Proposed conditions

3.15 In the event that Scottish Ministers uphold the appeal, the council proposes that conditions be attached as follows:

- A right of pre-emption in favour of the council if planning permission is refused, appropriate funding is not secured, work does not start within five years, the land is transferred or offered for sale, the project fails, the community transfer body is wound up or it seeks to dispose of the property for a purpose other than a community hub.
- A restriction on use of the land to that proposed in the business case.
- In the event a discounted price is agreed and the public benefits are not delivered substantially in line with the business case, or the land is sold at price higher than that agreed and the council has not exercised its pre-emption, a right to reclaim the discount. This right should continue for five to 10 years.
- A mechanism to address the title restriction on part of the site.

## Representations to the council

3.16 The council has produced a letter from the Lime Grove Association and five letters from three neighbouring households which were submitted to the authority in relation to the proposals.

3.17 The Lime Grove Association is generally supportive of the proposals but expresses concern about road safety, impact on residents' parking, protection of wildlife, the need to improve sustainable travel links, noise and light pollution, boundary treatments, the need to retain residents' garages and the prospect of the hub blighting the area if the business plan fails.

3.18 Letters from the three local households raise the following issues:

- projected income appears exaggerated;
- running costs and overheads are too low;
- no account has been taken of potential VAT payments;
- based on a 2014 study for an arts centre, there would be a potential annual revenue shortfall;
- many items are not budgeted for, such as security;
- financial failure could leave a legacy of dereliction;
- there are existing facilities which could meet some of the demand, such as the community centre, schools and halls;
- there is no audit of the use made of existing facilities;
- lack of demand for arts facilities;
- lack of evidence of support from prospective partners;
- impact on Rhodes Farmhouse, a category 'B' listed building;
- there has been no assessment of impact on residential amenity;
- there has been no consultation with residents;
- remoteness of the site from the town centre;
- loss of on-street parking;
- road capacity and safety; and
- ecological impact.

## CHAPTER 4: CONCLUSIONS AND RECOMMENDATION

4.1 Chapter 13 of the Scottish Government document Asset Transfer: Guidance for Relevant Authorities, 2017 provides advice on the assessment of asset transfer requests. There are four elements to this, as follows:

- (i) consideration of benefits against the criteria set out in section 82 of the Act and detailed at paragraph 1.9 above;
- (ii) alignment with one or more of the Scottish Government's national outcomes;
- (iii) demonstration of best value against the Scottish Government's seven best value themes: and
- (iv) consideration against a check list of matters listed at paragraph 13.10 of the guidance in relation to assessment of outcomes.

I consider each of these elements below.

### **(i) Delivery against section 82 criteria**

#### Reasons for the request

4.2 The appellant provides a demographic profile of East Lothian showing rapid population growth, pressures on services for young people and older people, in particular, and underlying issues of inequality that would be found in only a handful of Scottish council areas. Consequently, a proposal to provide additional services for those most in need potentially has a lot to commend it, not least as the project would be community-led. The proposed community hub would provide opportunities for existing third sector organisations to extend their reach in the community they serve as well as providing opportunities for the delivery of new services by voluntary groups.

4.3 At a time when local authority resources are constrained, and are likely to remain so in the foreseeable future, it is also commendable that the project is designed not to rely on public funding, either in terms of its establishment or operation. Indeed, it may be that, if the community hub delivers the benefits proposed, this would reduce pressure on public sector finances in the medium to longer term. The proposed development would also return what is currently a brown field site into productive use.

4.4 NBCDC is able to show interest in the project from a number of community organisations and a significant number of individuals who either attended public meetings or responded to an online survey.

4.5 There is evidence that NBCDC has engaged with the youth network and youth project to consider the opportunities for expanding provision for young people through the provision of a larger, bespoke facility. There is also an indication that drama and theatre groups regard the hub as an exciting opportunity. However, overall, I consider there is a lack of evidence on how proposed facilities relate to existing provision, whether provision of the facilities proposed is best achieved through the development of a community hub and whether any hub is best located at Elm Grove as opposed to elsewhere.

4.6 It is of particular concern that there is no evidence of meaningful engagement with the council. The appellant advises that NBCDC is working with the community centre management committee to ensure services at the existing and proposed facilities are

complementary and displacement is expected to be minimal. However, no information is provided on existing bookings at the community centre or whether activities proposed to take place at the hub could take place at the existing centre. Similarly, there is no information on whether the theatre provision proposed could be provided as part of the proposed expansion of North Berwick High School referred to by the council. It is also proposed that the community hub would provide a learning academy when the council advises that East Lothian Works, its employability and business advice service, does not have plans for such a service and the high school is working well in partnership with Skills Development Scotland.

4.7 The combination of a café and play facility is claimed as a key selling point of the hub. However, one of the letters from a local resident produced by the council refers to Whitekirk Hill, located to the south-east of the town, and advises that this facility provides both a cafe and play barn. This may be well be a relatively new development but there is no evidence to indicate how this might impact on the business plan for the community hub. The same writer also refers to a range of lettable hall space in the town. It may be that none of this is suitable for potential users of the hub, or is not available, but I have no evidence to that effect.

4.8 Of the four letters produced by the appellant, only that from the youth project goes into any detail about its potential use of the hub (it would relocate to the new facility). Generally, it is not possible to appreciate how the support shown by other groups is driven by specific needs, how use would translate to levels of activity or, crucially, income to the community hub, or whether benefits might be offset by displacement from existing facilities. It might also be expected that a project of this nature would attract a greater degree of support from the voluntary sector than has been evidenced in this case.

4.9 Overall, I find that the principle of establishing a community hub in North Berwick has the potential to help address some of the challenges faced by a rapidly changing and growing community. I also find that the proposal to deliver the project without public sector funding and to make the hub financially sustainable thereafter is a sensible approach given other pressures on council finances. There is clearly a degree of support for the community hub in the town. However, I also find that there is a crucial lack of evidence on how the services and facilities provided at the hub would relate to existing provision in and around North Berwick. I am particularly concerned that potential tensions appear to exist in relation to council services. The community centre management committee is reported as being supportive of the proposals and keen to work with NBCDC but no evidence has been produced to show what that collaboration may mean in practice. Conflict with services run directly or at arm's length by the council would have potentially serious consequences for the community hub, community centre and other council services. I consider that potential issues should have been resolved to the mutual satisfaction of the company, council and management committee at the outset. I also find that the lack of detail of involvement by groups involved in the provision of services to the community hub's target groups makes it difficult to be confident that the proposed benefits will be realised.

#### Other information provided

4.10 The North Berwick Community Development Company (NBCDC) board appears to be well structured with a reasonably broad skill base. There is recognition that it will be necessary for the board to evolve as the project develops in order to bring in additional skills. It is also proposed that professional support would be engaged, where required, not

least through the appointment of a project manager, reporting to a project management sub-group to aid day-to-day oversight and decision making. The consultants that prepared the business plan are still involved in the project and architects have been appointed. The board is also keen to seek guidance from advisory groups and best practice from other community groups. A draft induction checklist for directors and job outlines for the role of convenor, director, secretary and treasurer are in place. I note that the council considers that the board has the commitment, skills and experience to deliver the project but also expresses concern about succession planning.

4.11 The appellant hopes that the principal funder for the project would be The North Berwick Trust. The trust has a strategic aim of enhancing cultural, recreational and sporting activities and facilities and has indicated that NBCDC would be eligible to apply for grant support. The overall estimated cost of the project is between £6,200,000 and £7,450,000, depending on the final price of the site. This would represent a major commitment for a local funding body and would present a significant risk.

4.12 There is no evidence that potential funding from the trust to this level is a reasonable expectation. Indeed, the trust's accounts for 2016/17 show that the maximum grant awarded in that period was £10,000 (to the community centre). I accept that the trust would not provide a grant prior to the proposed transfer of the site taking place but it may have been possible to secure a provisional offer or provide reassurance in some other way that the amount applied for is realistic and whether any conditions imposed could be met. The same concerns apply to other potential funders, such as the Scottish Land Fund or Big Lottery, not least as even a small percentage reduction in anticipated funding from the trust would increase significantly the pressure to secure funding from other sources.

4.13 The business plan proposes an alternative approach whereby the trust would acquire the site and retain ownership of the hub building with a Scottish Charitable Incorporated Organisation, presumably an evolution of NBCDC, delivering the services. The intention of this approach would be to reduce risk to the trust. However, as the appellant notes, it may also have the effect of reducing other external funding opportunities. This may risk a shortfall in funding overall. However, crucially, there is no indication from the trust that it would consider this approach.

4.14 I find that, given the scale of the project, there is too much uncertainty about whether the requisite funding for site acquisition and development of the hub can be secured and, if it can, on what terms. I appreciate that the risk management process which the appellant proposes to introduce could result in a degree of value engineering but any significant shortfall in funding would compromise the overall integrity and viability of the project.

4.15 I also have concerns about proposed revenue funding. It is proposed that an initial shortfall in the first two years of operation would be covered by grant funding so my overall concerns noted above would also apply to this aspect of the project, not least as I have no indication that either of the nominated main funding bodies, or any other funder, would provide revenue support for two years.

4.16 Thereafter, sustainable operation would rely on income. The business plan provides evidence of market research and gives estimates of how the hub would be funded once open. Income would come from a rental charge for the youth space along with revenue generated from the bunkhouse, café, soft play area and theatre. The letter from the youth project, produced by the appellant, indicates that the group would be a key tenant of the

hub. No mention is made of the rent to be paid but, as the letter comes from the treasurer, it seems reasonable to assume that the undertaking provided is based on knowledge of the likely cost to the organisation. There is a suggestion in correspondence produced by the council that income from the bunkhouse is inflated. The facility would be based in an attractive area, close to Edinburgh and NBCDC has provided an assumed income and associated justification. As I have not been provided with detailed evidence to discredit the company's figures, I am prepared to accept the estimated income range provided in the business plan.

4.17 I have noted at paragraph 4.7 above my concern about the potential impact of the Whitekirk Hill play/café facility on income at the proposed Lime Grove café and soft play area. Income from the theatre would come from hall hire, show-in-a-week and similar events, amateur dramatics and touring shows and use by the film club. Whilst there is interest and support from arts groups, I have not been provided with evidence of sufficient demand and commitment to use the proposed large room/theatre such that I can be confident the significant income levels forecast would be achieved. The appellant provides some information on the accommodation available at the community centre but no details of the number of bookings or suitability of the lettable space. There is reference to seven other locations in the town that have been used for productions but no analysis of why users would choose the proposed hub over this accommodation. There is some speculation as to whether the Morag Alexander dance school would consider the hub suitable as a second location in North Berwick for running dance classes but no commitment from the company to take space in the hub. The appellant advises that Haddington Corn Exchange is being refurbished to create a 900-seat concert hall. Haddington is only five miles to the south of North Berwick on the B1347, or 10 miles by the A198/A6137. However, there is no analysis of whether this upgraded facility could impact upon the proposed community hub. I consider that, altogether, this lack of detail undermines the assumptions about income from the large room/theatre.

4.18 It is proposed that a three-year reserve fund will be established by year five of operation. The council has queried what would happen if reserves are needed before that time. The appellant recognises that this would be an issue if it were to arise and could be addressed in a more detailed funding plan. The example of current restrictions put in place to manage the Covid-19 outbreak suggests that such a contingency should be in place sooner rather than later.

4.19 The appellant advises that VAT planning will take place once site acquisition and governance arrangements are finalised. If the community hub is run by a charitable organisation, I appreciate that it may qualify for VAT relief and exemptions, but I am not able to appreciate the effect on the project overall without some indication of the impact of VAT payments.

4.20 If it was the case that the asset was transferred, as proposed, and either capital or revenue funding subsequently proved to be inadequate, the risk is that the site would remain vacant or become vacant again, when an alternative solution could have brought the site back into use. There would be a particular concern for the council that it would come under pressure to resume ownership of the site and complete or re-open the building at a time when it is likely to be under continued financial duress and looking to reduce its property portfolio.

## Economic development, regeneration, public health, social or environmental wellbeing

4.21 Development of the proposed community hub would be a significant local construction project with the potential to provide employment and generate business for suppliers, particularly if the sustainable procurement policy proposed by the appellant is put in place. The potential creation of 10 full-time equivalent jobs to operate the hub would also benefit the local economy. There would be an emphasis on increasing employability skills for young people and, again, that would be of economic development value.

4.22 Development of a currently vacant site would provide a boost to this part of the town in terms of physical regeneration. Creation of opportunities for employment, training, health improvement and cultural engagement would also contribute to social and economic regeneration.

4.23 A number of proposed initiatives would potentially benefit public health, such as the provision of a dementia-friendly community garden, a welcoming environment for people with disabilities and opportunities to reduce social isolation through use of the café and arts space.

4.24 Social wellbeing would be improved by initiatives such as encouraging volunteering and offering free places for activities and events for people experiencing social disadvantage.

4.25 Subject to professional advice, environmental wellbeing would be promoted by conserving and enhancing the natural heritage of the site in a way that also provides educational opportunities and helps to alleviate social isolation.

4.26 Representations made to the council highlight the fact that the site adjoins Rhodes Farmhouse, a category 'B' listed building, and question whether the proposed development would adversely affect the setting of the listed building. Although the buildings on the site are not themselves listed, there is a suggestion from the Lime Grove Association that they have sufficient intrinsic merit that they should be retained and converted rather than be demolished. There is also concern about the potential impact of the proposed hub on residential amenity as a result of issues such as overspill parking and noise and light pollution. These, along with potential issues flagged up by the council as planning authority relating to biodiversity, contaminated land, design, landscape impact and travel planning, are legitimate concerns but, in my view, ones resolved most appropriately through the planning application process when the council will have access to detailed information, specialist advice and wider community views not available to me as part of this appeal process. As the appellant has established, the proposals would require to be assessed in the context of the local development plan and Policies RCA1: Residential Character and Amenity and TC1 Town Centres First Principle, in particular.

## Reducing inequalities

4.27 The examples I have picked out at paragraphs 4.21 to 4.25 above, on their own and collectively, would help to reduce the inequalities of outcome that result in socio-economic disadvantage. I note the appellant's advice is that these benefits would generate a social return of £240,898 each year for 25 years.

### Other benefits

4.28 NBCDC has not sought to negotiate acquisition of the site for a discounted sum which takes account of this social return on investment. Although a final potential sale price has not been agreed, were the asset transfer to go ahead, it seems likely that the council would receive a capital sum in the order of £3,000,000. As the appellant points out, this would provide funding that could be invested in East Lothian, in line with single outcome agreement priorities.

### Benefits of an alternative proposal

4.29 I have not been made aware of any alternative proposal for the site. Consequently, I am not in a position to consider how any benefits which might arise from such a proposal would compare with those arising from the asset transfer proposal.

### Obligations imposed on the authority that affect its ability to agree to the request

4.30 The National Trust Conservation Agreement, which prohibits development on the north-west part of the site, would potentially influence the proposed use of this area by NBCDC. However, my understanding is that this burden would transfer with the land were Scottish Ministers minded to uphold the appeal and it would be for the company to design a layout that satisfies the National Trust, which it seems confident it can do. Similarly, the title restriction allowing access to the adjacent cottage and any legal rights of local residents in relation to garages on the site would transfer with the land, should the appeal be upheld.

4.31 The Dalrymple Disposition appears to raise a different issue in that some part of the site comprises inalienable common good land. No plan was provided with the disposition but NBCDC advises that this restriction relates to the same part of the site as the National Trust Conservation Agreement. The council advises that this can be dealt with by the use of a condition on any transfer. Should Ministers be minded to uphold the appeal, I would recommend that a legal check is made to ensure that the disposition allows for transfer of the land covered by the disposition from the council, as the successor to the Borough of North Berwick.

### Other matters which the authority considers relevant

4.32 The council's second statutory ground for refusal refers to funding, governance, sustainability, deliverability and community support. I consider that I have addressed these matters in paragraphs 4.2 to 4.28 above.

### **(ii) Alignment with Scottish Government national outcomes**

4.33 Paragraph 13.4 of the Scottish Government's Asset Transfer Guidance for Relevant Authorities advises that asset transfer at less than market value is justified when the benefits empower communities and align with local and national priorities. The guidance goes on to say that such benefits are likely to align with one or more of the Scottish Government's national outcomes and that the value of the benefits should be judged on a broad basis, not only in relation to the council to which the request is made. The appellant is not seeking to acquire the site at less than market value, but this test is still helpful. As paragraph 13.1 of the guidance points out, 'any decision to transfer an asset must represent good use of public resources.'

4.34 I consider that successful development of the community hub would contribute to two outcomes in particular:

- we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others; and
- we have tackled the significant inequalities in Scottish society.

My conclusions at paragraphs 4.21 to 4.25 above regarding benefits in relation to economic development, regeneration, public health, social wellbeing and environmental wellbeing suggest that there would also be potential to contribute to other national outcomes. In particular, there is potential alignment with outcomes relating to creating better employment opportunities, supporting children, young people and families, living longer, healthier lives, valuing and enjoying the natural environment and helping older people to maintain their independence.

### **(iii) Demonstration of best value**

4.35 Paragraph 13.7 of the Scottish Government guidance states that the evidence provided to support the asset transfer request should be considered in relation to the seven best value themes of vision and leadership; effective partnerships; effective governance and accountability; use of resources; performance management; sustainability; and equality. I consider the extent to which the proposals demonstrate best value against these themes in paragraphs 4.36 to 4.44 below.

#### Vision and leadership

4.36 NBCDC has a clear vision for the creation of a community hub at Lime Grove and I have summarised at paragraph 4.34 how I consider this contributes to the Scottish Government's national outcomes. The business plan sets out a path to show how the project would be implemented and there is a clear intention to follow good practice in terms of the Managing Successful Programmes framework, risk management and British Architects' Plan of Work guidelines, as well as seeking out benchmark examples of similar initiatives. The board appears to be well equipped to take on the challenge but recognises it would need to broaden its skill base by recruiting other board members in the latter stages of implementation. There is also an appreciation of the need for appropriate professional advice and the support structure to make sure this is effective. There is a commitment to the development of formal policy and procedures for managing active travel, finance, human resources and marketing. Communication with staff and the community is also regarded as being important.

#### Effective partnerships

4.37 The appellant proposes to develop partnerships with a number of third sector organisations, including arts and youth groups, the community centre, the council and the North Berwick Trust as a core funder. The effectiveness of these partnerships would be critical to successful operation of the community hub. There is also some evidence of wider support for the hub in the community. However, as I concluded above at paragraph 4.9, there is insufficient evidence that these partnerships would deliver the intended benefits of the project. The proposed, critical relationship with the trust is unclear, there does not appear to have been a meaningful dialogue with the council about need, priorities and

compatibility of service delivery, there is goodwill but little board-level commitment from voluntary organisations and limited effort to address the concerns of potential neighbours.

#### Governance and accountability

4.38 As I have found at paragraph 4.36 above, there is evidence to indicate that NBCDC would put in place the appropriate structures and policies to ensure the project is a long-term success. Crucially, there is a commitment to produce a five-year operational plan, reviewed and updated annually. Also, the board would be supported by a project management sub-committee in the short term and finance and human resources sub-committees when the hub is operational.

#### Use of resources

4.39 Effective use of resources concerns use of all resources including assets, information and staff. I do not have any grounds for concern in relation to these matters but I do have concerns about NBCDC's funding proposals. In particular, I have concluded at paragraph 4.14 above that there is insufficient evidence that the necessary capital funding can be secured to enable acquisition of the site and subsequent construction.

4.40 In line with the Scottish Government guidance, the business plan provides a revenue income and expenditure forecast over 10 years. However, as I have found at paragraphs 4.15 to 4.19 above, I am not confident that the necessary commitment and demand from prospective users has been established, nor that financial forecasts are meaningful without an assessment of the likely effect of VAT payments.

#### Performance management

4.41 The key requirements in terms of performance management are to put in place arrangements to monitor desired outcomes and communicate this information through the governance structure and to the community. The business plan provides some guidance on these matters, listing proposed outputs, associated outcomes and unique annual beneficiaries. This basic framework is stronger on the monitoring of outputs, such as the unique 200 annual beneficiaries of increased cultural opportunities, than the measurement of the outcome of improved social and cultural engagement for all ages. This lacks a measure of what value that engagement would have for the beneficiaries. This may involve some qualitative assessment as well as quantitative assessment but is essential if the hub is to monitor the difference it is making.

4.42 In the interests of openness and transparency, it is also important that achievement against outcomes is reported to the board and stakeholders. Given the apparently sound governance arrangements and commitment to good communications, effective performance reporting may take place but there is no specific mention of a performance reporting mechanism in the business plan.

#### Sustainability

4.43 The proposed development of a brown field site and proposals to safeguard wildlife on the site potentially demonstrate environmental sustainability. The peripheral location of the site is not ideal in terms of promoting active travel but, by way of comparison, the distance from the town is less than half the statutory walking distance to school for children

under eight years of age so I do not find this to be an unsustainable location in transportation terms. However, the appellant has not, in my view, provided convincing evidence that the hub would be self-financing so I am not able to find that the project would be financially sustainable.

### Equality

4.44 I have summarised the proposed benefits of the community hub above at paragraphs 2.3 to 2.9 and 4.21 to 4.25. A constant theme is the desire to level things up for young people, older people, people without jobs and people with health issues. I am satisfied that successful operation of the hub would reduce inequalities of outcome from socio-economic disadvantage. However, as I have also found, this is not underpinned by strong arrangements for income generation and performance reporting.

### Use of conditions

4.45 As I noted at paragraph 3.15 above, in the event that Scottish Ministers uphold the appeal, the council proposes that conditions be attached to the transfer to protect the council's interests. Section 14 of the guidance provides advice on the use of conditions to protect discount. Although, NBCDC propose to acquire the site at market value, it is possible that circumstances could change significantly after any transfer has taken place. For this reason, I consider that the principles set out in section 14 of the guidance are helpful in relation to this case.

4.46 The guidance recognises that public sector bodies are required to achieve best value in their property transactions and that it is legitimate for relevant authorities to protect themselves against the risk that benefits of a transfer may not be delivered by including clauses in the contract requiring some form of restitution if the project fails. The guidance says that the usual triggers for implementing such protections is if the project fails, if the community transfer body is wound up or it seeks to dispose of the property for a purpose other than was expected at the time of transfer. Mechanisms are expected to be appropriate and proportionate so as not to make a project unviable or restrict the capacity for reasonable development. Inclusion of proposed conditions in the decision notice enables the community transfer body to decide whether they are acceptable or not.

4.47 The conditions outlined in the council's appeal response of 7 January 2020 appear to me to be broadly in line with the guidance. However, this is a matter on which Ministers may wish to seek their own professional advice in the event that the appeal is allowed.

### **(iv) Assessment of outcomes**

4.48 Paragraphs 13.8 to 13.12 of the guidance state that it is helpful to have in place a framework to ensure that all issues have been considered fairly and recorded clearly and that this can be placed alongside a similar assessment of best value themes and any other relevant factors. The following matters are listed for consideration:

- value to the relevant authority of the existing use;
- value for alternative use/redevelopment;
- value for proposed and other community purposes;
- level of community benefits;
- likelihood that benefits will be delivered over a five-year period; and
- impact of project failure.

4.46 I have examined the proposed asset transfer in relation to each of these matters in paragraphs 4.2 to 4.44 above. The guidance suggests assessment on a five-point scale to provide an overview. Level one is defined as a very strong contribution, level two would be a strong contribution, level three a moderate contribution, level four a weak contribution and level five a poor contribution. It is recommended that evidence considered should relate to governance, finance, best value characteristics and related project benefits.

4.47 I have found that governance arrangements are sound and would be likely to develop in a sustainable way as implementation progresses. I consider that financial arrangements are weak, both in terms of initial project funding and sustainability. I have found that best value characteristics have been considered and are well demonstrated in relation to vision and leadership, governance and accountability, sustainability and equality but not in relation to effective partnerships, use of resources and performance management. I consider that related project benefits could lead to value for money but are not based on robust information.

4.48 Overall, I find that the proposals would make a moderate to weak contribution against the following definitions set out in the guidance:

- Moderate – Governance and financial arrangements are in place and acceptable. Best value characteristics have been considered as part of the proposal. Related project benefits are acceptable and could lead to value for money.
- Weak – Governance and financial arrangements are weak. Best value characteristics are not well demonstrated in the proposal. Related project benefits are not based on robust information and demonstrate questionable value for money.

4.49 The guidance states that the proposals should then be considered against the financial implications of any decision both for short-term budget planning and long-term asset strategies. This should include the consideration of the current use of the asset and any consequent implications that could arise from the transfer of the asset. A larger discount will require a stronger case to be made with an appropriate level of benefits demonstrated effectively.

4.50 Although vacant, the site is not allocated for development so, presumably, not critical in terms of the council's ability to meet its employment or housing land supply targets. As I have noted at paragraph 4.26 above, any development proposals would require to be judged against local development plan policy relating to residential character and amenity. I have also noted at paragraphs 4.30 and 4.31 that any disposal by the council would be required to take account of the National Trust Conservation Agreement and various title restrictions. However, I do not have evidence to indicate that the site is critical in terms of the council's current financial strategy nor that it is required for development by the council as part of any asset management strategy. This may be because of the restriction imposed by the Dalrymple disposition.

## **Overall conclusions**

4.51 In relation to the section 82 criteria in the Act, I find that the proposed community hub has the potential to:

- address issues of inequality in relation to economic development, regeneration, public health, social wellbeing and environmental wellbeing;

- provide opportunities for voluntary sector organisations to extend their reach into the community;
- progress without reliance on public sector funding;
- re-use a brown field site;
- attract community support;
- be well managed by the board; and
- provide a capital receipt for the council.

4.52 However, I also find:

- a lack of evidence of how proposed services relate to need, existing provision or alternative means of delivery;
- a lack of engagement with the council, in particular;
- that it is unclear whether the significant funding to acquire the site and build the community hub can realistically be achieved; and
- there is insufficient evidence that the income required to ensure the facility would be financially self-sustaining.

4.53 I conclude that, whilst the proposed community asset transfer has the potential to deliver activities, jobs, services and training for North Berwick that may not otherwise be accessible, particularly to those in the community experiencing disadvantage, I cannot be confident that the necessary financial plan to deliver the community hub can be put in place nor that the proposed outcomes can be delivered. Therefore, on balance, I find that the proposal cannot be supported in relation to section 82 criteria.

4.54 Scottish Government guidance in relation to alignment with national outcomes recommends alignment with one or more outcome. I find that the proposed community hub would align closely with outcomes relating to developing strong and supportive communities and tackling inequality and has the potential to contribute to several other outcomes. However, the weight I attach to this finding is compromised by my conclusions about evidence of demand and financial planning.

4.55 I find that the proposed community asset transfer would demonstrate best value in terms of vision and leadership, governance and accountability, sustainability and equality but not in relation to effective partnerships, use of resources and performance management. I attach significant weight to these shortcomings such that, on balance, my conclusion is that the proposals would not represent best value.

4.56 In terms of the Scottish Government's recommended assessment of outcomes, whilst I am not aware that the proposed transfer would have a detrimental impact on the council's asset or financial strategies, I conclude that the proposals would result in a moderate to weak contribution to the outcomes set out in the guidance.

4.57 Overall, I conclude that the proposals have potential to help the North Berwick community address the significant demographic change it continues to experience in a way that could reduce inequalities. This would align, in part, with the criteria set out in the Community Empowerment (Scotland) Act 2015 and the Scottish Government's national outcomes and best value themes. However, based on the evidence presented to me, I find that the business case overall to support the proposed transfer is moderate to weak in strength. Consequently, I do not find reasonable grounds to recommend that the council's review decision be overturned and the transfer approved.

## **Recommendation**

4.58 I recommend that the appeal be dismissed and that the community asset transfer request be refused.

4.59 If Scottish Ministers are minded to uphold the appeal and approve the request, contrary to my recommendation, I recommend that it is established whether the council is able to transfer legally that part of the site covered by the Dalrymple disposition. In addition, it would be for Ministers to consider any appropriate conditions to be applied in order to protect the council's position should circumstances change significantly following transfer, in line with Chapter 14 of the Scottish Government's Asset Transfer Guidance for Relevant Authorities.

*Steve Field*

Reporter