



The Machine Room,
Invertay House,
3 Maule Street
Monifieth DD5 4JG

9 January 2020

**The Asset Transfer Request (Review Procedure)(Scotland) Regulations 2016
Appeal to Scottish Ministers under Section 87 of the Community Empowerment
(Scotland) Act 2015.**

Notice of Appeal to Scottish Ministers

This is a Notice of Appeal to the Scottish Government by Carnoustie and Monifieth Men's Shed in respect of the decision made by the Angus Council Review Committee on 9 December 2019 to confirm the original decision to refuse our Community Asset Transfer request.

1 Background to the appeal

1.1 The Carnoustie and Monifieth Men's Shed submitted a Community Asset Transfer request on 15 October 2018 (**Document 1, Documents 1a-d**) in respect of the property identified in paragraph 2 below. At a meeting of Angus Council Policy and Resources Committee on 4 April 2019, on the basis of Report 101/19 (**Document 2**) the request was refused and a Decision Notice (**Document 3**) issued on 5 April 2019.

1.2 The land to which this asset transfer request relates is as follows, all at

Invertay House
3 Maule Street
Monifieth
Angus
DD5 4JG

and comprises

- (a) the area which we rent at present from Angus Council, known as the Machine Room,
- (b) the other section of the same building which was previously used by the Council
- (c) the two lock-up garages, one of which we ourselves previously occupied (B and C on the plan)
- (d) all the ground extending to the boundary with Maule Street to the north, the boundary wall of No 5 to the west, the boundary of the Swallow apartments to the south and
- (e) area of the car park to be negotiated.

1.3 It should be carefully noted at this point that our request was only ever meant to be for a lease. We did state at 3c in our application that we were seeking the right to purchase the land

and buildings proposed for lease within the period of the lease, but should have made it clear that what we had in mind was ultimately to move consequently from a lease arrangement to purchase the property. In the informal discussions with the Council prior to the formal submission we explored this but abandoned it at that stage, when we became aware it was not an option – the legislation allows for lease or buy, and any subsequent request for purchase would have to be the subject of separate CAT request. We therefore, in 3.1 of the form, ticked the 'lease' box.

1.4 Following the rejection of our CAT request, it was decided to ask for a review of this decision on the basis of a number of issues which are outlined in our review document. This was submitted to Angus Council on 30 April 2019 (**Document 5**)

1.5. The six month period for considering the review was due to end on 31 October; the Council requested an extension to 31 December. A Review Committee was scheduled for 25 November but because sufficient notice had not been given to parties involved, this was rearranged for Monday 9 December.

1.6. At that meeting on Monday 9 December, the Review Committee considered Report 416/19 (**Document 6**) and upheld the original decision to refuse the Community Asset Transfer request. A Review Decision Notice was issued dated 17 December 2019 (**Document 10**)

1.7. At the Committee Meeting of the Carnoustie and Monifieth Men's Shed on 16 December it was resolved to proceed with an appeal against this decision to the Scottish Ministers.

2. Grounds of the Appeal

2.1 Setting out the grounds of this appeal have been complicated somewhat by the Council having submitted, along with the papers for the 25 November meeting, a document containing the 15 points we had listed in our Request for Review (**Document 4**) with paragraphs inserted after each one giving the 'CAT group response' in each case. (see Appendix C to Report 352/19 - **Document 5**). When the papers for the rearranged 9 December meeting were sent out we were advised that these responses had now been omitted. Also left out were the opening paragraphs of our submission, which we regard as integral to the whole, and should have been issued as such.

2.2 The question now arises as to whether we are allowed to draw on these comments in the context of this appeal. We are strongly of the opinion that we should be, given that they clearly form the basis of the CAT group's recommendation to the members of the Review committee. There was no open discussion among the five Councillors who made up the committee, other than several times to endorse the housing preference. Following the CAT group's recommendation that no new evidence was needed, (section 6.4 of report 416/19 – **Document 6**) and the inadmissibility of our being allowed to contribute to the process, the Shed Committee felt a sense of being silenced.

2.3 While much of the material consists of rather superficial rebuttals of our statements, there are a number of repeated emphases which cause concern, and not least, a few factual inaccuracies.

3. Lack of first hand knowledge of the Shed

3.1 Among the latter is the reaction to our comment that no 'relevant Council official, other than a Clerk of Works and the Communities Officers, had been to see the Shed at first hand.' In response to our statement it is contended that 'a number of the CAT group members have been to the site and have extensive understanding of the situation' while others are able 'to assess

the application without the need for a site visit.’ We can state categorically that no CAT group member has ever entered the Shed while we have been there

In section 6.4 of report 416/19 (**Document 6**), it is stated that ‘In this instance officers consider that all of the information required to make a decision is provided in this report.’ We would challenge this strongly, on the grounds that understanding a Men’s Shed involves much more than factual knowledge about the buildings and even details of membership statistics and activities, important though these are. It requires some immersion in the ethos and culture of the Shed, a direct feel of the spirit of it all, as a place of creative working relationships.

4. Lack of formal engagement to address issues

4.1 We have previously recorded our disappointment that during the period when our application was first being considered, there was no engagement with the Shed in any way. Likewise in respect of the review, we expressed the hope that there might be the opportunity for us to meet and discuss issues, recognising that discretion in this lies with the Council, in order that there might be sharing of information and clarification of key aspects.

2 Many of the most essential issues in the various phases of application and review have been patently in need of open consultation, but the opportunities for this have not been offered. A hearing during the review stage would have enabled many concerns to be directly addressed and perhaps not made it necessary for the CAT group to produce their rather unhelpful rebuttals of our statements. On top of this we were neither allowed to respond in writing to these nor to speak at the review committee meeting. We challenged both of these refusals, referring to paragraphs 1.15 and 1.16 of Appendix 1 to Report 210/18 – CAT Review Procedure and Guidance. (**Document 7 page 13**) These rather impenetrable paragraphs, citing a ‘mutually agreeable time and date’ (not offered) and the provision of ‘a supporting document’ (denied) were then stated to refer not to the review committee meeting, but to a hearing. There is no reference to a hearing anywhere in these lines which are extremely confused and confusing and desperately need to be translated into plain English.

5. Assessment and evaluation

5.1 As stated in the second paragraph of our review request, the major concern in the whole process is the evaluation and assessment system. The Evaluation Panel Templates (**Document 8**) are stated to be found in Annex A to Appendix 1 of Report 105/18. (**Document 9**), but having retrieved this document, it did not have the template annexed to it. The Council states that it is ‘publicly available in report 105/18’, but was not the case at the time of our investigations and it would appear it has been since added in the context of report 416/19. In sum **availability is not accessibility**, and once this report was extracted from the archives, much further research was needed to finding a path through the trees to trace its roots in the Forestry Commission’s original procedure.

5.2 Further, this method, having been approved by the Council, was to have been ‘added to the existing Council Guidance for CAT applicants.’ (Report 105/18, section 6.2). In no version of the Council Guidance that we have seen has it been included. We feel the Council should have been proactive in furnishing us with the above information, and not left it to us painstakingly to ferret it out; we have been severely disadvantaged by these deficiencies in communication and the provision of essential information. Assurances about its future availability have been made and are welcome but not relevant to the degree of disadvantage incurred by us.

5.3. Thirdly we are just given the results, and not the workings. Implementing the scoring mechanism for ourselves, we come to a very different outcome from the Council, a figure which

is not mentioned or acknowledged in their comments. The Council awarded the Shed a 'community benefit' score of 46.2 out of 90. They gave themselves, for their housing development proposal, 75.8 out of 90. On the 'financial assessment' the Council scored themselves 42.2 out of 52, the Shed being given 14.8 out of 52.

5.4 We would contend that the community benefit scores are strongly skewed. On our own try at the social evaluation template we came out at around 70 out of 90, which suggests, even allowing for a degree of subjective bias on either side, that there is not the big discrepancy in community value which the council figures suggest.

5.5 On the financial side, a much more pervasive bias prevails, finance, it seems always appearing at the top of any list of criteria. We observed, in par. 8 of our review submission that in the national guidance there are 7 best value categories and these subsequently become 10 in the council assessment procedure; The inclusion of the first one, economic regeneration, is going to be biased against a small project unless it is judged proportionately, but an equally serious question is whether it is permissible to shift the goalposts in this fashion. We followed the seven criteria on pages 60 and 61. Angus Council, it would seem, unknown to us, decided to adopt a different and enlarged order of priorities. By no standard can this be accepted as fair.

5.6 We also, in our paragraph 13, pointed out our disadvantage in being confronted by economic statements that we are unable to contest without substantial research that is beyond the resources at our disposal. However one figure which we do feel able to challenge is the £370,000 market value of Invertay. In March 2018, we learned that the value was in fact £250,000. We pointed this out in our paragraph 13, there being a major discrepancy here in valuation, but all that was said in reply was that 'officers stand by the information provided in the original report as being the best and most accurate estimate of the financial implications of the different options.' In the light of this revised valuation figure, it is difficult for us blindly to accept that any of the rest of the Council's calculations are accurate.

5.7 We cannot but be uneasy about the composition of the Council CAT group, chaired by the Director of Finance, and including an accountant and an estates manager, but singularly light on people with an explicit professional community development role. We are not of course casting any aspersions on the integrity of the members of the group but there is such a thing as institutional bias, and we see it expressed in the orientation of the group towards places and things rather than people and their relationships.

5.8 Further, we provided a link to the '*Social Return on Investment*' document which offers a means of estimating social and community value on a more equitable basis. There is a strong tendency, which is unfortunately reinforced in the national guidance, to make financial value the starting point, the benchmark, as it were, over against which the challenge is issued to the community body to try to reach that standard.

5.9 The social value of the Shed can thus be worked out by taking, as an example, an annual gross income of £6,000 and multiplying it by a factor of 12, a total of £72,000 which is getting close to the £90,000 stated value of the Machine Room. Our focus is not these particular figures, which are used to illustrate the process, but that the Council did not recognise this important tool in their response to our review statement.

6. Sources of information and support

6.1 We have mentioned the major difficulties we have been experiencing in obtaining information pertinent both to the application and the review. The Government guidance makes it clear that relevant authorities are required to offer up as much of this as is possible, subject to availability. We understand this requirement to one in which relevant authorities should be

diligent in offering up all useful material in their possession to assist the community body in their submissions.

6.2 With regard to the obtaining of such information, much is made in the responses to our review comments about the role of community officers. We have very much valued the support of Donald McNeill who indeed was responsible for getting the Shed going in the first place, but we feel that the several statements about community officers being 'conduits' for guidance re CAT conceals a much more complex network of possible communication and miscommunication. There is an element of unrealism in the repeated suggestion that there is a single, clear and easily accessed route to information by way of these officials. With no disrespect to them, they operate mostly on a part-time basis, have diverse roles and multiple responsibilities, operate from several bases and get moved around frequently. 'Agile working' rules.

6.3 Moreover many of the issues that have arisen over these months, have been covering new ground, and many sources of support have been used to find ways forward. We have gained much from consultations with the Community Ownership Support Service, the Sheds Development Officer at Age Scotland and the Scottish Men's Sheds Association. Consultation with such independent agencies is vital and indicates that there is not one simple straight-line route in seeking advice on procedures etc.

7. Review Committee decision

7.1 Another serious concern relates to paragraph 6.2 of report 416/19 (**Document 6**) which first of all correctly quotes the national guidance regarding the review but then introduces five criteria on which the committee are to base their decision. The statement reads:

The Committee is advised that it should only uphold the review if it considers that either:-

- a. the decision is perverse or that no reasonable public body would make the decision subject to challenge;
- b. in making the decision the Policy and Resources Committee took into account an immaterial consideration;
- c. in making the decision the Policy and Resources Committee failed to take into account a material consideration;
- d. the decision is tainted by procedural impropriety; or
- e. the Policy and Resources Committee erred in law in making the decision.

7.2 None of this appears in the National Guidance; nor was it included in the similar report 352/19 which was sent out for the subsequently cancelled 25 October meeting. (**Document 7** is the whole package of papers sent out for this meeting.) It suddenly made an appearance in report 416/19 for the 9 December meeting, this being the first sight of it the Shed has had. We are thus severely disadvantaged by the sudden manifestation of these opaque legalistic clauses and the difficulty of interpreting them. We have no access to the source of this material and wonder if its presentation at this stage is not in itself a 'procedural impropriety'?

The nature of these paragraphs also corroborates what we said in our paragraph 14 regarding jargon. As noted the above clauses do not originate in the National Guidance and are a denial of the expressed intention of Angus Council 'to use plainer English where we can.'

8. Summary and Conclusions

8.1 It may appear that the accumulation of detail in these paragraphs amounts to nit picking. It has to be realised that it is precisely that mounting up of obstacles and obfuscations that sets the members of the Men's Shed at a severe disadvantage. Prior to and subsequent to the review committee meeting, we have spent a large amount of time juggling with a proliferation of Council reports, appendices and annexes, some being those from a previous occasion re-issued with a new name and number. For example the papers issued for the review of 25 October, (subsequently cancelled), are reproduced with new designations but with reference to their previous issue, thus Appendix B(iii) to Report 415/19 is a reprint of Appendix 2 to Report 101/19, etc, etc, etc.

8.2 It is clear from what has been stated here that the assessment of benefit and value has not been carried out according to the required standards of providing information relevant to the CAT request, especially in terms of being proactive in providing details of the evaluation template that would enable the Shed to do its own calculations.

8.3 There has been a resistance (or an unwillingness) to engage in consultations that might have provided a better mutual understanding of the respective positions.

8.4 In sum there has been a serious lack of the transparency on which the whole CAT process is supposed to be based. Angus Council has recently been found wanting in this quality in other respects, and an assurance has been given by the Chief Executive that 'in future officials would give fewer closed door briefings to elected members.' The Council policy of 'agile working' seems often to be more one of 'elusive working'.

- **With reference to section 20.8 of the Guidance, we would prefer some form of face to face discussion to have a place in the appeal proceedings, by way of a hearing and/or site visit, rather than a decision being made solely on the basis of written documentation.**

Document 1	Carnoustie and Monifieth Men's Shed CAT Request document 15 October 2018 <ul style="list-style-type: none"> 1a Constitution 1b Development/Business Plan 1c Drawing 1d letters of support
Document 2	Angus Council Policy and Resources Committee 4 April 2019 Report 101/19.
Document 3	Angus Council Decision Notice 5 April 2019.
Document 4	Carnoustie and Monifieth Men's Shed CAT review request document 30 April 2019
Document 5	Angus Council CAT group response Appendix C to report 352/19
Document 6	Angus Council CAT Decision Review Committee Report 416/19 December 2019
Document 7	Angus Council CAT Review Process and Guidance 352/19
Document 8	Angus Council Evaluation Panel Templates. Annex A to Appendix 1 of Report 105/18.
Document 9	Angus Council Report 105/18
Document 10	Angus Council Review Decision Notice 17 December 2019