

Agenda Item	12.
Report No	CC/15/22

THE HIGHLAND COUNCIL

Committee: Caithness Committee

Date: 22 August 2022

Report Title: Wick Common Good Fund – Consultation on proposal to dispose, by lease, of Bignold House to Wick Academy Football Club

Report By: Acting Depute Chief Executive and Executive Chief Officer – Performance and Governance
Executive Chief Officer – Communities and Place

1. Purpose/Executive Summary

- 1.1 This report provides information on the outcome of the public consultation under section 104 Community Empowerment (Scotland) Act 2015 on the proposal to dispose, by lease, of Bignold House, Bignold Park, South Street, Wick to Wick Academy Football Club.

2. Recommendations

2.1 Members are asked to:

- i. Note the outcome of the consultation process undertaken as detailed in paragraph 4 below and contained in the analysis at **Appendix 1**
- ii. Approve the responses to the representations raised in connection with the proposal for publication on the Council's website as contained in the table at in **Appendix 1**.
- iii. Agree the proposal to dispose, by lease, of Bignold House, Bignold Park, South Street, Wick to Wick Academy Football Club.
- iv. Note that, if agreed, it will be necessary to seek Sheriff Court consent in respect of the disposal because the land is considered inalienable.

3. Implications

- 3.1 Resource – The proposal for Bignold House will result in the creation of a long lease to Wick Academy Football Club. Wick is a recently reactivated Common Good Fund and the lease of Bignold House will benefit the fund as not only will it provide regular income but will also see the asset continue to be used, maintained and kept in repair by the proposed tenants. The proposed tenants have agreed to meet the costs associated with the consultation and Court proceedings.
- 3.2 Legal - The statutory requirement to consult has been complied with. Where land is also considered to be inalienable, there is a statutory requirement to seek Court approval to the disposal. Bignold House takes its title from Bignold Park on which it is constructed. As Bignold Park is considered to be inalienable Common Good land, the requirement to seek Sheriff Court approval must also be complied with.
- 3.3 Community (Equality, Poverty, Rural and Island) – Bignold House is currently vacant. The proposals by Wick Academy Football Club will see the building brought into new and improved use with provision of office and meetings space, tea facilities as well as new toilets on the upper floor and disabled facilities on the ground floor. There would also be scope for renting out some of the spaces for community meetings. In addition, the lease would provide a rental income for the recently reactivated Wick Common Good fund.
- 3.4 Climate Change / Carbon Clever – any works or renovations would give consideration to using more environmentally friendly materials and products where possible.
- 3.5 Risk – no implications.
- 3.6 Gaelic – no implications.

4. Consultation on proposal to dispose, by lease, of Bignold House to Wick Academy Football Club

- 4.1 Bignold House is not subject to any lease arrangement and is currently vacant. Wick Academy Football Club already lease the surrounding land for their pitch and approached the Council to seek a lease of Bignold House too. Their wish would be to use the building as office and meeting space, tea facilities, hospitality space for sponsors and guests and to make available space for community groups to rent. In addition they would wish to provide new toilets on the upper floor and disabled facilities on the ground floor. Such an arrangement would see a rental income being received into the recently reactivated Wick Common Good fund as well as ensure the asset continued to be used, maintained and repaired by the tenant. Proposed terms have been negotiated for a 50 year lease on the basis of full repair, maintenance and insurance at a rental of £1,000 per annum reviewed every 5 years.
- 4.2 In Highland a long lease of 10 years or more is considered to be a disposal of Common Good property and triggers the requirement to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015. The proposal was put to Members which received support to commence a consultation on the proposal as contained in the consultation document was confirmed by email in January 2022.

4.3 The public consultation commenced on 20 January 2022 and concluded on 21 March 2022. An analysis of the outcome of the consultation has been prepared and can be found at **Appendix 1**.

4.4 A total of 5 responses were received including responses from the Community Council and local residents. The responses are broken down as follows:

- 2 were fully supportive
- 3 were supportive but also raised comments/issues for response.

4.5 **Appendix 1** provides examples of supportive comments received at section 2a. A table detailing the representations received in connection with the proposal and the suggested responses from the Council for publication on the Council website is contained at section 2b.

Wick Community Council noted that the lease made sense as the property is lying empty, and it will generate income for the Common Good. In addition to the supportive comments, their representations raised were not against the transfer but related to the level of rent proposed – it is based on the size, location and condition of the property – and how any income will be managed.

4.6 Members are now asked to note the outcome of the consultation in respect of Bignold House. All responses received supported the proposal with the issues being raised relating to lease term and more general Common Good queries.

4.7 Decision making in respect of the Community Empowerment Act section 104 consultations follows the governance contained in the Council's Scheme of Delegations. Where the asset being consulted upon has a value of 10% or less against the total value of the particular area Common Good Fund, the decision is competent to be made by Area Committee. If the asset value exceeds 10% the decision must be made by full Council.

4.8 The market value of Bignold House with vacant possession has been assessed by the Council's area surveyor as being £50,000. However, that value will be impacted by the existence of the 50 year lease producing a figure, based on a yield of 7%, of £14,290. The total value of Wick Common Good Fund has been assessed at £425,354. Therefore, the value of Bignold House subject to the proposed lease is less than 10% of the total fund value and, as a result, the governance for making the decision rests with Members at Area Committee.

5. Options for next steps

5.1 Members are now asked to consider the options for dealing with the proposal. The available options are as follows:-

- Agree that the proposal for disposal by lease as outlined above should go ahead subject to Sheriff Court approval
- Amend the proposal (any significant amendment would require a new consultation process)
- Decide that the proposal should not go ahead.

On the basis of the outcome contained in **Appendix 1** it is recommended that Members of the Caithness Committee recommend that should agree that the proposal as contained in the consultation document should go ahead.

- 5.2 Bignold House derives its title from Bignold Park upon which it is constructed. Bignold Park's title is derived from the Deed of Gift by Arthur Bignold to the Provost, Magistrates and Councillors of the Burgh of Wick registered 4 May 1903. The Deed specifies that it is to be "utilised as a public park and recreation ground for the inhabitants of Wick and Poultney" and for the "use and enjoyment of the inhabitants thereof heritable and irredeemably". As a result of this dedication for public use contained in the Deed of Gift Bignold Park is considered to be inalienable. As Bignold House derives its title from Bignold Park, it is similarly considered to be inalienable.

In such circumstances it is necessary to also seek Sheriff Court approval for the disposal under section 75 Local Government (Scotland) Act 1973. How long such an application will take to conclude will be entirely contingent upon Court timescales.

Designation: Acting Depute Chief Executive and Executive Chief Officer –
Performance and Governance
Executive Chief Officer – Communities and Place

Date: 21 July 2021

Author: Sara Murdoch, Common Good Fund Officer

Background Papers:

Appendix 1 – Analysis of consultation

WICK COMMON GOOD

ANALYSIS OF COMMUNITY CONSULTATION ON THE PROPOSAL TO DISPOSE, BY LEASE, OF BIGNOLD HOUSE LOCATED ON BIGNOLD PARK, WICK TO WICK ACADEMY FOOTBALL CLUB.

1. Number of responses received

The public consultation period ended on 21 March 2022 with a total of 5 responses having been received. Responses were received from the Wick Community Council and local residents. These responses are broken down as follows:

- 2 were fully supportive
- 3 were supportive but also raised issues/comments for response.

2. Representations, questions and issues distilled from the responses received

a. Supportive comments received

The types of supportive comments received can be summarised in the following examples:-

- Great idea for Wick Academy to take over the running of the vacant property at their home ground.
- The house could have fallen into disrepair becoming an eyesore, but this will ensure it is maintained and used in a productive manner.
- Fantastic idea bringing the property back into use.
- The house is lying empty so it makes sense to lease it as it will bring income into Wick Common Good.

b. Objections or issues raised for response

Some representations received raised questions or issues for response.

The issues raised are summarised in the table below.

Questions/issues/concerns	Council's suggested response
The annual rent proposed is very low for a property of this size. How has the figure been calculated?	<p>The rental valuation of the property has been based on location, size, condition, market evidence, and lease terms. The property is of nonstandard construction and is very poorly insulated. It has previously been used as a dwelling, but it was too expensive to heat and was not fit for purpose.</p> <p>This lease will transfer all running and maintenance costs to the tenant. While</p>

	<p>securing a long-term income source for the Wick Common Good fund.</p> <p>The property has been vacant for several years and will continue to require upkeep and maintenance. The need to have a tenant take on all running costs for the subject in its present condition was a key element of this lease.</p> <p>The lease provides the best outcome for the Wick common good fund because outgoings will be minimised, and a new long-term source of income will be created. The agreed rent is the result of negotiations between the parties and the agreement represents best value.</p> <p>The proposed lease will return the subject to beneficial use and will be mutually beneficial for both the Wick Common Good fund and the Wick Football club.</p>
<p>There is no consistency with other rentals – for example a community voluntary group had to give up a 1 room garage when the rent was increased to £1,450pa but this proposal is for a figure of £1,000pa for a house to a football club receiving much more income.</p>	<p>Without specifics on the community group’s lease mentioned here there is no way to compare them accurately and fairly. Any number reasons could affect the rental value of a property from its location, size condition, market, and or lease type. All of these factors are considered when a rental level is determined. Every property is looked at on an individual basis.</p>
<p>Where will any income received be kept and how will it be distributed? Monies received should only be for the benefit of the people of Wick, community projects and not to pay for planned Council works.</p>	<p>All income will be received into Wick Common Good Fund. The Council is required to manage and account for Common Good property and funds separately from other Council property and funds. The Common Good Policy available on the Council website provides more information – the link is included below this table.</p> <p>Wick Common Good currently has minimal cash assets and it will take time for sums received to accumulate to a level whereby distributions/grants could be considered possible.</p> <p>Most of the Council Common Good funds that have been recognised for a significant period of time take</p>

	<p>responsibility for maintenance of their assets from their available funds however, this will not be possible for Wick until funds have accumulated. Common Good is property owned by the Council and, as such, responsibility will remain with the Council for such matters until Wick Common Good is able to take on this responsibility.</p> <p>Local authorities are not bound to spend Common Good funds only within the boundaries of the former Burgh. However, they are bound to “have regard” to the interests of the inhabitants of the former Burgh. The former Burgh boundaries were as existed in May 1975 when the Burghs were abolished so may not reflect modern day boundaries. In practise, Highland Council applies Common Good to the area to which it belongs and not outwith that area.</p> <p>Common Good funds are not used to pay for or meet shortfalls in respect of work due from other Council budgets.</p>
<p>Wick Community Council raised some specific queries on the proposed lease terms as follows:</p> <ul style="list-style-type: none"> • Break option should be subject to 6 months’ notice not 3 months as suggested. • Rental should be £3,000pa not £1,000pa. • Why should there be a rent free 12 month period? It should be at a reduced rent instead – half the annual rent would be fair. 	<p>Local members were fully briefed on the proposed lease terms.</p> <ul style="list-style-type: none"> • 3 months’ notice is the standard lease term the council offers on commercial leases. • The rental level of £1,000pa was reached with the club taking on property in its current condition and agreed by local members. This lease will see all running and maintenance costs fall to the tenant. While securing a long-term income for the Wick common good. • A lease of this length is considered to be a disposal. Common Good legislation requires that there must be a public consultation and, if approved, approval of the Sheriff Court. The Football Club is meeting the costs of the consultation and Court process the total cost of which exceeds the rent free period. Allowing a

	rent free period reflects both these costs and any additional risk.
What admin fees will be charged to Wick Common Good in respect of overseeing the lease and any rent reviews?	Corporately, the established Highland Common Good funds pay a central support charge which covers such services as support from the Council finance team. Monitoring of the lease would be down to the area surveyor and the ward manager. The rent review pattern is every 5 years and is tied to an inflationary index. The area surveyor would issue the rent review notice and conclude the rent review. The usual practise is for a charge on a time taken basis to be made by the Estates Team recoverable against the particular Common Good fund concerned.
Ideally Wick Common Good will be overseen by a committee which includes local representatives as well as the local Area Councillors.	Common Good is a statutory responsibility of local authorities. Currently Highland Common Good funds are managed in a corporately consistent manner with none of them including community representatives on the Area Committees responsible for administering and decision making. All decisions in respect of the common good are taken in compliance with the relevant statutes and the Council's Scheme of Delegation.

Common Good Fund Policy

https://www.highland.gov.uk/downloads/download/1845/common_good_fund_policy

3. Next steps

- Consider and agree responses to the above questions/issues raised. Once approved they will be included in a document for publication on the Council website and notifying to those who have responded within the consultation process.
- Members to consider the outcome following the consultation process. If the value of the proposed disposal is up to 10% of the Fund value, the decision in respect of the proposal rests with Nairnshire Committee. If the value exceeds 10%, the decision falls to full Council. The total value of Wick Common Good Fund has been calculated to be £425,354 with Bignold House lease being valued at £50,000. Therefore, the final decision will rest with full Council.

4. Decision making options

Available options are as follows:-

- Recommend to full Council that proposal should go ahead in the terms of the consultation document.
- Consider if any amendments to the proposal should be recommended in light of the representations received – any significant amendments will trigger a fresh consultation process.
- Recommend that the proposal should not go ahead

5. Additional information

The proposal for a lease of 50 years constitutes a disposal. Bignold House derives title from Bignold Park on which it is located. Bignold Park was gifted by Arthur Bignold to the Provost, Magistrates and Councillors of the Burgh of Wick on 4 May 1903.

The Highland Council have a statutory obligation to seek court consent before disposing of Common Good land which may be 'inalienable'. Property is considered to be inalienable if it falls into one of the following categories:

- The Title Deed of the property dedicates it to a public purpose, or
- The Council has dedicated it to a public purpose, or
- The property has been used for public purposes for many years (time immemorial) without interference by the Council.

In this particular case, Arthur Bignold acquired the ground with a view "to its being utilised as a public park and recreation ground for the inhabitants of Wick and Pultneytown". He gifted it to the Royal Burgh of Wick "for the use and enjoyment of the inhabitants thereof heritable and irredeemably". Therefore, it is dedicated to a public purpose and triggers the requirement to seek Sheriff Court approval.

The Community Empowerment consultation and Court application are separate to any process and consultation under planning legislation.

Sara Murdoch
Common Good Fund Officer
12.04.2022