

Shetland Islands Council – Community Asset Transfer

Reviews and Appeals Procedure

In line with the requirements of the Community Empowerment (Scotland) Act 2015, the procedure below sets out the processes by which community transfer bodies can pursue a review or appeal of a decision to decline and asset transfer request.

Please note, these procedures may be subject to review.

Reviews and Appeals

A community transfer body can ask for their asset transfer request to be re-examined in certain circumstances. This can either be in the form of a **review** (where the asset transfer request is considered again by the Council) or an **appeal** (where the asset transfer request is considered by the Scottish Ministers).

A community transfer body can seek a review or appeal if:

- their request is refused,
- the terms and conditions in the decision notice are significantly different from those in the request
- no decision notice is issued within the required period.

The steps in the review and appeal processes are shown in the **flowchart** below.

A community transfer body cannot seek a review or appeal in relation to the terms and conditions in the decision notice if it has already made an offer, unless it first withdraws that offer. If the community transfer body makes an offer after submitting an appeal or application for review, the appeal or review is treated as having been withdrawn.

A community transfer body can also appeal to the Scottish Ministers if a request is agreed, but no contract is concluded within the required time limit of 6 months. In all cases the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them (except by judicial review).

Review of a request made to the Council

If the Council declines the initial request, a community transfer body can apply for an internal **review** by the Council. This is an option open only to Councils, other relevant authorities are not covered by this provision. Applying for a review must take place within **28 days** of the decision notice being issued.

An application for review must:

- include the name and contact address of the community transfer body;
- specify the land to which the asset transfer request relates;

- include a statement setting out the community transfer body's reasons for requiring a review of the case and by what, if any, procedure¹ (or combination of procedures) the community transfer body considers the review should be conducted;
- be accompanied by a list of all documents, materials and evidence which the community transfer body intends to rely on in the review.

The application for review must also include a copy of all documents, evidence and materials listed in the list described above, other than the materials already submitted to the Council as part of the original request.

If the Council considers that the review documentation provides sufficient information to enable a decision to be made, the review will proceed as set out below. However, the Council may decide that further procedure is required and can, at any stage of the review, determine that further representations should be made or information supplied. The Council can also determine how the representations should be made or further information provided, either through written submissions or via a hearing panel.

Written submissions are requested by written notice to the community transfer body and any other relevant people; the notice is to include the matters requiring further representation or additional information and the date for submission. Additional material should be submitted in writing within **14 days** of the written notice being received.

Hearing panels will again be arranged by giving written notice to the community transfer body and any other relevant people and anyone intending to attend the hearing panel will have **14 days** to acknowledge the written notice and state their intention. Notice for the date of the hearing session will be at least **14 days** from the deadline for acknowledgement. The hearing panel should be arranged in communication with all relevant parties to find a mutually agreeable location, time and date (this process can be facilitated by the Council's **Community Planning and Development Service**). Once notice has been acknowledged, the community transfer body should also be instructed to provide a statement supporting the reasoning behind their appeal and any additional documentation they intend to rely on at the panel. This period also affords the Council an opportunity to request any further information, which should be provided by the community transfer body. This should be submitted at least **7 days** prior to the date of the hearing panel.

In carrying out a review, the Council must consider the request in the same way as the original process and taking account of the same factors and benefits of the request and any alternative proposals. The difference in this instance is that the process is carried out by Councillors and cannot be delegated to officers. This represents an escalation, as delegated authority for using the decision making framework will always rest with officers for the original application. The Council will agree the hearing panel process and appoint a hearing panel. The panel is likely to be constituted of the Policy and Resources committee.

Whether a review proceeds via written submission or hearing panel will be determined by the value of the asset concerned.

- If less than £25,000 then the review will proceed via written submission

¹ Written submission or hearing panel (see below)

- If greater than £25,000 then the review will proceed via hearing panel

However, a community body are entitled to request either of the above options depending on their own preference and logistical concerns.

Having carried out the review, the Council may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. If the request is agreed following the review, the process continues as set out in the section '**After agreement**'. If the outcome of the review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal to the Scottish Ministers. The required period for decision will be **6 months** from the date of the application for review.

Review of requests made to the Scottish Ministers

Community transfer bodies are also able to apply for a review to the Scottish ministers if the original request is made to the Scottish Ministers (i.e. to another relevant authority other than the Council). Again, the request should be submitted within **28 days** of the decision notice. The procedures for this are set out in regulations and the outcome is the same; i.e. the Scottish Ministers may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. A new decision notice will be issued. If the request is agreed following the review, the process continues as set out in the section '**After agreement**'. If the request is refused following the review, the asset transfer process comes to an end.

Appeal to the Scottish Ministers

If the review by the Council does not resolve the issue or if the request is made to any other relevant authority, the community transfer body can appeal to the Scottish Ministers. Again, the request should be submitted within **28 days** of the original or revised (following review) decision notice.

On appeal, the Scottish Ministers can consider any aspect of the previous decision, whether it is mentioned in the appeal or not. They can "allow" the appeal, meaning that they agree with the community transfer body's case and the decision is to be changed, or they can "dismiss" it, meaning that the community transfer body loses the case and the original decision stands. If the appeal is allowed, the Scottish Ministers can overturn or change any part of the decision made by the relevant authority, including any of the terms and conditions attached to it, even if that part of the decision was not challenged in the appeal documents. Procedures for the appeals process are set out in regulations (Asset Transfer Request (Appeals) (Scotland) Regulations 2016)

If the appeal is allowed and the relevant authority is required to agree the transfer of the land or rights requested, or is required to agree to specified terms and conditions, the Scottish Ministers must give a direction to the relevant authority, requiring it to issue a new decision notice. This replaces the original decision notice. The direction must set out the terms and conditions which the Scottish Ministers require to be included in the decision notice, any other steps which the relevant authority is required to take, and the deadline by which these things must be done. Once the new decision notice is issued, the process continues as set

out in the Council's Policy (section '**After agreement**'). If the request is refused following an appeal, the asset transfer process comes to an end.

Flowchart 5: Review & Appeal and Conclusion



