BEST VALUE IN THE DISPOSAL OF LOCAL AUTHORITY ASSETS

Thank you for your letter dated 18 February, which was also sent to the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights and the Cabinet Secretary for Rural Affairs, Food and the Environment. This response is on behalf of us all.

I agree it is disappointing that local authorities and other public bodies are perhaps not making as much use as they could of the powers they have to dispose of assets at less than market value, where there are other public benefits to be gained. However, I believe the Community Empowerment Bill will make a significant difference in this area.

It is important to recognise that the experiences you have heard about in oral evidence, and the responses received from local authorities, are set in the current context in which there is no requirement for local authorities or public bodies to have asset transfer arrangements in place. Hence some authorities have no policy for or experience of transferring assets, and where policies are in place there is substantial variation between them.

The Bill will mark a complete change in that position, by introducing a statutory scheme for asset transfer. Although to date some community bodies have sought to acquire public sector land through the community right to buy provisions in the Land Reform (Scotland) Act 2003, in future we expect that all such requests will be through the asset transfer provisions, as this will be a simpler process.
Local authorities and public bodies will have to deal with requests they receive in line with the statutory procedures and timescales, and will be required to agree to the request unless they have reasonable grounds for refusal, which they must set out in the decision notice. This will significantly strengthen the position of community bodies making requests.

In addition, there is provision for community bodies to seek an appeal or review if their request is refused, or if it is agreed but the terms and conditions offered, including the price, are significantly different from those proposed by the community body. In the case of requests to public bodies, this appeal will be to Ministers. In the case of local authorities, it will be an internal review, but will ensure that the final decision is made by elected members, not just officers.

The criteria which a relevant authority is to consider in making its decision on an asset transfer request include whether agreeing to the request is likely to promote or improve economic development or regeneration, public health, social well-being or environmental well-being. These are the same criteria that a local authority is required to take into account in considering whether a disposal at less than best consideration is permitted, under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. There is therefore a clear read-across between agreement to an asset transfer request and benefits that could justify a discounted price.

In relation to other public bodies, I amended the Scottish Public Finance Manual in October 2014 to highlight the need to take account of wider public benefits in the disposal of assets. This states:

"Where there are wider public benefits, consistent with the principles of Best Value, to be gained from a transaction, disposing bodies should consider disposal of assets at less than Market Value. This includes supporting the acquisition of assets by community bodies, where appropriate."

The Community Ownership Support Service (COSS) is funded by the Scottish Government to support both community bodies and local authorities (and other bodies) in the transfer of assets to communities. In August 2013, COSS together with the Association of Chief Estates Surveyors, representing local authority property managers, issued guidance, "Asset Transfer from Policy to Practice", which includes advice on evaluating the benefits of community proposals and appropriate discount.

I am happy to make a firm commitment that the Scottish Government will update and provide further guidance to local authorities and public bodies in connection with the introduction of the asset transfer provisions in the Bill, which will include guidance on valuation of assets and the assessment of wider benefits in the consideration of best value and discounting. This has always been our intention, and will be taken forward in collaboration with community bodies and support organisations, as well as local authorities and public bodies.

1 http://www.gov.scot/Topics/Government/Finance/spfm/PropertyManagement
I do not believe it is appropriate to introduce a statutory presumption in favour of sales to communities at a nominal price. It is essential that public sector bodies are transparent in their financial dealings and can be held responsible for their stewardship of taxpayers' money. Market Value is embedded in International Accounting Standards and International Valuation Standards for this purpose. While in many cases transferring an asset to a community body has benefits that justify a discount, each case should be assessed on its own merits. Local authorities and public bodies must take account of the interests of all the people they serve, and consider the impact that income foregone, in the shape of a discount, may have on other services and planned investments. A statutory presumption would presumably have to indicate the degree to which the value of an asset should be discounted, and I doubt this could be sufficiently sensitive to account for all the factors that should be taken into consideration. I believe that statutory guidance is the best way to provide for that necessary level of discrimination.

There may also be a risk that selling a public asset at a reduced price might constitute State aid and will have to comply with State aid rules. This is an issue which any public authority must consider in its transactions. State aid rules take precedence over national laws, and would therefore over-ride any statutory presumption of discount. In the event that the European Commission were to investigate and find the aid illegal, the full aid amount and compound interest would be required to be repaid by the recipient to the funding body.

You also recommend introducing a mechanism to adjudicate in cases where there are suggestions that local authorities and other public sector bodies may be seeking to frustrate local communities. As I have said, I believe these situations will be less likely to occur once a statutory asset transfer scheme is in place. However, as part of the Short Life Working Group looking at the target of 1m acres in community ownership by 2020, we will be considering the remit of a Community Land Agency, and such a mediation or adjudication role could potentially be given to that body.

I am grateful to the Committee for its consideration of this issue, and I look forward to the progress of the Community Empowerment Bill at Stage 2.

JOHN SWINNEY