

**EDUCATION, RECREATION AND CULTURAL SERVICES COMMITTEE:
11 NOVEMBER 2009**

**EGILSAY PRIMARY SCHOOL,
PROPOSED LEASE OF PREMISES TO EGILSAY COMMUNITY ASSOCIATION**

REPORT BY DIRECTOR OF EDUCATION AND LEISURE SERVICES

1. PURPOSE OF REPORT

- 1.1 To note the current position in respect of the statutory consultation process to consider the possible discontinuation of Egilsay Primary School;
- 1.2 To consider leasing the premises of the Egilsay Primary School to the Egilsay Community Association for a minimal rent below market rent value.

2. RECOMMENDATIONS

The Committee is invited to note:-

- 2.1 that Egilsay Primary School has not been utilised as a school since 2004;
- 2.2 that a recent review of the Janitorial Services, undertaken within Education and Leisure Services, identified that the current level of caretaking and cleaning at Egilsay Primary School was no longer required, resulting in the caretaker being made redundant with effect from 31 March 2009;
- 2.3 that, in order to support the continued use of Egilsay Primary School by Egilsay Community Association, officers within Education and Leisure Services agreed to investigate the possibility of leasing the premises to Egilsay Community Association at a minimal charge below market rent value;
- 2.4 that the Council had previously agreed that the Director of Education and Leisure Services should instigate the statutory consultation process to consider the possible discontinuation of Egilsay Primary School; and
- 2.5 that the Director of Education and Leisure Services will now instigate the statutory consultation process in respect of the possible discontinuation of Egilsay Primary School;

It is recommended:-

- 2.6 that the Director of Education and Leisure Services should submit a report, to the meeting of the Committee to be held in March 2010, on the outcome of the statutory consultation process referred to at paragraph 2.5 above;
- 2.7 that, further to the statutory consultation process referred to at paragraph 2.5 above, and Scottish Ministers' consent to discontinuation being received, the premises be moth-balled as a school at this time;

- 2.8 that the Solicitor to the Council should seek the consent of Scottish Ministers to lease Egilsay School to Egilsay Community Association at a rent of £1 per annum; and
- 2.9 that, subject to the consent, referred to at paragraph 2.8 above, being received, the premises be leased to Egilsay Community Association for a peppercorn rent of £1 per annum, for a period of 5 years, on such terms and conditions as determined by the Solicitor to the Council.

3. **POLICY ASPECTS**

- 3.1 The proposal outlined in this report will allow the community to utilise Egilsay Primary School for community run activities. It progresses two of the Council's declared 6 key priorities and promotes two of its 6 values, as follows

Council Priorities:

- **sustainable communities**
- **schools and community facilities**

Council values:

- **promoting sustainability** – to make sure economic, environmental and social factors are balanced
- **working with communities** – to involve community councils, community groups, voluntary groups and individuals in the process

4. **INTRODUCTION**

- 4.1 At its meeting held on 14 June 2000, the Education Committee noted:

4.1.1 the decline of the primary pupil roll at Egilsay Primary School and the difficulties being experienced in recruiting staff to small island schools, together with proposals for the future provision of education on Egilsay;

- 4.2 The Committee recommended:

4.2.1 that Egilsay pupils should attend Rousay Primary School on a full-time basis; and

4.2.2 that the Director of Education and Recreation Services should instigate the statutory consultation process to consider the possible discontinuation of Egilsay Primary School.

- 4.3 At its meeting held on 30 January 2002, the Education Committee:

4.3.1 recommended that Egilsay pupils should attend Rousay Primary School on a full-time basis in the case of primary school pupils; and

4.3.2 reaffirmed the policy that the Director of Education and Recreation services should instigate that statutory consultation process to consider the possible discontinuation of Egilsay Primary School.

- 4.4 At its meeting held on 13 November 2003, the Education Committee noted that the Director of Education and Recreation Services had refrained from instigating the statutory consultation process to consider the possible discontinuation of Egilsay Primary School in order to ensure that the best possible educational opportunities were afforded to a pupil living on Egilsay;
- 4.5 The Committee recommended that, subject to appropriate arrangements being secured to transport any pupils resident on Egilsay attending Rousay Primary School, the Director of Education and Recreation Services should thereafter instigate the statutory consultation process to consider the possible discontinuation of Egilsay Primary School.

5. BACKGROUND

- 5.1 Egilsay Primary School has not been used since 2004 and although it is not anticipated that it will be used again in the near future it is still 'moth-balled' ie the asset is maintained, and the school is not formally closed, although use of the property is still made by the community. No action has yet been taken to instigate the statutory consultation process to consider the possible discontinuation of the Egilsay Primary School.
- 5.2 Until 31 March 2009, a part-time caretaker was employed for 10 hours per week to check the heating and water, maintain security and undertake general maintenance. The caretaker also cleaned the premises after any community use and maintained the grounds surrounding the premises.
- 5.3 A recent review of the Janitorial Services within the Education and Leisure Service identified that the current level of caretaking and cleaning was no longer required. The caretaker was made redundant with effect from 31 March 2009.
- 5.4 In order to support the continued use of the school premises by the Egilsay community, under the overall supervision of the Community Association, it was agreed to investigate further the possibilities of leasing the premises to the Community Association at a peppercorn rent. This could be implemented through an agreement with Egilsay Community Association that they would undertake the user responsibilities as necessary, such as water and security checks, as well as keeping the building clean and tidy. Reasonable electricity and insurance costs would continue to be met from the Service budget. A lease would be prepared by Legal Services to formalise this arrangement.

5.5 A recent property survey was undertaken by Technical Services in June 2009. Although the building is structurally sound and fit for purpose there are a number of items requiring urgent attention. The property report provided three estimates:

Estimate 1 – Costs of urgent repairs to maintain fabric	£19,110
Estimate 2 – Costs of essential repairs (4 – 10 years requirements)	£24,920
Estimate 3 – Costs of long term repairs (beyond 10 years)	£72,042

The repairs and maintenance budget is able to cover the works listed in Estimate 1, to be carried out over the next two financial years.

5.6 In the matter of the future of the Egilsay Primary School the Council has three options:

5.6.1 Do nothing

To do nothing would avoid the costs of maintaining the asset, and would avoid the fairly elaborate process of consultation with a view to closing a school. The problems with this option are that a small community with limited financial capacity would be expected to utilise a deteriorating accommodation, and that in the event of a primary aged child coming to Egilsay, the previous issues of requiring a youngster to commute to Rousay while Egilsay Primary School remained opened would have to be revisited;

5.6.2 Seek to close the school and dispose of the asset

As, from August 2010, there will be no primary-aged children whose parents or guardians wish to use local authority provision remaining on Egilsay, it would be logical to pursue current Council policy to consult with a view to closing the school. In the current political climate, the process may create some controversy. To dispose of the asset, however, would leave a small island community with no affordable means of securing community facilities.

5.6.3 Seek to close the school and retain the asset for community use.

This option has the same school-related benefits as option 2, and also provides the community with community facilities in an affordable way, and supports the Council's priority for sustainable communities.

The recommendations of this report support option 3.

6. **PERSONNEL IMPLICATIONS**

6.1 There are no personnel implications arising from this report.

7. FINANCIAL IMPLICATIONS

- 7.1 Education and Leisure Service already meet the running costs of the premises at a cost of £6,600 in 2007/08; £3,700 in 2008/09 and a budget of £2,500 has been allocated for 2009/10. In addition to this the Service has been able to generate an efficiency saving of £4k in the form of staff costs following an internal review of janitorial services.
- 7.2 Future maintenance costs are contained within existing Education and Leisure Services revenue budgets. Should the Council decide to retain the asset, immediate costs in the region of £20,000 would be incurred in repairs and maintenance. Should the Council decide to dispose of the asset, this expenditure would not be necessary.
- 7.3 In order to protect the Council's VAT recovery position, consideration will be given to apply for an option to tax on the premises. In this way any VAT costs incurred as landlord to these premises can still be recovered through HMRC.

8. LEGAL ASPECTS

- 8.1 The Council's title to the school at Egilsay is contained in a Feu Charter in favour of The School Board of Rousay in 1876. The title contains a burden limiting the use of the subjects to use as an education facility. This is no longer applicable due to the Title Conditions (Scotland) Act 2003, Section 88, which states that after 5 years of the Act coming into force (4 April 2003 – In force Date) the reversionary conditions imposed in the deed are no longer applicable.
- 8.2 The Council is required by statute (Section 22A of Education Scotland Act 1980) to carry out a consultation exercise with regard to the proposed closure of the school and 'mothballing of the site'. All proposals to "discontinue a school" are included under this legislation, and this will include the proposal to "mothball" the school. Whilst the legislation sets out the minimum standard for consultation, councils are encouraged to seek wider consultation wherever possible. The Council is required by the Education (Publication and Consultation Etc) (Scotland) Regulations 1981, as amended where there is a proposal to discontinue a school; to publicise its proposal, consult parents and school boards affected, and allow them and other interested parties a minimum 28 day period to make their views known to the authority.
- 8.3 Those parents with children under the age of 5 who would be eligible to attend the school within two years from the date of the proposal must be notified and consulted. The consultation with parents of such children, who are not at the date of the proposal of school age and not in attendance at a primary school within the management of the Council, may be notified in writing or by way of advertisement in a local newspaper; outlining the proposal and stating where full details of the proposal may be obtained and an address to which representations can be submitted and where if applicable a meeting shall be held. Such notice must state the minimum 28 day period.

- 8.4 The Parent Council would if applicable have to be consulted too.
- 8.5 Those parents with children within the catchment area of the school at primary school age who attend other schools run by the authority or are home schooled may require to be consulted. The regulations state that “the parent of every pupil in attendance at any school affected by the proposal” must be consulted. The school which they currently attend (or perhaps the fact they are home schooled) may be said to be “affected” by virtue of the children’s attendance there. Consultation with such parents would certainly be “best practice”.
- 8.6 Where written notification is applicable it should be addressed to each of the parents concerned. The written notification must outline the proposal as in the Council’s opinion affects the parent to whom the notification is issued (and it is suggested by the writer should address issues involving; cost effectiveness and current and future educational provision, as well as future proposed possible uses of the school (As this is a consultation exercise any future use must be referred to in such terms as makes it clear that it is only proposed and possible, particularly as all views of the parents must be taken into account). The written notification must indicate where full proposals can be obtained and such further information as is appropriate. The letter of notification (which can be issued by post or by hand) should also state an address or addresses to which representations may be made on the proposal within the period specified in the notification, that being a period of not less than 28 days from the day immediately following the date of issue of the notification (Extra days should be allowed for if the postal service is limited).
- 8.7 The Council must have regard to any representations received in reaching its decision.
- 8.8 It should be noted that ‘best practice’ would seem to suggest that even where notification is completed by writing to the relevant parties that the proposal should also be publicised and a notice entered into a local newspaper circulating in the area concerned.
- 8.9 Any meeting held (meetings are not mandatory but are “best practice”) should be notified to the parents within the written notification (and any public notice), detailing the date, time and place at which representatives of the Council shall be present for the purposes of explaining the proposals, answering questions and taking account of the representations of parents made at the meeting. Any such meeting requires to be held outwith normal working hours not less than 14 days after the date of issue of the notification, and the place of the meeting should be, in the opinion of the Council, the most convenient on account of its geographical location in relation to the area of residence of the parents invited to attend.
- 8.10 The school closure should fit in with the Council's School Estate Management Plan. Once the consultation process has been concluded, copies of the consultation documents, any representations received and a note of how the consultation was carried out should be retained, and available for inspection.

- 8.11 Ministerial consent is only required in instances where the school roll exceeds 80 per cent of the school's capacity or where pupils will have to attend a different school over 5 miles away. As no pupils currently attend the school this would appear to not be the case. If the school currently attended by pupils is over 5 miles from the school proposed to be closed (measured by the nearest available route) it may be best practice to consult the Scottish Ministers and ask them to confirm that consent is not required in this instance as no children currently attend the school.
- 8.12 The Schools (Consultation) (Scotland) Bill was introduced in the Scottish Parliament on 2 March 2009. The Bill is currently being considered by the Education, Lifelong Learning and Culture Committee as part of its stage 1 scrutiny. Assuming its safe passage through Parliament the Bill will commence in early 2010. The Council should proceed without delay to start the consultation exercise before new regulations come into place. The new legislation will impose a new duty on the local authority to take into account certain prescribed additional factors before deciding to consult on a proposal to close a rural school. These include the effect on the local community, including the sustainability of the community and whether there is any viable alternative. The Scottish Ministers may "call-in" any decision by the local authority to close a rural school within 6 weeks of the decision being taken, and where this occurs the Scottish Ministers will be able to determine the proposal by withholding their consent, granting consent under conditions or granting consent unconditionally. As a consequence the local authority will not be able to implement its decision for 6 weeks to allow the Scottish Ministers to call in the decision, and if called-in the Local Authority will not be able to implement its decision until Scottish Ministers' consent is provided.
- 8.13 In terms of Section 74(2) of the Local Government (Scotland) Act 1973 a local authority shall not dispose of land for a consideration less than the best that can reasonably be obtained without the consent of the Scottish Ministers. In order to comply with this provision property is normally advertised on the open market inviting offers over valuation. However, advertisement on the open market would not be appropriate in respect of the disposal of the property referred to in this report.

9. CONTACT OFFICERS

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