



Application for Review

Dear [REDACTED]

On behalf of Ochils Community Trust (OCT), I write to request a review of the Council's decision dated 15 September 2026 refusing our Asset Transfer Request in respect of the Ben Cleuch Centre, Park Street, Tillicoultry. This Application for Review is made under section 86 (2) of the Community Empowerment (Scotland) Act 2015 in relation to the Ben Cleuch Centre, Park Street, Tillicoultry, FK13 6AG (UPRN: 000035019139) by Ochils Community Trust (SC877779) registered office [REDACTED]

Our review request relates specifically to the Council's conclusion that the property was no longer available for Community Asset Transfer because a lease had been entered into with Tillicoultry, Coalsnaughton & Devonside Community Development Trust (TCDCT), and that the Council was entitled to proceed with that lease under Section 84(12)(b) of the Community Empowerment (Scotland) Act 2015.

We are requesting a review to consider whether, in the specific circumstances of this case, exercising that entitlement in the manner it did was consistent with the principles of community empowerment, transparency, proportionality and securing the greatest possible benefit for the community.

The two main considerations are as follows - more detail supporting these considerations is supplied in pages 6-8 of this submission:

1. OCT acknowledges that the Council had the legal power to conclude the lease and was entitled to rely upon Section 84(12)(b). However, the existence of that power did not remove the Council's discretion as to whether and when it should be exercised.
2. The Council's choice to not exercise this discretion meant the process for OCT was neither proportionate nor transparent and failed to assess the community benefit of the OCT Asset Transfer Request as per the Community Empowerment (Scotland) Act 2015, the Council's published guidance for Asset Transfers and the Council's Asset transfer Strategy as part of its Targeted Operating Model.

However:

- a valid Asset Transfer Request had been submitted and accepted;
- the Council had advised OCT that the Asset Transfer route was available and appropriate;
- material changes affecting key assumptions underpinning the community benefit lease proposal being progressed by the Council were notified 5 months before concluding missives;
- health & safety breaches by the party with whom the lease was being pursued were also notified before missives were concluded;
- strong evidence of community support had been gathered through public consultation via Citizen Space;
- competing community-led proposals existed; and
- missives were concluded only a matter of weeks before determination of OCT's application.

We believe the Council not only had a reasonable opportunity to pause proceedings and undertake a fuller assessment of the available options before reaching a final decision, it had a duty to do so.

The Council asserts that the only route available to process competing bids for the same asset was to parallel process. Under Scots law, negotiating parties are not bound until missives are concluded; a material change of the case for the community benefit lease was notified to the Council on 22 December 2025 - exploring alternative options or pausing to resolve an ongoing dispute is a standard, risk-management practice in commercial transactions. The Council has a strict duty of fairness and transparency to *all* stakeholders. By prioritising one party over another, the Council acted with procedural unfairness and failed to exercise its discretion rationally.

By adopting a rigid approach and failing to consider other options such as pausing the legal process related to the community benefit lease, the Council's process was fundamentally flawed and resulted in the decision to recommend refusal on OCT's Asset Transfer Request solely on the basis of having concluded missives.

The question for review therefore is whether acting as entitled by the legislation and failing to consider or pursue alternative entitled actions best served the interests of the community and reflected the principles of community empowerment, transparency, proportionality and public value that underpin the legislation.

Accordingly, OCT respectfully requests that the review panel reconsider the decision and determine whether the refusal was consistent with the objectives and intended outcomes of the Community Empowerment (Scotland) Act 2015.

OCT is content for the review to be conducted through written submissions.

Yours sincerely,

 Shona Ulrichsen

For and on behalf of
Ochils Community Trust

Supporting Information 1. Material Change in Circumstances Prior to Conclusion of Missives

OCT submitted a valid Asset Transfer Request on 11 February 2026 in good faith and with a reasonable expectation that the statutory process would allow full and fair consideration of its proposal.

Chronology

- TCDCDT publicly announced a Licence to Occupy on 22 November 2025.
- During January 2026, OCT sought clarification regarding the options available in relation to the Ben Cleuch Centre. Council officers advised that OYCI was entitled to submit an Asset Transfer Request.
- Having exhausted alternative options, OYCI sought independent advice from DTAS, which similarly advised that submission of an Asset Transfer Request was the appropriate route available. OYCI created a new legal entity OCT to pursue an Asset Transfer Request.
- OCT's Asset Transfer Request was submitted and validated on 11 February 2026.
- The Council allocated a statutory determination date of 18 June 2026.
- Despite the existence of a live and validated Asset Transfer Request, missives for the lease were concluded in May 2026.

OCT relied upon the advice received from both the Council and DTAS and entered the statutory Asset Transfer process in good faith. Having had its application validated and accepted for consideration, OCT had a reasonable expectation that its proposal would be considered on its merits through the process established by the Community Empowerment (Scotland) Act 2015.

The Council's position appears to be that, following issue of the Licence to Occupy, progression to a lease was the only available course of action. OCT respectfully disagrees with that interpretation.

Whilst the Council was entitled to proceed with the lease, it was not required to do so. The Council retained discretion throughout the process and could have paused progression of the lease in light of subsequent material changes including:

- Since 2023 OYCI had been a partner in support of the community management of the Ben Cleuch Centre, including initiating the process via an Expression of Interest – cTSI, DTAS, Council Officers, the Strategic Director of Place & Economy [REDACTED] and elected members were all fully aware of this and attended various development meetings around this model. [REDACTED] and the Chair of TCDCDT attended OYCI's Board meeting to give reassurance to the Board about OYCI's role in this and security of tenure in the centre
- OCT understands that the community benefit lease proposal advanced by TCDCDT and considered by the Council included reference to OYCI acting as an anchor tenant within the Ben Cleuch Centre.

- OCT further understands, following advice received from DTAS, that OYCI's involvement formed part of the narrative supporting the proposal's anticipated community benefit, operational delivery model and financial viability.
- Community consultation undertaken by TCDCDT in relation to the future use of the Ben Cleuch Centre also identified OYCI as an organisation that local residents wished to see operating from and contributing to the future use of the building.

However, from December 2025 onwards, circumstances materially changed. OYCI no longer had operational certainty at the Ben Cleuch Centre and therefore its role as anchor tenant as described within the original proposal was in doubt. [REDACTED] was advised of this position during a telephone conversation on 22 December 2025, approximately six months prior to conclusion of missives. This phone call was followed by a meeting and subsequent letters detailing the circumstances and risks to [REDACTED] on 27/01/26, 03/02/26/, 09/02/26 and 06/03/26, based on DTAS advice.

By the time missives were concluded, the Council was therefore aware that a key component of the proposal originally presented was no longer in place. The proposal being progressed was materially different from the proposal originally assessed.

The Council was therefore progressing towards completion of a lease based upon circumstances that no longer reflected the operational reality of the proposal. OCT submits that this constituted a significant material change which should have prompted further consideration of whether the assumptions underpinning assessments of community benefit and financial viability remained valid and whether progression to lease completion remained the most appropriate course of action.

2. Failure to Exercise Discretion in a Proportionate Manner

OCT acknowledges that the Council was entitled to conclude a lease with TCDCDT and was under no legal obligation to suspend those arrangements following submission of our Asset Transfer Request. However, the existence of a legal power to proceed did not remove the Council's discretion - and public duty - to consider alternative courses of action.

At the time missives were concluded in May 2026, OCT's Asset Transfer Request had already been validated and accepted for consideration through the statutory process. The application had a scheduled determination date of 18 June 2026.

The period between conclusion of missives and determination of OCT's application was therefore a matter of weeks rather than months.

OCT respectfully submits that this timing is highly relevant to the proportionality of the Council's decision. Had the missives not been concluded prior to 18 June, OCT's application would have been fully assessed and presented for decision making. Effectively the decision regarding the community management of a significant Council asset, the Ben Cleuch Centre, was left to arbitrary timelines rather than a full consideration and transparent decision making of which proposal presented most benefit to the local community, how much support there was in the local community and the financial viability of each bid.

Did exercising the power to conclude missives only weeks before determination of a valid Asset Transfer Request represent the most reasonable and proportionate approach available? Did this represent Values Based Leadership and good governance?

OCT also notes that, having advised OCT that submission of an Asset Transfer Request was an available and legitimate route, it is difficult to reconcile that advice with a decision to conclude missives only weeks before the statutory determination date.

Whilst the Council was entitled to proceed with the lease, it was not required to do so. The Council retained discretion throughout the process and could have paused progression of the lease in light of the active Asset Transfer Request and the material changes which had emerged since the original proposal was presented.

Had the Council deferred conclusion of missives for a short period, it would have retained the ability to assess OCT's application on its merits and compare the options available for the future of the asset.

Such an approach would not have prejudiced the Council's ability to proceed with the lease at a later date if that remained the preferred option. However, it would have enabled a fuller and more informed assessment of community benefit, organisational sustainability, community support and public value.

In OCT's view, a short pause would have been a proportionate response and would have ensured that the statutory process which the Council had encouraged OCT to pursue was allowed to run its course.

3. Absence of Comparative Assessment of Community Benefit

The circumstances of this case resulted in the Council having before it two separate community-led proposals concerning the future of the Ben Cleuch Centre.

TCDCT's proposal was progressed through a Community Benefit Lease process, while OCT's proposal was submitted under the statutory Asset Transfer provisions of the Community Empowerment (Scotland) Act 2015.

The Asset Transfer framework exists specifically to ensure transparency, public accountability and formal assessment of community benefit, organisational capacity, financial sustainability and wider public value.

By concluding the lease before determination of OCT's Asset Transfer Request, no comparative assessment was undertaken between the competing proposals.

As a result, the Council did not have the opportunity to consider:

- Which proposal would deliver the greatest long-term community benefit;
- Which proposal demonstrated the strongest financial and operational viability;
- Which proposal offered the greatest level of sustainability;

- Which proposal represented the best overall value for the community;
- Which proposal had secured the strongest evidence of community engagement and support.

OCT notes that significant community engagement was undertaken through the Citizen Space consultation process. This generated evidence regarding community views, priorities and aspirations for the future of the Ben Cleuch Centre.

Consultation responses included support for the continued involvement of OYCI within the building and highlighted the value placed upon the organisation's contribution to local children, young people and families.

This evidence was relevant not only to considerations of community benefit but also to understanding community aspirations for the future use of the asset. However, because the lease was concluded before OCT's Asset Transfer Request was determined, this evidence was never considered alongside OCT's proposal through a formal comparative assessment.

As a result, the Council was unable to assess the competing proposals against a common set of criteria relating to community benefit, community support, financial sustainability, organisational capacity and long-term public value.

The result was that one proposal progressed to lease completion while the other was excluded from consideration without any assessment of its merits. This decision meant a timeline dictated the Council's actions. There was no parallel processing in terms of simultaneous evaluation without allowing for the same timeline for each party – instead it became a race to the finish with one party having a distinct advantage in the timelines.

The Council has fundamentally misunderstood the administrative concept of parallel processing. Parallel processing dictates that multiple bids are managed concurrently to allow for a fair, merit-based comparison; the Council has effectively turned a parallel evaluation into an arbitrary race against the clock. This completely undermines the principles of equal treatment and administrative fairness. Public bodies are bound by duties of neutrality and robust decision-making. Voluntarily choosing to conclude missives represents a profound failure to pursue obvious, lawful, and entitled alternative actions.

OCT respectfully submits that the community was denied the opportunity for the Council to determine which proposal represented the best overall outcome for local people and the greatest public value.

4. Transparency and Public Scrutiny

OCT further notes that the two proposals were being advanced through different processes.

The Asset Transfer process is a statutory process specifically designed to promote transparency, public participation and scrutiny of proposals involving community ownership, management and use of public assets.

By contrast, the Community Benefit Lease route utilised by TDCDDT was not subject to the same statutory framework, assessment process or level of public scrutiny.

OCT does not suggest that the Community Benefit Lease route was inappropriate or invalid. However, once a valid Asset Transfer Request had been submitted and accepted, it would have been possible to pause finalisation of the lease and assess both proposals against consistent criteria.

This would have enabled the Council to demonstrate transparently that the option ultimately selected represented the strongest proposal in terms of community benefit, financial sustainability and public value.

OCT believes such an approach would have better reflected both the spirit and intent of the Community Empowerment (Scotland) Act 2015.

Documents, materials and evidence which OCT intends to rely on in the review and already submitted to the Council as part of the Asset Transfer Request:

- OCT Articles of Association
- OCT Business Plan & updated Business Plan dated 260326
- OCT Budget 260326
- OCT Asset Transfer request application
- Citizen Space Public Comments and OCT responses to this
- Social Value case Study
- Social value ref LOIP Priorities
- Ben Cleuch Centre Location Plan and Layout
- Document responding to the points raised in email from [REDACTED] 23 April 2026
- 12 months scanned bank statements (OYCI)
- 3 years annual accounts (OYCI)
- Document outlining 1 year of proposed activities at the centre including need/demographic and raising awareness
- OYCI Articles of Association
- Draft lettings policy and draft conditions of let
- Draft SLA between OYCI and OCT
- Updated budget (070526) - new tab re minor repairs
- 4 grant offer letters as evidence of funds secured
- Correspondence between OYCI and [REDACTED] by letter dated 27/01/26, 03/02/26, 09/02/26 and 06/03/26 from OYCI Chairperson [REDACTED] to [REDACTED] and 05/02/26 and 03/03/26 from [REDACTED] to [REDACTED]
- Evidence pack sent to elected members and seniors at the Council (copy enclosed)
- Expression of Interest submitted by OYCI on 28/11/23 and acknowledged by [REDACTED] on 04/12/23