

# Sheffield City Council

# COMMUNITY BUILDING

# POLICY

## February 2024

### Context

Sheffield's communities and people are at the heart of what we do and as a Council we support people, communities and businesses. Provision and use of Community Buildings is a tool which can be used to support communities and forms part of a wider strategy to help local communities. Community use of buildings can make a major contribution towards strengthening and empowering local groups to create thriving places to live and can aid communities to become resilient, entrepreneurial; and thrive in a climate where the capacity for councils to continue to deliver services in the traditional manner becomes challenging.

To take more control over their neighbourhoods, to deliver services and become more self-reliant, so they can take more control over improving their own neighbourhoods and deliver their own solutions to meet local needs. As part of this, the Council is committed to using its land and property assets to effect positive change and noticeable benefits to local communities.

Sheffield City Council (SCC) is the single largest provider of community buildings across the city. Current figures suggest circa one hundred community buildings managed and maintained by SCC and a further circa 4,000 leased to community groups. Indeed in 2008 the City Council considered a report 'Grasping the Nettle – A 20-year Community Buildings Strategy for Sheffield City Council' which proposed a series of recommendations for Council owned community buildings and VCFS management and ownership of Council buildings. The process was managed through a Community Buildings team. This approach had some success however, the Community Buildings Team no longer exists, and whilst a variety of groups manage and lease council owned assets, there is no clear policy and approach.

The use of Community Buildings supports our shared standards of the following City Goals:

*"We make **long-term decisions** that address the economic, ecological and social crises we face and create opportunities for everyone to contribute to the city's present and future."*

*"We **foster and grow businesses, organisations and local initiatives** that look after people, place and planet, and **lead the way on decarbonisation, re-use and the rewilding of nature.**"*

*"We have access to the digital and **physical infrastructure** we need to work together to solve shared problems and make positive and healthy lifestyle choices."*

The Community Buildings Policy set out below allows the Council to work in a consistent and proactive manner, setting out a clear, transparent the management of Community Buildings and / or transferring buildings to the VCFS via a Community Asset Transfer (CAT). As part of this policy the Council will continue to work with local organisations to ensure that a range of initiatives are in place to support the development of strong and sustainable communities.

## **Purpose of the Policy**

This policy outlines Sheffield City Council's approach to Community Buildings (including CAT, where appropriate). It sets out an open, fair, transparent, and consistent process to enable the management of Community Buildings and for the Council to work with the voluntary, community and faith sector and promote their long-term success.

This policy sets out a framework for elected members, council officers and voluntary and community organisations to provide clarity on the process the management of Sheffield City Council's Community Buildings.

In implementing this policy, regard must be given to the Council's Corporate Asset Management Plan (the Sheffield Land & Property Plan), the Council's Disposal Framework and other relevant policies and legal duties.

## **Benefits of Community Building use and What are we Trying to Achieve**

There are many benefits to the Council and local communities of the use of community buildings and community asset transfer:

- Supports the delivery of the Council's corporate aims and objectives.
- Supports 'City Goals.'
- Improves relationships with the local community.
- Results in facilities and services which are more responsive to local needs.
- Potentially secure investment as community groups and third sector organisations may access funding streams not accessible to Local Authorities.
- Provide a catalyst for regeneration of local areas.
- Greater ownership and pride in facility by local community.
- Improves the economic and environmental wellbeing of the area.
- Empowers local communities.
- Encourages community participation in activities.
- Revenue income for the Council.
- Potential revenue and capital spend savings for the Council.
- Improves management and or maintenance of buildings.

## What is Community Asset Transfer

Community Asset Transfer is a voluntary process. It involves the transfer of management and/or ownership of public land and/or buildings to a community organisation to achieve an economic, social, or environmental benefit. Community management or ownership of Council assets can take place under different forms of agreement, such as a:

- Management agreement, essentially a licence and an agreement to manage an asset.
- Licence to occupy (right to use the property for specific uses but not a grant of exclusive rights). This form of agreement can be useful for organisations that wish to support the maintenance of land such as parks and open spaces.
- Short term lease (less than 7 years with no protected right to renew lease).
- Long term lease (more than 7 years, usually no longer than 30 years and with no protected right to renew the lease other than in exceptional circumstances).
- Consideration may be potentially given to longer term leases (e.g. 99 year / 125 year) depending on the content of the of the associated Business Plan (see Community Asset Transfer Process, below) and specific requirements of funders / grant giving organisations.

**Note:** 7 years refers to Section 123 Local Government Act - see 'Legal Framework & Enabling Powers' section below.

Community Asset Transfer should not be confused with Assets of Community Value which relate to the 'community right to bid,' the provisions for which are set out in the [Localism Act 2011](#). Assets of Community Value do not have to be buildings in public ownership and can be nominated by parish councils or by groups with a connection with the community. If the nomination is accepted, local groups will be given time to produce a bid for the asset if and when it comes up for sale on the open market. More information on Assets of Community Value can be found on the Council's website here: [Assets of community value | Sheffield City Council](#)

## National Policy Context (CAT)

In 2006 the Local Government White Paper "Strong and Prosperous Communities" introduced a new approach to managing public assets and delivering public services. It gave Council's greater freedom to work with other public sector providers, third sector organisations and local citizens, and explored the opportunities for communities to manage and own local land and property assets.

The publication of the 2007 Quirk Review – "Community Management and Ownership of Public Assets" further promoted this new attitude to delivering community assets and services by investigating options of increased community management and ownership of assets. In particular, it looked at ways to overcome potential barriers to asset transfer and ways to manage associated risks.

A number of subsequent government documents have further recognised the significant potential benefits that may be realised through Council's creating and supporting community partnerships. The Localism Act (2011) devolves decision making powers to

neighbourhood level and advocates new rights and powers for communities and individuals such as the “Community Right to Challenge” and “Community Right to Bid”.

There is a high-level support and recognition from Government that asset transfer can create more confident and empowered communities and increase the number of sustainable community/third sector groups. The Government wish to see Local Authorities empowering local people and organisations to transform land and buildings into vibrant community spaces and support a thriving third sector.

### **Risks associated with Community Building use.**

There are many benefits which come from the use of Community Buildings, but it should be noted that there are also risks for both the Council and groups using these facilities including:

- The Community Building not being used for the original purpose agreed between the user and the Council.
- Public interests or community benefits may not be delivered or inclusive to the wider community.
- Expectations of the Council and the community organisation may differ.
- Competing applications between different community organisations can result in conflict.
- The community organisation, using the building, lacks adequate experience, capacity, or financial means to deliver the service, manage and maintain the building (where appropriate) or meet legal/statutory requirements (all depending on the agreement between the community organisation and the Council).

It is especially important to consider within any agreement for the use of a Community Building the ongoing maintenance requirements of the property. These will change depending upon the agreement, the user(s) and individual facility. Some agreements will transfer responsibility for upkeep, repair, and maintenance of the asset; all running costs, including insurance; compliance with statutory inspections and health and safety requirements to the organisation taking occupation / ownership (if applicable). Whereas some or all of these may remain the responsibility of the Council & will need to be determined on an individual basis. There have been many recent cases within the city where groups have taken on assets with all good intention but cannot afford the repair maintenance and running costs.

The Council will need to mitigate the potential risks of the use of Community Buildings through a solid booking process and where appropriate a robust application and assessment process and through specific agreements which ensure that the building is used for community benefit as was intended.

## Additional Risks Associated with CAT

- Potential loss of revenue income, capital receipt or future opportunity cost for the Council.
- The asset transferred not be used for the original purpose of the transfer.
- Lack of control of the future of the asset by the Council.
- Council requires the asset for its own future requirements.

However, these risks should be effectively managed by robust process of 'due diligence' / positive scrutiny of the Business case of the VCFS group that is to take the property lease. It is important that the Business case provided by the group which wishes to take a building via Community Asset Transfer is effectively scrutinised in order to ensure that the group has the best chance of success.

## Review of Community Buildings

### Principles and Methodology

Using the knowledge and data stored for the Council's assets, all the Council's Community Buildings will be reviewed. The review will be governed by clear principles in terms of:

- The financial viability of the building in terms of its current condition (including compliance), operating costs, maintenance, investment need, and potential future use.
- The environmental sustainability of the building in terms of the ability for it to become net zero and the required investment to do so, including its current and future potential energy performance, carbon emissions, and the associated challenges of achieving this, including required funding.
- The current and potential future utilisation of the building and the availability of other similar facilities in the local area. This will also include whether the building is currently fit for purpose in terms of its intended use.
- How the current or future use of the building contributes to the Council's strategic ambitions and those of Sheffield's communities.
- The context of any legal ownership, covenants and restrictions of the building and ensuring appropriate decision making and governance.

A detailed and standardised approach to the evaluation of each Community Building (*see 'Community Building Evaluation' section below*) has been developed to ensure consistency in decision-making. This will include consultation with Elected Members, Local Area Committees, building users and key stakeholders. The approach will result in a recommendation for each building to:

- **Invest:** Target investment to improve the quality of the building and deliver better outcomes for our communities.
- **Divest:** Dispose of surplus buildings to create savings, which could be re-invested into the Council's remaining estate. This will also reduce liabilities and risks that cannot be effectively mitigated within reasonable financial and other limits. Any

building disposals would be undertaken through the Council's Policy for the Disposal of Council Owned Land and Property.

- **Re-purpose:** Explore options for co-location, repurposing, or asset transfer (see separate Community Asset Transfer Policy) of buildings to deliver better value for communities and maximise usage.

## Community Building Evaluation

To properly understand the building condition, running costs, current & potential future uses, sustainability, current users / agreements, and legal ownership etc. the following:

### Property Data

1. Location.
2. Building Condition (including compliancy elements).
3. Backlog Maintenance (including costs).
4. Ongoing Maintenance (including costs).
5. Investment requirement (including costs).
6. Future potential use / need.
7. Energy Efficiency / Performance / carbon emissions, including possible future energy performance / ability to become Net Zero by 2030 (including costs).
8. Current Building usage, including activities, capacity, frequency etc.
9. Fitness for purpose (current / intended uses).
10. Proximity to other facilities in local area (similar, or otherwise).
11. Legal ownership including covenants and restrictions of the building and ensuring appropriate decision making and governance.
12. Consideration of the Heritage Status of any building.

### User Data

1. Community Building users.
2. Community Building users' agreements (none / informal / formal - licence / lease etc.).
3. Booking regime(s).
4. User's needs / requirements.

### How will this data be used?

This data will be used to inform the decision-making process as to which building represent good value for Sheffield City Council to retain, what level of investment is required, and which should be considered for disposal.

## Legal Framework and Enabling Powers

Section 123 of the Local Government Act 1972 requires that all disposals (including leases over 7 years) by Local Authorities must be at the best consideration reasonably obtainable. Best Consideration is generally the best price in monetary terms that could be achieved if the asset were offered on the open market assuming a willing seller, a willing buyer and no restrictions or requirements on the disposal which may impact on value.

However, the Council may dispose of land or property at less than market value (less than best consideration) in some exceptional cases. The General Disposal Consent Order (England) 2003, gives Council's wider powers to dispose of land and property assets at less than best consideration where it can be demonstrated that they promote the economic, social, and environmental well-being of the area; provided that the unrestricted undervalue of the asset to be disposed of and the consideration for the disposal does not exceed £2,000,000.

This General Consent can only be used where the property in question is held under statutory powers which permit it to be disposed of under the terms of the 1972 Act. A large percentage of the Council's land is held in this way. The General Consent does not apply where land is held for other specific purposes such as housing, education, highways, and planning for which other statutory disposal powers apply.

Land and Property is not a free resource and Council Members and officers have a fiduciary duty to ensure that any disposal is at best consideration as these are local government assets involving taxpayers' money. Any disposal at less than best consideration is important because of the opportunity cost to the Council. Disposal at an undervalue must ensure that the outcome will be at least as beneficial as that which could have been achieved through disposal of the asset at Best Consideration and should clearly contribute towards fulfilling corporate objectives. Disposal at less than best consideration should therefore only be used in exceptional circumstances for example where the Council may be seeking outcomes from a disposal that delivers wider policy objectives. The benefits from a disposal at less than best consideration must be clear, tangible, and directly support the economic, social, or environmental responsibilities and duties of the Council. The amount of any reduction in value must be specifically identified, reported, and approved. The Disposals Framework, approved by Finance Committee in September 2022, sets out the Council's policy and process for disposals including disposals at less than best consideration.

### Charitable Land

Land and properties that are held by the 'Council in trust' will not be considered for a Community Asset Transfer unless approved by The Council's Charitable Sub Committee (sitting as Trustees). The proposed disposal will need to follow the requirements of the Charities Act 2011, be advertised in compliance with the Act and any objections will be considered by the Committee. In certain circumstances such as when land was gifted to the Council in trust for a specified purpose such as for a public recreation ground or the disposal is to be at 'less than Best Consideration', these proposed disposals depending on the terms may need to be referred to the Charity Commission for their approval pursuant to the Charities Act 2011.

## **Public Open Space/School Land and Playing Fields**

Proposals to transfer land classified as public open space will need to be advertised that a transfer is being considered under section 123 (2A) of the Local Government Act 1972 and any objections must be considered by the Council in deciding whether to progress with the proposed transfer.

In respect of school land and playing fields the Council will also need to consider whether the land is subject to the provisions of Schedule 1 of Academies Act 2010 and section 77 of the School Standards and Framework Act 1998. Such disposals will require consent of the Secretary of State.

## **Assets Suitable for Community Asset Transfer**

Only some assets will be suitable for Community Asset Transfer and any Community Asset Transfer must be able to demonstrate delivery of the corporate aims and outcomes of the Council. Assets which could be potentially suitable for Community Asset transfer include:

- land or buildings in the freehold ownership of the Council. Any restrictions or covenants on title will need to be checked prior to the building being considered for Community Asset Transfer.
- Assets declared as 'surplus' and not required or used for direct service delivery.
- Assets available for transfer where there is no clear rationale for retention to continue due to cost of maintenance, condition of the building or low levels of usage.
- Assets which are under-utilised or dormant in current ownership but could be put to a more productive use which are not required to deliver other Council priorities.

## **Assets that are to Be Excluded from Community Asset Transfer**

The Council will not support the transfer of an asset transfer whereby any of the following apply:

- the asset is required for service delivery or has been identified to implement a corporate priority or Assets which accommodate fixed or core services which the Council intends to continue to operate (e.g. schools, social care establishments, sheltered accommodation, etc)
- Where there is a significant impact on Capital or revenue income this includes:
  - assets identified within the disposal/capital receipts programme,
  - assets held for revenue income and/or assets which forms part of the Council's commercial estate or investment portfolio.
  - the asset transfer results in revenue income loss unless there is clear demonstration that revenue savings to service delivery can be made to outweigh any potential financial loss,
  - the asset is held for long term future capital appreciation,
  - any asset where the market value or development value is greater than its existing use value at the time of application.
- The proposal relates to only a part of the asset.
- The asset has been identified as being required for strategic, planning or redevelopment/regeneration or housing growth reasons.



- The asset will be used by the organisation purely as a vehicle for commercial ventures. This does not include, for example, charitable organisations with trading arms, where profits are reinvested in communities.
- The transfer is to an individual.
- The transfer would contravene Subsidy Control.
- The transfer would contravene procurement rules.
- The asset will be used for religious or political purposes/activities.
- Charitable assets held by the 'Council in trust.'

Where Assets are not fit for purpose and/or require significant investment, repair or maintenance, groups will need to be able to demonstrate that they can secure the financial resources available to bring the property back into a state of repair and fund its ongoing maintenance.

### Organisations Eligible for Community Asset Transfer

Applications will be considered from community and voluntary sector groups and other formally constituted third sector not for profit organisations. The Applicant must:

- Be non-profit distributing – no applications will be accepted from private companies, private individuals or other organisations that do not fulfil the criteria. Any applicants that are profit making must reinvest any surpluses to further its social aims/community benefits.
- Be a community or voluntary sector organisation – i.e. it must be a legal entity which is non-governmental or part of the statutory sector. However, applications will be considered from Town and Parish Council's
- Exist for community, social and/or environmental benefit of the community.
- Be appropriately constituted – for example a registered charity, a community interest company or a charitable incorporated organisation, a not-for-profit company or co-operative. Such constitution must allow for the management/ownership of buildings and/or provision of services.
- Demonstrate good governance – Have robust systems, governance and policies as evidenced by a management structure, constitution, and appropriate quality assurance, with adequate monitoring, evaluation, and financial management systems.
- Have directors, committee members and/or employees who have the relevant experience and skill to manage the property and develop and manage a financial plan and be able to provide copies of the accounts of the organisation on request.
- Have well defined community benefit objectives – and can demonstrate the skills and capacity within, or available to its managing body, to effectively deliver services and manage the asset.
- Have capacity, experience, and knowledge of property management – and can demonstrate that it understands health and safety issues and compliance with legislation/statutory requirement arising from ownership or management of the asset.
- Demonstrate community engagement – be able to provide evidence of the need and demand for the activities for which the use of the asset is proposed, have support of the local community, and be proactively involved in economic, environmental, or

social regeneration or be providing a service of community benefit in line with the Council's core purposes.

- Embrace Equality and Diversity and work to improve community cohesion and reduce inequalities. A community organisation taking control of a property must be able to demonstrate open access and respect all users protected characteristics i.e., age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Where proposals are restricted to a particular group or have limited local community use the Council will need to consider, it meets council service needs and equalities legislation.
- Demonstrate sustainability – the Applicant will need to establish how the proposed use can maximise opportunities to ensure sustainability, for example through social enterprise.
- Not be in arrears or have poorly maintained or managed the asset prior to the asset being transferred.

Appropriate due diligence and investigation will be undertaken to ensure the above criteria are met and the organisation must be able to demonstrate that they have the necessary skills, expertise, and ability to manage and operate the property. Where a disposal is to a Charity or Trust evidence must be provided that the organisation conforms to Charity Commission governance and management requirements and that the organisation has complied with the financial reporting requirements of the Commission

### **Different Types of User Agreement.**

There are several different types of agreement which will be applicable for using Community Buildings:

- Ad-hoc rental of parts of a building / room – Concessionary letting – not a regular requirement.
- Formalised rental of community building (whole / part / room) – more regular provision, by formal agreement, up to 7 years.
- Community Asset Transfer (longer term agreements) – 7 years and above – see below.

### **Payment for use of Community Buildings**

Land and Property is not a free resource and Council Members and officers have a fiduciary duty to ensure that property is effectively financially managed in terms appropriately managing the property and the resources required to provide that facility. These Community Buildings are local government assets involving taxpayer's money.

A standard pricing methodology will be put in place to ensure that users are charged consistently across the Community Building portfolio. This will consider the following:

- The size of the building / space used.
- Facilities available, to the user, in the building.
- Concessionary letting or more formal agreement.
- Hire period (time).
- Frequency of hire.

- Sheffield City Council / Tenant responsibilities.

Where a formal agreement is in place for the use of Community Buildings the payment rates / schedule will be set out in the agreement.

In the case of ad-hoc rental of Community Buildings the 'hire-rate' will be set annually, formally as part of the Council's fees & charges setting process.

No new agreements will be made with existing users who have existing / outstanding debts with the Council.

### **Community Buildings Suitable for Continued Use (*not to be disposed of*).**

Only Community Buildings which meet a series of set criteria should be considered suitable for that continued use by the Council. These criteria include:

- Community Buildings of a suitable condition, where any investment is appropriate based on a cost / benefit analysis (although some users will be able to make good to ensure suitable to meet need at their own cost).
- Community Buildings NOT declared as surplus.

Community Building that will be available for use will be marketed using a list published on the Council's website. The Council's Finance Committee will have approved this list, following the building evaluation review, as above, as recommended by the Council's Estate Management Board.

Any minor changes to this list will be delegated to the Estate Management Board, with an Annual Update Report submitted to the Finance Committee.

### **Assets That Are to Be Excluded from Community Use**

The Council will not support the continued use a Community Building whereby any of the following apply:

- Where there is a significant impact on Capital or revenue income this includes:
  - assets identified within the disposal/capital receipts programme.
- The asset will be used by the organisation purely as a vehicle for commercial ventures. This does not include, for example, charitable organisations with trading arms, where profits are reinvested in communities.
- The Community Building will be used for as a place of worship or for political purposes/activities.

In the case longer term formal agreements where the user enters into a repairing & maintaining agreement with the Council, and where Assets are not fit for purpose and/or require significant investment, repair or maintenance, groups will need to be able to demonstrate that they can secure the financial resources available to bring the property back into a state of repair and fund its ongoing maintenance.

## New Requested for use of Community Buildings (not CAT).

Although several steps are involved in a request for the use / expression of interest for a Community Building, there are three key stages:

- Stage 1 – Request for Use / Outline Expression of Interest
- Stage 2 – Details of how the user proposes to pay the rent and continues to do so (required for full formal agreement, less than 7 years)
- Stage 3 – Due Diligence check by Council

### Stage 1 – Request for Use / Outline Expression of Interest

The Council will determine whether a Community Building is to be made available for Community and this list of buildings will be published for potential users to view on the Council's website. This will ensure openness and transparency and the opportunity for all groups to request use / express interest.

A **Request for Use** is most likely to be an ad-hoc request one off, or short-term request, i.e., a Concessionary Letting.

Whereas an **Outline Expression of Interest** will relate to where a longer-term agreement (less than 7 years) will need to be put in place.

If a Building is deemed to be suitable for Community use the Council will advertise the fact via several sources including (but not limited to): Council website, LACs, Community and Voluntary sector newsletters, Council approved social media sources.

Interested parties will be able to make a **Request for Use** by completing an on-line form via the Council's website (or by telephone / visiting Council offices in person).

If it is appropriate to book the building (or part thereof) online the user will be able to do so at this point.

However, should the proposed use require the potential user (longer term / more formal agreement – less than 7 years) to make an **Outline Expression of Interest**, they should complete an 'Outline Expression of Interest form'.

### Stage 2 – Details of how the user proposes to pay the rent.

In the case of longer-term agreements, up to 7 years, the organisation should submit details of how they propose to pay the rent for the Community Building the Council in assessing the financial viability of the proposal, and the capacity and capability of the organisation to manage the asset.

Occasionally, a building that is being a Community Building may have heritage status or other features that could cause significant liabilities if repairs (where repairing obligations are the responsibility of the building user) are needed which would almost certainly be beyond the means of a community organisation, especially a new one. In such circumstances the organisation will need to consider establishing a sinking fund to cover future maintenance and specialist repair.

## Stage 3 – Due diligence

Before entering into any formal agreement (up to 7 years), the Council will need to satisfy itself that the organisation's financial plan for the agreement is satisfactory. The Council will review the information submitted to satisfy itself that this the case.

In reaching a decision the Finance committee will need to weigh up the potential gain against the potential loss of revenue from the asset and potential loss of a capital receipt. Any subsidy will need to be balanced by clauses in the property's agreement to ensure the promised outcomes continue to be delivered.

## Hiring / Letting Community Buildings

Prior to hiring out or letting any Community Building the Council will ensure that it meets building compliancy requirements, these will include:

- Gas Safety Certificate
- Fixed Wire Certificate (Electricity)
- Fire Safety Plan
- Asbestos Management Plan
- Legionella Safety Plan

In the case of longer-term agreements (up to 7 years) will supply a full set of the of the above information at the commencement of the agreement. Subsequently, the user will be required to ensure that this information is kept up to date, using the Council to provide new certification / plans etc. It will be the responsibility of the user to fund this re-certification, drafting of any new plans etc.

## Community Asset Transfer Process

Although a number of steps are involved in Community Asset Transfer, there are three key stages:

- Stage 1 – Expression of Interest
- Stage 2 – Full Application and Business Case
- Stage 3 – Agree Heads of Terms for the transfer and basis for a Joint Working Agreement with the Council

### Stage 1 – Expression Of Interest

The Council will determine whether an asset is to be made available for Community Asset Transfer or not. Assets may be identified as available for Community use by the Council. Local Area Committees or local organisation can make a speculative request to consider a specific asset for CAT. The final decision on which buildings will be considered for CAT will rest with Finance Committee. LAC chairs and Local Ward Members will be provided with a list for information of any properties in their area which are proposed for disposal and are proposed for Community Use. If an asset is deemed to be suitable for Community Asset Transfer the Council will advertise the fact via a number of sources including (but not limited to): - Council website, LACs, Community and Voluntary sector newsletters, Council approved social media sources. This

will ensure openness and transparency and the opportunity for all groups to express an interest.

Interested parties should complete an Expression of Interest form by a specific date outlined in the advertisement. All Expressions of Interest will be presented to the Council's Estate Management Board for consideration. Any interested group will be informed on the outcome of the Estate Boards recommendation. Should the board in principle support the initial expression of interest, the group(s) will be notified of the next stage.

## Stage 2 – Full Application and Business Case

The organisation should submit a Full Application together with a Business Case which will be used to assist the Council in assessing the financial and operational viability of the proposal, the social, economic, or environmental benefits of the proposal and the capacity and capability of the organisation to manage and maintain the asset. As a minimum requirement the following points should be addressed:

- an executive summary of why the organisation requires the proposed asset; what difference it will make to the organisation.
- a statement of the aims and objectives of the organisation
- a description of who the organisations clients/users are, i.e. its target group.
- a description of the need for the service proposed and how the community asset transfer will deliver this need any community benefits from the organisation managing the asset (the how, the who, how many) and how this will be measured.
- An assessment with supporting evidence of how the proposal contributes to the achievement of economic social or environmental well-being.
- An assessment with supporting evidence, of the monetary and non-monetary benefits and value to the Council
- details and evidence of community involvement and consultation for the use or service to be delivered. Community organisations will need to demonstrate that consultation has taken place with local people. Consultation must be unrestricted and not limited to just those people who have a positive interest in the proposal. Elected ward members must be included as part of any such consultation exercise. Elected members and LACs will also be consulted by Council officers during assessment.
- details of what activities, services, events and uses the asset will be required for, and how the organisation intend to deliver these; it should also identify any new/additional activities/services will be delivered as a result of managing the asset and who will use the service including evidence of any existing users.
- description of how the disposal will contribute positively to an agreed Council policy priority, together with a clear statement showing where the scheme fits within service priorities.
- the outcomes which will be delivered because of the asset transfer.
- what improvements the organisation intends to make to the asset (if any), including indicative costs and how these are to be financed including any repairs, improvements and management and maintenance costs
- an outline of the operational capacity and skills of the group

- a cash flow forecast and budget detailing any income and basis for projections and the financial viability and sustainability of the organisation. This should demonstrate the ability of the group to run the building and sustain it over the next 10 years, including all costs resulting from their use and operation including (as a minimum); ongoing repairs and maintenance liabilities, all insurance costs including cover for public liability, and statutory compliance responsibilities.
- details of the organisations safeguarding policy and demonstration of how it meets the Council’s own safeguarding policy.
- Links to other local initiatives and organisations to prove not duplicating provision in the area.

The Council will not refurbish or improve the condition of a building prior to transfer. As previously stated, occasionally, a building that is being considered for a Community Asset Transfer may have particular heritage status or other features that could cause significant liabilities if repairs were needed which would almost certainly be beyond the means of a community organisation, especially a relatively new one. In such circumstances the organisation will need to consider establishing a sinking fund to cover future maintenance and specialist repair.

### **Funding availability and viability**

Viability is a key consideration in Community Asset Transfer and is often the major barrier preventing a community from taking over a property. The business plan will need to show that the proposal is viable over a period of at least ten years. Tools such as Fit for Purpose Health check from Locality can be used by community organisations to assess their abilities and readiness for Community Asset Transfer, including business plan assessment.

If an organisation cannot raise the finance necessary to purchase the property, cover rental costs, carry out any capital works and convincingly show that they can cover the ongoing revenue costs through income generation, then the request for asset transfer will be declined.

Depending on the circumstances, the property will either continue as operational property, or it will be considered for sale in line with current procedures. The Council will not hold onto buildings indefinitely while funding applications are submitted, and business plans reworked. Timescales will be agreed at the start of the proposal to allow the community organisation and the Council to plan ahead, although extensions may be given where progress has been made.

### **Due diligence**

Before entering into any CAT, the Council will need to satisfy itself that the financial standing of the organisation is satisfactory, this will include (but is not limited to) a review of financial statements, review of owned assets and bank accounts, audited accounts, review of current and intended business activities and review of any other CATs acquired by the organisation including linked organisations or its group.

## Assessment

In assessing applications and business plans for Community Asset transfer the Council will take account of the:

- benefit/s to the local community to be gained by transferring the asset.
- ability of the voluntary or community organisation to sustain the use of the asset over the lease period.
- impact of the proposed transfer on the Council's scope to fund its future capital spending priorities, revenue funding or its potential alternative use of the asset.
- use of the asset reflects the outcomes and objectives of the Council's Corporate Plan, Community Strategy and 'City Goals.'
- proposed use of the asset is genuinely for the benefit of the local community and offers real potential for the development of sustainable, successful, and independent community organisations.
- asset will have an open access policy for all local groups, relevant to the purpose of the transfer, and should be compliant with the Equality Act 2010 (if not already compliant it will be the responsibility of the community organisation to ensure compliance).
- suitability of the asset for the proposed use and the potential for utilisation of other community assets will form part of any Community Asset Transfer assessment.
- Whether the proposal is viable and sustainable
- Capacity and capability of the organisation to manage the asset.
- Funding and financial management

## Decision Making

The Council will specify to the organisation the deadline for submission of their business case after which it will be evaluated by cross-service Community Asset Board and a social value tool/ Community Asset Transfer Matrix will be used to record the assessment. A recommendation will then be made to Estate Management Board as to whether the application should be supported. If the application is recommended for approval, report will be prepared to Finance Committee for decision.

Any reports for decision to finance Committee which propose Community Asset Transfers at less than best consideration must be supported by a full analysis of the benefits and impact of the CAT. Reports for decision must contain sufficient information to enable decision makers to decide whether the disposal will be a proper use of the General Disposal Consent, having regard to the Council's fiduciary duties, legal and property matters. The report must also clearly demonstrate how disposal at an undervalue supports the Council's policy objectives and duties and responsibilities for economic, social and/ or environmental well-being. All reports requesting approval for a disposal at an undervalue must contain:

- A valuation report provided by or via the Chief Property Officer identifying the market value of the property and the scale of any undervalue/subsidy, undertaken by an RICS qualified Registered Valuer as required by the circular and technical guidance accompanying the General Disposal Consent Order 2003. In most cases this will be a Registered Valuer from Property Services but where the disposal is



controversial or there is potential challenge on the agreement of market value an independent RICS Registered Valuer may be appointed to provide valuation advice.

- Community Asset Transfer aims to benefit local community organisations. Charities and social enterprises that operate in a specific field and/or are not established for wide local community benefit will not be able to benefit from community asset transfer.
- An assessment from Property Services identifying any risks or impact which may result from the disposal at an undervalue including an assessment of the impact on land values or future capital receipts.
- An assessment from Legal Services on whether the disposal falls within the terms of the General Disposal Consent enabling the Council to sell at an undervalue, whether the disposal is compliant with Subsidy control and any other legal considerations.
- An assessment from Finance and Commercial Services of the impact on the Capital Programme, revenue budgets and existing financial commitments and how any reduction in potential capital receipt (i.e. subsidy) will be accommodated.
- A summary of the due diligence undertaken and any financial or audit checks carried out on the proposed purchaser and any identified issues.
- A clear statement that the benefits which the city or its residents will derive cannot be achieved unless the sale takes place at an undervalue and confirming that no alternative mechanisms for delivery or sources of funding are available.

In reaching a decision the Finance committee will need to weigh up the potential gain against the potential loss of revenue from the asset and potential loss of a capital receipt. Any subsidy will need to be balanced by clauses in the property's lease to ensure the promised outcomes continue to be delivered.

### Stage 3 – Heads of terms and joint working agreement

Following approval by Finance Committee heads of terms for the asset transfer will be agreed. These terms will include a requirement for the organisation to enter into a joint working agreement with the Council to ensure that the services proposed continue to meet the requirements of the Council and the wider community in the long term.

There may be additional legal issues which may arise in context of the Community Asset Transfer for example (including but not limited) – public procurement/State Aid, transfer of undertakings (protection of employment “TUPE”) etc. Each asset will be considered on a case-by-case basis and the Council will advise applicants on their legal responsibilities, but applicants will need to seek and fund their own independent professional advice.

In line with the Council's Disposal Framework and legal duties the Council will not consider the sale of a freehold at less than Best Consideration unless there are very exceptional circumstances. No Community Asset Transfers will take place which will increase revenue funding or maintenance demands upon the Authority.

The Council will only consider granting leases or disposing of leasehold interests at less than Best Consideration:

- For up to 10 years where no significant investment is to be made by the purchaser

- For up to 30 years in circumstances where a significant investment is to be made by the purchaser or which involves external funding and where the funding body, e.g. the National Lottery, requires a longer term.
- For up to 99 years in the case of disposals of Housing Land to Registered Social Landlords where a significant investment is to be made by the body which involves external funding and where the funding body requires a longer term

Where a disposal by way of lease is to enable external funding to be secured, the lease term will be the minimum required by the external funding provider and the lease will be conditional on such external funding being secured. The costs of paying rent or acquiring buildings can be included in applications for funding to major funders such as the Lottery fund and many Charitable Trusts. The Government also launched the Community Ownership Fund aims to provide resources for local groups to take on local assets.

A standard lease template will be used for Community Asset Transfers which seeks to mitigate the risks to the Council. The Council will however adopt a flexible approach to the lease terms if the circumstances of a particular Community Asset Transfer so require, but a risk assessment will be undertaken to ensure that there is a balance between what the community organisation reasonably requires and what the Council requires to ensure that the land and property remains available for the benefit of the community as was intended.

Typical lease terms will include:

- The lease to be contracted out of the Landlord and Tenant Act 1954 which means there is no automatic right to renew the lease.
- Mutual break clauses or Council break clauses may be included as appropriate. This will be considered on a case-by-case basis and the drafting of any 'break clause' may need to address funders concerns for example a 'break clause' cannot be triggered until project life of the funding has expired.
- Sub-letting and Underletting will only be permitted with the Council's prior consent by way of short-term leases contracted out of the 1954 Landlord and Tenant Act, providing such underletting is mentioned in the supporting business plan. The granting of licences and room hire agreements may be permitted.
- Assignment of part is not permitted. There will usually be a prohibition on underletting of the whole and permitted assignment only to a successor body. In certain circumstances under letting and assignment of the whole is only permitted with the Council's prior consent.
- Use will be restricted to that set out in the business plan.
- surpluses generated must be reinvested into the project and/or for community benefit,
- A Legal Charge (mortgage) on the property is not permitted without the Council's prior consent to be at the Council's absolute discretion.
- Restriction on title on all leases registrable at the Land Registry to ensure that the Council is aware and consents to any proposed mortgages, assignments, or under-lettings.
- User provisions will be tightly defined to ensure the property is used for the specific community use it was intended.
- Standard forfeiture provisions to enable to the Council to forfeit the lease for example for non-payment of rent, breach of covenants and insolvency; Forfeiture for insolvency

will need considered in each case and may need to be tailored for example providing funders with 'step in' rights to accommodate specific funding requirements.

- Standard lease provisions will include repairing and insuring obligations.
- A user clause will ensure the use of the property to support community benefit but may also permit ancillary commercial uses. Community assets cost money to run and commercial activity is often required to subsidise premises running costs to make premises sustainable for community use. However, such commercial activity should be ancillary and clearly defined in the lease with any surpluses from commercial activity or rental paid by a third party must be reinvested in the asset and services delivered within.

Once the Community Asset Transfer is completed, the organisation acquiring the asset will become responsible for:

- Operation of the asset in accordance with the terms of the lease agreement, along with all other legal and statutory requirements.
- Compliance with the Joint Working Agreement and any other transfer agreements.
- Delivery of the agreed outcomes.
- Submitting an Annual Report to the Council's agreed representative which should demonstrate that the agreed outcomes have been delivered.
- Providing proof on demand that all statutory and legal requirements are complied with.
- The Group will need to cover the cost of statutory compliance and annual condition checks by SCC (or provide evidence that these have been undertaken as a condition of the lease)

Failure to comply with the agreement could result in the Council terminating the lease/licence agreement and the organisation having to hand back the asset to the Council. The Council may also seek costs from the organisation to bring the asset back into a good state of repair under the terms of the lease.

### **Community Asset Transfer Officer Working Group**

The Community Asset Transfer process will be overseen by a Community Asset Board. The Group will include Officers from Communities, Property, Facilities Management, Legal, Finance and Commercial Services.

The purpose/remit of the group will be:

- Identify and advertise suitable available assets to the wider community.
- To engage with LAC's/local ward members/ local organisations to understand the needs of the local area and determine if these align to the corporate aims of the Council.
- Consider applications for the transfer of assets and ensure the applicant has adhered to and submitted the relevant documentation and evidence in order that their application may be fully assessed.
- Review Expressions of Interest, business cases and applications and evaluate them on the agreed criteria.

- If the application is considered to adequately meet the criteria, to prepare a report for Finance Committee and if approved to implement the transfer based on the principles within this policy.
- To recommend the appropriate means of transfer and the terms of the joint working agreement with the successful applicant.
- To provide the appropriate level of support and advice to the successful applicant in moving the project forward to conclusion.
- Where there are competing applications, or applications are not recommended to progress, to inform the unsuccessful applicant(s) on why they were not successful.
- To report to finance committee the level of subsidy the transfer represents to the Council.
- To maintain a record of disposals carried out under this Policy and the General Disposal Consent and advise the Chief Operating Officer, Finance Sub-Committee and Strategy & Resources Policy Committee on an annual basis of details of all CAT and transactions at less than Best Consideration granted during the financial year. The relevant Director from the sponsoring service will be responsible for identifying, monitoring, and reporting on the non-monetary benefits to the community and to the Council.

### Support for Groups

Taking on and managing a community Asset can be onerous A toolkit and other resources are available to assist groups intending to make an application. The Council and Community Assets Board can offer support to groups considering taking on community assets.