

Community Asset Transfer Policy 2020

1. Context

In Bradford people identify with and take pride in their local neighbourhoods, villages and towns. We are great at volunteering and we come together both at times of need and to celebrate and enjoy ourselves. The Council's role is to help support people, communities and businesses so they can take more control over their neighbourhoods, tapping into the extraordinary energy and community spirit across our district.

We will continue to work with community groups to help connect them to resources and opportunities. We will help them to deliver services and become more self-reliant, so they can take more control over improving their own neighbourhoods. We will also work to improve community relations and local networks.

Community asset transfer directly supports this approach and contributes directly to two of the four principles set out in the Bradford Council Plan 2016-20, namely:

- Working together
- People in charge of their own lives

The plan sets out that “we know that people can, and do, make a real difference to our district”. One of the key actions set out is “help the transfer of management and ownership of community assets such as council owned buildings and land to parish and town councils and community organisations, putting local resources into the hands of the community.”

The Council's Community Asset Transfer policy is a voluntary process of disposing of assets to community organisations. Bradford Council works with local community organisations because it's an important way of empowering local communities with them taking over responsibility for public assets. This policy demonstrates Bradford Council's commitment to community asset ownership. Some of the benefits of community asset transfer are:

- Facilitates the creation of strong resilient communities putting people at the heart of decisions that affect them locally
- Enabling autonomy within local communities helping to create a thriving network of local enterprise
- Assists local communities to provide services that the Council may no longer be able to provide
- Creates opportunities for innovation and new approaches to service delivery to better support local areas encouraging co-production led by communities
- Assists in the delivery of the Bradford Council Plan by strengthening partnerships with community organisations

- Enables community groups to use properties to generate revenue which will support the delivery of benefit to communities

The purpose of this policy is to provide residents with a clear understanding of the Council's approach to Community Asset Transfer and demonstrate that it is an open, fair, transparent and consistent process. The policy provides a framework within which transfers are considered rather than a prescriptive rule book as it is recognised that every community asset transfer proposal is different. This policy sets out that framework for elected members, council officers and local communities to provide a consistent approach to dealing with both projects that can be supported and those applications which are unsuccessful.

2. Definition of a Community Asset Transfer

The Council defines a Community Asset as a building and/or land from which a community based activity or service is delivered. Asset transfer means moving the long term responsibility for the ownership, management and running of assets from the Council to a community organisation. Community Asset Transfer has the potential to achieve a range of key objectives from promoting civic renewal, community cohesion, active citizenship and improving local public services to tackling poverty.

Community use of Council assets can take place under different forms of agreement, such as a:

- Management agreement, essentially a licence and management of asset agreement;
- Licence to occupy (right to use the property for particular uses but not a grant of exclusive rights). This can be a useful intermediate stage for a recently formed organisation who may not have the technical expertise to manage property and/or may not yet have the financial ability to invest in the premises. This form of agreement is usually appropriate 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 39 years and with no protected right to renew the lease other than in exceptional circumstances).

Community Asset Transfers under this policy provide community bodies with an opportunity to apply for a Community Asset Transfer of certain Council owned assets, and depending on individual circumstances, this could include a lease at a subsidised rate (often at a peppercorn rent) which would be subject to assessment as set out in this policy and compliance with relevant legislation that relates to the disposal of land.

3. Organisations who may apply for a CAT

Local community organisations whose activities are wholly or primarily concerned with the City of Bradford Metropolitan District, may apply for a Community Asset Transfer, but such organisations must not be for profit. Only incorporated organisations with legal rights and responsibilities are able to complete a transfer; the Council will not complete a lease to individuals acting as trustees, although we do acknowledge that sometimes a request for a community asset transfer may be made by an organisation which proposes to become incorporated during the process.

There are various types of incorporated bodies which may complete a transfer. Each must be established as not for profit. These include but are not limited to:

- Community Interest Company
- A Charitable Incorporated Organisation
- A Town/ Parish Council or Community Council
- A Co-operative

Organisations need to determine what is the best type of incorporation for them and this may vary from organisation to organisation. To assist, the Council provides contacts that may be able to provide advice e.g.

- Community Action Bradford and District (CABAD) - set up to support and develop the voluntary and community sector
- Locality –set up to support community organisations to be strong and successful
- Bradford and District Community Empowerment Network – who act as a ‘bridge’ between communities and service providers to enable people to influence the development and delivery of local services
- PARTICIPATE – who support organisations to reach their potential and develop into sustainable enterprises

A community organisation applying for a Community Asset Transfer can be of any size, and needs to demonstrate that it:

- Generates social, economic or environmental benefits which directly benefit the people of Bradford District;
- Has stated community benefit objectives;
- Has robust systems, governance and policies as evidenced by a management structure, constitution and appropriate quality assurance;
- Has the capacity to manage the asset and has directors, committee members and/or employees who have the relevant experience and skill and a demonstrable financial plan moving forward;
- Operates through open and accountable co-operative processes with strong monitoring, evaluation, performance and financial management systems.

Where proposals are restricted to a particular group or have limited local community use the Council will need to consider, on a case by case basis, the rationale for the transition to ensure it meets council service needs and equalities legislation.

A community organisation taking control of a property must be able to demonstrate open access and respect all users protected characteristics ie age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

4. Property suitable for Community Asset Transfer

Land and property assets usually considered suitable for Community Asset Transfer are: ones the Council proposes to release for this purpose or; where a community organisation enquires about a specific property and a decision is taken to consider that request further on the basis of the potential benefits to the local community.

The Council will consider transferring assets in the following circumstances:

- (a) Assets must be in the ownership of the Council;
- (b) Assets which are currently delivering community based services or are capable of delivering community based services where there is a demonstrable need for the asset and associated services to take place or continue;
- (c) Assets that the Council has identified in savings proposals, or as potentially surplus or where there is no clear rationale for the retention to continue due to cost of maintenance, condition of the building or low levels of usage;
- (d) Assets which are under-utilised or dormant in current ownership but could be put to a more productive use.

The Council will not consider applications for Community Asset Transfer in the following circumstances:

- i. Assets which accommodate fixed or core services which the Council intends to continue to operate (e.g. schools, social care establishments, sheltered accommodation, etc. - this is not an exhaustive list);
- ii. Assets which have been identified as having a potential significant capital receipt, or where a significant amount of revenue income would be lost unless the Director of Corporate Services or the Council's Executive deem the social, environmental and/or economic benefits match/outweigh any potential financial loss;
- iii. Assets which are held in the investment portfolio and which don't currently have a community use;
- iv. Assets which have been identified as being required for strategic, planning or redevelopment/regeneration reasons;

- v. Transfers to organisations to be used purely as a vehicle for commercial ventures. This does not include, for example, charitable organisations with trading arms, where profits are reinvested in communities;
- vi. Transfers to individuals;
- vii. Where transfers contravene State Aid or procurement rules;
- viii. Assets which may be used solely for religious or political purposes/activities.

5. Consultation

Consultation within the local community is essential as part of developing any Community Asset Transfer proposal. Community organisations will need to demonstrate that consultation has taken place with local people and the results of such consultation must be included within the business plan. 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.

Ward members will be consulted by Council officers during assessment, beginning at Stage 0 relevant portfolio holders may also be consulted at this stage, but must be consulted during Stage 1 & 2.

6. Risks with Community Asset Transfers

Community Asset Transfer requests will usually be for long term leases.

The grant of a lease of land and property is the grant of a legal estate in the land and property with exclusive possession to the tenant for the duration of the lease. The Council will need to ensure the land and property remains available for the benefit of the community.

The Council will need to consider and as appropriate take measures to mitigate any risks associated with the proposed tenant organisation which include:

- Failure to deliver the project and outcomes;
- Exclude users from the land or cease to operate the facilities on the land;
- Sale of the property to another party;
- Mortgage the property and in the event of default on the mortgage, the mortgagee could take possession and sell the property to another party;
- The tenant organisation could fail financially and become insolvent and any mortgagee could take possession and sell the property;
- Application to the Upper Lands Tribunal to remove or vary the community user provisions to some other non-community use in long leases for a term of 40 years or more.

7. Mitigation of Risks and Terms of Community Asset Transfer Leases

The Council will need to mitigate the potential risks of leasing land and property through a robust application and assessment process and the lease provisions to ensure that the asset is used for community benefit as was intended.

The Council has a standard lease template for use 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 include:

- Community Asset Transfers usually involve long leases for a term of 25 years. The length of term however may vary from project to project. Premises requiring substantial investment may be granted a longer lease than one for say a small area of land which is being leased to a local community where little or no capital investment is required. Leases may be granted up to a period of 39 years and in exceptional circumstances and subject to a risk and benefit analysis, a longer lease may be considered. The tenants' requirements for a longer term lease will need to be balanced at all times with ensuring that the property remains available for the benefit of the community;
- 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 clause 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;
- Subject to compliance with legal requirements and assessments including land valuations, it is likely that community asset transfer properties will be leased at less than market rental, often at a peppercorn. Although some projects may make financial surpluses this will not usually result in a rental being payable as long as there are provisions in place that any surpluses are reinvested into the project and/or for community benefit, and lease provisions can be tailored for the particular circumstances;
- Underletting of part is usually only 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 will 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.

- 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 particular 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 particular 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.

8. Financial Implications and considerations

Land and property owned by the Council has a value. This value may be measured in monetary terms or social output, quite often the value is a mixture of both of these measurements. Either way there are fiduciary duties upon those handling public resources to work to high standards of probity. The standards we must aim to achieve are set out below:

- Honesty
- Impartiality
- Openness
- Accountability
- Accuracy
- Fairness
- Integrity
- Transparency
- Objectivity
- Reliability
- Value for Money

The Council therefore has a responsibility, as far as reasonably practicable, to ensure that a transfer of the asset, achieves not only the objectives for the transfer

but in addition to this, that the community organisation has demonstrated that they have the skills and financial ability to become the new custodian of the facility.

New opportunities for Community Asset Transfers may be identified by the Council and advertised through the CAT page of the Council's web site as a minimum. Such enquiries will be progressed following the Community Asset Transfer process set out in paragraph 10. The Council may also consider requests from local community organisations for transfer of existing community assets that it is not necessarily considering disposing of, but these will be considered purely on a discretionary basis.

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.

Should a period of 6 months elapse between financial review and completion of the CAT, the financial standing of the organisation will need to be re-assessed, prior to completion.

Should an extraordinary event (force majeure) occur prior to completion of the CAT (for example COVID 19 pandemic 2020), further financial due diligence (the nature of which will be unknown until the event occurs) may be required prior to completion of the financial assessment.

9. Legal Implications and considerations

This policy will need to comply with the relevant legislation that relates to the disposal of land or property by the Council (including but not limited to s.123 of the Local Government Act 1972 and State Aid Regulations).

Section .123 (2) of the Local Government Act 1972 – requires the Council to dispose of land at 'Best Consideration' that can reasonably be obtained (other than disposal by way of a short tenancy not exceeding 7 years) and all disposals need to comply with 'State Aid' rules (assistance from public resources on a selective basis that can distort competition among organisations engaging in economic activity). Failure to comply with the 'State Aid' rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

In determining whether or not to dispose of land for 'less than Best Consideration' the Council should also have regard to its accountability and fiduciary duty to local people.

In respect of land disposals under s.123 (2) of the Local Government Act 1972 – disposals at less than market value will be considered under the General Disposal

Consent (England) 2003 which means that specific consent of the Secretary of State is not required for the disposal of any interest in land which the Council considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area and the difference between the market value and actual price paid for the land is less than £2 million (if the difference is more than £2 million then the disposal will require Secretary of State approval).

The Council will assess the full market value of any Community Asset Transfer property so that any decision about transfer at 'less than Best Consideration' for the asset is transparent, with the value of the subsidy known alongside the service value or gain that becomes possible as a result of the transfer. The Council 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.

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.

It is important to note that the grant of a lease to land and property is the grant of the right to exclusive possession of land to the tenant for the duration of the lease. In order to mitigate the risks of leasing land, the Council needs to ensure that the lease provisions provide a balance between what the community organisation reasonably requires as tenant and what the Council requires to ensure that the land and property remains available for the benefit of the community as intended.

Charity Land

Land and properties that are held by the 'Council in trust' will not be considered for a Community Asset Transfer unless the Council's Regulatory and Appeals Committee (sitting as Trustees) approve of the disposal. 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 s. 123 (2A) of the Local Government Act

1972 and any objections must be considered by the Council in deciding whether or not 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.

TUPE

In some circumstances the transfer of land or a building may have wider implications and result in the requirement for Council staff to transfer to the community organisation under Transfer of Undertakings (Protection of Employment) (TUPE) provisions. Usually this will not be the case, but if the land/ building is going to continue to be used for the same purpose it may apply. This is particularly likely to apply to premises which have a specific purpose such as recreation. In such circumstances Council staff may have rights under TUPE regulations. This will require the community organisation to employ any staff affected on the same terms and conditions as they currently have. This can be a burden on community organisations, particularly the requirement to provide pension protection that is the same as, broadly comparable to, or better than the pension provision while employed by the Council. This issue requires careful consideration and staff in the Council's Human Resources service will be able to advise if TUPE applies and its implications.

10. Application and Assessment Process

To ensure consistency and for interested parties to understand how an application is progressing, the application goes through a number of stages. The stage that each project is at is published on the Community Asset Transfer Register.

The final decision on any transfer under this Policy will usually be taken by the Strategic Director of Corporate Resources (or exceptionally the Council's Executive).

The Council publishes a comprehensive list of proposed, current and historic community asset transfer projects. If it is likely that more than one eligible community group may be interested in taking over an asset, it may be appropriate to advertise and invite parties to submit expressions of interest. Where there is more than one organisation interested in a property, organisations are encouraged to work together. If the asset is already run by a community group the Council may negotiate on a 'one to one' basis directly with that group and generally, in such circumstances, a transfer to a third party would not be considered.

A toolkit and other resources are available on the Bradford Community Asset Transfer webpages to assist groups intending to make an application.

Stage 0 – informal/initial discussions or the Council advertising a building for a Community Asset Transfer

Stage 1 – a formal expression of interest by a community organisation

Stage 2 – the application stage followed by evaluation and agreement of heads of terms if the evaluation is passed. The end of stage 2 is the sign off by the Strategic Director of Corporate Resources or approval by Executive in exceptional circumstances

Stage 3 – agree terms of agreement and/or lease and completion of the legal documentation.

Stage 4– ongoing monitoring.

Stage 0

The process of a Community Asset Transfer may be initiated in two ways:

1. By the Council identifying an asset as appropriate to transfer either to sustain the current building and/or the service delivery, or where a building has been deemed surplus and advertising the asset for a Community Asset Transfer on the Council's website and/or press release; or
2. A request from a community organisation; in these cases there will be initial considerations with enquiries made to the Council department managing the asset to evaluate the suitability of the asset for Community Asset Transfer.

Stage 1

Formal Expression of Interest application by a community organisation on the prescribed form. Where land is managed by another Council department they are formally consulted. Legal (including deed check), Finance and Neighbourhoods Teams (Area Co-ordinators office) are engaged. Any strategic, operational, legal and financial constraints will need to be identified early in the process.

A valuation of the property will be carried out in accordance with the General Disposal Consent (England) 2003.

The Assistant Director of Estates and Property following consultation with the relevant Council department managing the asset, Legal, Finance and Neighbourhoods Teams may take forward a project to Asset Management Board for consideration, if a project is one which may be supported.

Any land which is held by the Council in trust will not be considered for a Community Asset Transfer unless the Council's Regulatory and Appeals Committee (sitting as Trustees) approve of the proposed disposal. The proposed disposal will need to follow the requirements of the Charities Act 2011.

Stage 1 ends with the application being supported to progress and the organisation being invited to submit a Stage 2 application; or the Stage 1 application being declined. In certain circumstances Stage 1 may be progressed on an accelerated basis following consultation with the relevant Council departments including Finance Legal and the Neighbourhoods team.

The Portfolio Holder, Parish & Town Councils, Ward Councillors are notified of the application and invited to comment.

If the land is designated 'public open space', the proposed disposal is to be advertised at Stage 1 and any objections are considered by the Council in deciding whether or not to proceed with the proposed disposal.

In respect of school land and playing fields that are subject to the provisions of Schedule 1 of Academies Act 2010 and section 77 of the School Standards and Framework Act 1998. The Council will need to obtain the necessary consent of the Secretary of State before progressing with the proposal.

Stage 2

The completion of a formal application accompanied with a full business plan including a five-year cash flow. A due diligence exercise will be carried out on the application and the applicant by officers from the relevant service areas including Finance and Legal. This will include:

- financial appraisal;
- a SWOT analysis of the proposals;
- a risk assessment for the project.

The due diligence process needs to inform and ensure viability and sustainability of the proposed Community Asset Transfer; financial information will be required to support the application including audited accounts if available, in addition to other supporting information e.g. articles of constitution. Additional information may be requested as appropriate, please note all information requested for this project will be treated confidentially and stored securely.

If appropriate head of terms following approval by Legal and Financial Services are sent out to applicant and are agreed.

The evaluation of an application is undertaken by, officers from Estates & Property, budgetary department, Neighbourhoods (Area Co-ordinators office), Finance and Legal. If a transfer is to proceed, a report is prepared to Asset Management Board and if approved a recommendation is made to the Strategic Director of Corporate Resources who makes the decision in consultation with the Director of Finance and City Solicitor. In certain circumstances the final decision on approval may be referred to the Council's Executive.

Stage 3

Both parties instruct their respective solicitors and the form of agreement and/or lease terms are agreed. Stage 3 ends upon completion of the form or agreement and/or lease or in exceptional circumstances, an interim contractual arrangement such as a licence may be put in place.

Stage 4

A Community Asset Transfer is an on-going relationship with a community organisation. Monitoring will be carried out on an annual basis by officers in Asset Management and Neighbourhoods and the community group provided with support as appropriate. A Community Asset Transfer starts not ends on completion of a lease.

Any questions relating to this policy or specific Community Asset Transfer projects may be directed to the CAT.Team@bradford.gov.uk.

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