

# **Community Asset Transfer Policy**

**March 2020**

**Section 3 updated to include Council's new Corporate Strategy 2020-24 agreed at Full Council on 25<sup>th</sup> February 2020**

**Bath & North East Somerset Council**



# **Community Asset Transfer Policy**

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# Community Asset Transfer Policy

## 1. Overview

Since the Quirk Report 2007 and the introduction of the Localism Act 2011, there has been a growing interest by both local Councils and the third sector in transferring property assets into community ownership. Councils and central government have recognised that community assets can provide better outcomes, offer better value as well as create greater freedoms for partner organisations to tailor services and draw down external investment.

Under s123 of the Local Government Act 1972, any disposal by the Council of an asset in excess of 7 years (including leasehold interests) must obtain “best consideration”, unless the General Disposal Consent (England) 2003 can be applied or a specific consent is obtained.

The General Consent allows specified circumstances where the consent can be applied:

- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
  - i) the promotion or improvement of economic well-being;
  - ii) the promotion or improvement of social well-being;
  - iii) the promotion or improvement of environmental well-being;

and;

- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

The Council has undertaken a number of Community Asset Transfers over the last eight years with various organisations where they have demonstrated that they are delivering services in our area and that their proposals can fulfil the following criteria:

- That they are an appropriate, not for profit legal entity, with a suitable governance structure to ensure effective management of the asset;
- There is an alignment between the work and objectives of the organisation and the Council’s own Corporate Strategy and;
- Opportunities are created for enhancing the capacity of the third sector and empowering them to deliver their objectives.

This policy document builds upon the work already undertaken by the Local Authority and follows the principles set out in the guidance document produced by “Locality” on Community Asset Transfer and examples taken from other local authorities including Bristol City Council, Isle of Wight and Wigan Borough Council. This policy creates a straight forward process for organisations to apply for a Community Asset Transfer. This is essential to ensure that the wider community interests are safeguarded and that the overall objectives agreed for each asset transfer will continue to be delivered in the longer term. The Council will review this policy in line with its Corporate Strategy 2016-2020.

## 2. Definitions

- **Asset of Community Value** – also known as “Community Right to Buy” or “Community Right to Bid” allows defined organisations, including Parish Councils, to ask the Council to list certain assets as being of “community value”. This is designed to give communities more opportunity to take control of assets and/or facilities important to them. If an asset is listed and then comes up for sale, the new right gives communities a total of 6 months to put together a bid to buy it.
- **Community Asset Transfer** - (as defined by Locality) “Community assets are land or buildings that have current or future potential use for community value. They can be brought into community ownership through a number of routes, and can involve different organisational structures and terms of ownership.”
- **Equalities Act 2010** - The Equality Act 2010 legally protects people from discrimination. It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations.
- **Expression of Interest (EOI)** – The Expression of Interest is a written proposal made from an organisation who is interested in taking over a community asset.
- **Heads of Terms** - A set of terms within an agreement or letter of intent that is non-binding, outlining the main issues relevant to a tentative (partnership or other) agreement.
- **Localism Act 2011** – an Act of Parliament passed to facilitate the devolution of decision making powers from central government control to individuals and communities
- **Land Registration Act 2002** – together with the Land Registration Rules 2002 regulates the role and practice by simplifying and modernising the registration of land.
- **Partnership Agreement** – is an agreement between the organisation and the Council that defines the outcomes expected.
- **Third Sector** – these are organisations commonly known as voluntary and community organisations. Their governance structures vary. They can be registered charities, trusts, social enterprises, mutual and co-operatives.
- **Transfer** – is defined as “passing ownership or management of a building or piece of land from a public sector body to a third sector organisation.”

## 3. The Council’s Strategic priorities for Community Asset Transfer

The Corporate Strategy is the Council’s overarching strategic plan. It was agreed by Full Council on the 25<sup>th</sup> February 2020 and sets out what the Council plans to do, how it plans to do it, and how it will measure its performance over the next four years.

There is one overriding purpose to improve people’s lives. The strategy sets out two core policies

- tackling the climate and nature emergency and
- giving people a bigger say.

And identifies three principles.

- prepare for the future
- deliver for local residents and;
- focus on prevention.

For more information about the Corporate Strategy visit [www.bathnes.gov.uk](http://www.bathnes.gov.uk)

#### **4. Assets within the scope of the Community Asset Transfer policy**

Community Asset Transfers apply to land or buildings that have current or future potential community use.

Where an asset has become surplus to operational requirements or where it is currently run as a community asset and its agreement is due to end, an assessment will be made on the future options including whether the asset is appropriate for Community Asset Transfer.

As part of the assessment consideration will be given to:

- The retention within the Council (both strategic long term objectives and operational requirements)
- Open market disposal
- Change of use / redevelopment
- Potential for Community Asset Transfer

If a Community Asset Transfer is being considered, further consideration will be given to protecting the asset, the need for investment and the community service offered.

The Council may use Community Asset Transfers as a route to continue a service where the community have expressed an interest in running a service – example Community Run Libraries.

In most cases, the Community Asset Transfer will not generally exceed the land value of £2,000,000, unless in exceptional circumstance. In this case a separate process would be required and the permission from the Secretary of State would be required.

There are a number of assets which will not be considered as a Community Asset Transfer, these include land or buildings;

- within the Council's Investment Estate (eg retail and office space)
- earmarked by the Council's Property Company ADL
- earmarked for capital receipt / disposal
- required for operational purposes
- retained for legal, contractual or other reasons

Where a Community Asset Transfer is determined as the preferred option, the Council, will invite expressions of interests.

Where they can demonstrate that there are social, economic or environmental benefits the transfer of management and/or ownership of the asset to a community organisation will involve a transfer at less than market value. This will normally be in a form of a lease; a licence for very short-term arrangements where flexibility is needed, and freehold in exceptional circumstances. The Council will not restrict its CAT to 'low value' or difficult to dispose of assets as this will narrow the scope of the policy.

All decisions will be made at the Council's discretion, irrespective of the strength of the business case presented. The Council may decide at any time not proceed with a Community Asset Transfer.

## **5. Differences between Community Asset Transfers and Assets of Community Value**

There is often confusion made between a Community Asset Transfer and what are defined as Assets of Community Value. Although they share some of the same objectives, the crucial differences are:

- CAT is the transfer of ownership or management of public land or buildings from its owner (usually a local authority), whereas the Assets of Community Value can apply to some public and some privately-owned assets.
- CAT is the transfer of management or ownership at less than market value. Assets of Community Value sets out a defined period of time for community organisations to compete to buy an asset on the open market.
- CAT is a voluntary process. The Council has a legal duty to list Assets of Community Value if certain criteria is met.

For more information, about how to register an [Asset of Community Value](#).

## **6. Ownership terms and arrangements**

The Council will give careful consideration to the ownership terms of any CAT application. In most cases the Council will offer a lease transfer. This will be dependent on a number of factors including the use and condition of the asset, capacity to manage and raise funds and the outcomes to be achieved.

The following is a guide to the length of terms that the Council may apply:

Short term	Management agreement or licence to occupy granted up to 1-2 years or a short term lease up to 6 years
Medium term	7 years up to 24 years lease
Long term	25 years +
Freehold	In exceptional circumstances

Attached in Appendix 1 is a sample heads of terms.

The Council will aim to work with organisations to ensure lease terms provide maximum benefit for both the organisation and Council. In all cases, leases will include a Partnership Agreement and terms that ensure the asset is returned if these agreements are not met or the organisation is dissolved, becomes insolvent or due to any other circumstances.

The Partnership Agreement will set out the agreed outcomes for the approved use of the asset. The tenant will be required to provide an annual report to the Council which will demonstrate how they have complied with the conditions of the agreement.

## **7. Calculating the value of the Community Asset**

Community Asset Transfer usually involves a transfer at less than market value. The level of subsidy applied to the asset transfer, will be determined by the social, economic or environmental benefits generated by the transfer and the market value of the asset. The value of the transfer will vary. It cannot be assumed that this will automatically be reduced to nil, as the subsidy will be dependent upon the benefits demonstrated.

## **8. Criteria applied to all Community Asset Transfer**

Any organisation wishing to apply for a Community Asset Transfer must demonstrate that they have:

- A clear vision for the future use of the building or land
- Prepared a financially viable business case.
- Good governance, robust financial systems and up to date policies and procedures
- A proven track record of successfully managing a community building or land, or have trustees or board members that have community and voluntary sector experience
- Contributed towards the Council's Corporate priorities (as set out above in 3)
- A clear community/social demand for the proposal.
- Directly benefiting as wide and diverse a range of local people as possible.
- An appreciation of the current Health & Safety and Fire Safety legislation.
- An understanding of Equalities legislation, including the Equality Act in relation to the accessibility of public buildings and the delivery of services

The length of any business plan will depend on the nature of the lease arrangements proposed, normally a three to five year period.

## **9. Eligible organisations**

Organisations that are not for private profit will be considered to apply for a Community Asset Transfer. This includes the following organisations:-

- parish and town councils
- incorporated charitable organisations including CIOs and Trusts
- companies limited by guarantee with charitable status
- community interest companies (CIC) limited by guarantee or by shares
- community benefit industrial & provident societies with an asset lock

This Policy will adhere to the commitments made in the Parish Charter May 2018 which recognises the statutory role and functions of parish. The Parish Charter also sets out a number of key principles for the devolution of services:

- By choice, not imposed
- One size doesn't fit all
- All liabilities to be declared openly on both sides
- Give proper notice of changes
- Be clear on what is being transferred, and over what timescales
- Encourage parishes to cluster
- Set up a 'support offer'- e.g. training/equipment

For certain assets and in exceptional cases, the Council may consider leasing a building or

land to an unincorporated organisation. The lease arrangements agreed will depend upon the length of lease required and the governance arrangements in place. In all cases the Council will need to be assured that the liabilities are properly held and managed.

Privately owned or commercial organisations can only be considered where they demonstrate that their main aim is to deliver social, economic or environmental benefits eg. social enterprises.

National organisations whose remit is regional or nationwide will not normally be considered for CAT.

## **10. Applying for a Community Asset Transfer**

The Council will operate a four stage process. See Appendix 2 for more details. The first stage will be an assessment of the future potential uses of the building or land (see 4 above). Once the asset has been identified as a Community Asset Transfer, organisations will be invited to submit an expression of interest which will determine the eligibility of the organisation and their proposal.

If successful, the third stage will require the applicant to submit a detailed business plan for which advice and guidance is offered, also see attached Appendix 3.

The final stage will be the practical implementation and legal steps required in the Community Asset transfer process.

If your organisation is currently occupying a Council asset and your leasing arrangements are due to expire, you will be required to re-apply under the terms of this policy.

## **11. Assessment process**

The application process and criteria is set out in Appendix 2. A panel (made up of Council officers) will undertake the assessment of all the Community Asset Transfer applications. The assessment will be presented to the B&NES Property Board and final approval will be made by a Cabinet Member.

Where an application does not meet the criteria for a Community Asset Transfer, in the first instance the reasons for the refusal will be discussed between the applicant and the Council. Advice will be given on how the application can be improved or, if further work is required, make it more robust to deliver its proposals. Following any improvements (required within six months of any refusal – thus allowing for improvements to be made) the applicant would be requested to submit its improved application. This would then be reassessed and a decision given in writing, including reasons in the event of a refusal.

## **12. Monitoring**

All Community Asset Transfers will include a Partnership Agreement that will form part of the lease which sets out the agreed outcomes and evaluation on the use of the building or land. The organisation will be expected to provide an annual report in line with the agreed arrangements as well as confirming that the constitutional have not changed. These may include usage statistics, service evaluations, or other key indicators which will be clearly laid out in the Partnership Agreement. Failure to do so may result in a loss of rental subsidy.

### **13. Review**

This policy will be reviewed twelve months following the approval date.

### **14. Support available**

The Council's Communities Team can provide applicants support in preparing their business case and submitting their plans. It is advisable that organisations arrange initial meetings with the team to discuss their proposals.

### **15. Useful resources**

The information below is provided as a guide to applicants only and does not imply that the Council endorses the views and information provided by external organisations.

#### **General**

- [B&NES Voluntary Sector Support](#) - useful sources of information for voluntary organisations.
- [Locality](#) - national network providing resources, case studies and toolkits.
- [Gov.uk](#) - government website including Charity Commission, HMRC.
- [NCVO \(National Council for Voluntary Organisations\)](#) - NCVO provide resources, research and expertise for the VCS sector.
- [DSC Directory of Social Change](#) - publications, guides and resources.

#### **Funding**

- [B&NES Funding Bulletin](#) - a monthly bulletin produced by the Council detailing grants, funding programme and trusts.

#### **Managing a building**

- [Action with Communities in Rural England](#) – guidance on running a village hall.
- [Health and Safety Executive](#) – guidance, risk assessment and policy templates

#### **Licences and permits**

- [Bath & North East Somerset Council](#) – alcohol licences, events, gambling
- [Bath & North East Somerset Council](#) - Food standards

#### **Planning permission**

- [Bath & North East Somerset Council](#) – planning permission and advice
- [Bath & North East Somerset Council](#) – listed buildings
- [Bath & North East Somerset Council](#) - building regs

#### **Business Rates**

- [Bath & North East Somerset Council](#) – business rates relief and exemptions