

DERBYSHIRE COUNTY COUNCIL COMMUNITY ASSET TRANSFER PROTOCOL

Introduction

Derbyshire County Council acknowledges and values the role of the Voluntary and Community Sector (VCS) in delivering a wide range of services to the people of Derbyshire. Indeed, many Voluntary and Community Organisations (VCOs) are commissioned by the Council to deliver a wide range of services to the people of Derbyshire on behalf and in place of the Council.

The Council holds an extensive property portfolio including operational assets, commercial assets, administrative accommodation and community assets. This protocol describes the Council's approach to the transfer of assets to VCOs and the process that should be followed in effecting a community asset transfer.

Background and Context

Since the 1970s there have been various community economic development initiatives based on using assets as a way of meeting social and economic objective, e.g. community centres, community garden and community farms.

In 2007, the Quirk Review ('Making Assets Work: The Quirk Review of Community Management and Ownership of Public Assets') signalled the transfer of public assets to community based organisations as a mainstream activity.

The Localism Act 2011 that came in to force in 2012 introduced four new rights for communities:

Community Right to Build - This gives communities the power to build new shops, housing or community facilities without going through the normal planning process.

Community Right to Bid – This gives communities the opportunity to bid to buy and run valued local amenities if they come onto the open market.

Community Right to Challenge – This gives local groups the opportunity to express their interest in taking over a local service where they think they can do it differently and better.

Neighbourhood Planning – Neighbourhood planning powers give people the chance to decide how their local area should develop and what should be built.

Local authorities are empowered to transfer the ownership of land and buildings to communities for less than their market value. This is known as 'community asset transfer'. This shift in ownership of land and buildings from public bodies to communities is localism in action, giving greater powers to community and voluntary sector organisations, community and social enterprises; and individuals looking to form a not-for-private-profit group to benefit their community.

What is a CAT?

For the purposes of this protocol, the term Community Asset Transfer (CAT) is defined as "the transfer of land or buildings from the Council's ownership in to the stewardship and/or ownership of a voluntary or community organisation".

A CAT involves a freehold or long leasehold transfer at less than market value, either at a reduced or nil price.

Properties will be transferred in the existing condition at the time and the VCO will be required to take on full maintenance responsibilities as part of the CAT. The Council will provide any information it has regarding condition, energy usage and running costs of the asset, however, the VCO will be required to satisfy themselves in respect of their ability to run and maintain the asset in the future. The VCO needs to be aware of the costs and obligations they will be inheriting in respect of any statutory requirements relevant to the running and use of the asset.

The costs of transfer will be shared, with the community group and the Council each covering their own costs relating to the transfer and the preparation of any paperwork or documentation required in support of the transfer. This will allow each organisation to manage their costs more effectively, particularly avoiding a conflict of interest. In addition, it is less likely to create a disincentive for small community groups, preventing costs which they may have no control over mounting up. With this reduced pressure more opportunities may be taken up benefitting the local communities. The costs will need to be factored into the business case for each asset to prevent an inappropriate type of transfer relative to cost and community benefit taking place.

What assets can be transferred by a CAT?

Assets that can be transferred by CAT include many different types of land and buildings.

The Council may consider transferring assets in the following circumstances:

- The asset must be in the freehold ownership of the Council;
- Where the asset is currently being used for the delivery of activities that benefit a community;
- There is a demonstrable need for the community activities to continue.

- Where the asset contributes towards community empowerment and generates social, economic or environmental benefits.

The Council will not consider applications for community asset transfers under the following circumstances:

- Where the asset is used to deliver the Council's core services such as schools and social care establishments;
- Where the asset has been, in the opinion of the Council, identified as having a potential significant capital receipt or where a significant amount of revenue income would be lost;
- Where the asset has been identified as being required for strategic, planning or redevelopment/regeneration reasons;
- Where the transfer of the asset would be to an individual(s) or businesses to be used purely as a vehicle for commercial ventures. This does not include, for example, charitable organisations with trading arms, where profits are given back to communities;
- Where a transfer would contravene State Aid or procurement regulations;
- Where the asset would be used solely for religious purposes/activities;
- Where the asset would be used for any political purposes/activities;
- Where the result would be detrimental to any individual, geographical community or community of interest, resulting in unlawful discrimination, harassment or a failure to promote good relations.

What organisations can be considered for CAT?

To be considered for a CAT, VCOs will need to be a Derbyshire based charity or community group that is non-profit making, incorporated, constituted for social benefit and wherever possible within their legal structure, be able to demonstrate an 'asset lock' provision to ensure the asset is retained for community benefit. Such organisations could include:

- A Town or Parish Council
- Community and social enterprises
- Unincorporated charitable organisations
- Charitable Incorporated Organisations (CIOs)
- Companies limited by guarantee with charitable status and which do not distribute any surplus they make to their members
- Community Interest Companies limited by guarantee and which do not distribute any surplus they make to their members
- Community Interest Companies limited by shares and which do not distribute any surplus they make to their members

Applications for a CAT transfer may be considered from either:

1. Individuals looking to form a not-for-private-profit group to benefit their community (the CAT would not be completed until the group is legally formed), or
2. An established VCO that meets the following criteria:
 - I. Is an established legal entity, such as a Charitable Incorporated Organisation (CIO) or be a company limited by guarantee;
 - II. Have an up-to-date governing document;
 - III. Have clearly defined roles and responsibilities for management committee members as directors and/or charity trustees;
 - IV. Have elected officers (e.g. chairperson, secretary and treasurer), elections and regular meetings (e.g. an annual general meeting) in accordance with its governing document;
 - V. Comply with all Charity Commission and Companies House requirements (e.g. completing all the necessary returns and notifications);
 - VI. Have ways in which to avoid and manage conflicts of interest;
 - VII. Understand their community and its current needs, monitor the quality and relevance of its services, seeking feedback, and ensure that its services are fully accessible and appropriate to their community;
 - VIII. Prepare regular financial updates for the organisation;
 - IX. Have Trustees/Directors/Management Committee Members who understand their legal obligations;
 - X. Produce annual accounts, appropriately examined or audited, and containing the Annual Report;
 - XI. Have written policies covering payment of Trustees/Directors/ Management Committee Members and volunteers which are clearly communicated;
 - XII. Understand all the tax, national insurance and VAT requirements and have procedures for paying/re-claiming the correct amounts;
 - XIII. Operate a consistent charging and hiring policy that balances the needs of the organisation with the needs of local groups;
 - XIV. Have a separate trading company where this is necessary and have a clear legal relationship with the separated trading company;
 - XV. Have a clear recruitment policy and written procedures for the recruitment, induction and support of employees and volunteers;
 - XVI. Have contracts of employment and written conditions of service (including sickness leave, maternity/paternity leave, compassionate leave and disciplinary and grievance procedures) for all staff;

- XVII. Comply with relevant equal opportunities legislation in its work and the recruitment/employment of staff;
- XVIII. Have the required insurance cover and the correct licences and permissions in place where applicable;
- XIX. Comply with health and safety legislation and good practice;
- XX. Comply with The Children's Act and The Safeguarding Vulnerable Groups Act 2006.

Criteria for a CAT

In order to be eligible for a CAT and in order to reduce the risk of the CAT failing, a VCO will have to:

- Have a well prepared business case for their proposed use of the asset. This will need to demonstrate that there is a clear intention for the use of the asset and a secure financial base to ensure long term sustainability;
- Demonstrate a clear community/social demand for the proposed CAT;
- Have the staffing capacity to manage the asset and have management or committee members who possess the necessary experience and skills to manage the asset;
- Have good governance, robust financial systems and all the necessary policies expected of a VCO in place;
- Demonstrate how they will contribute towards the Council's five pledges to the people of Derbyshire (as listed below);
- Show that they will not be duplicating activities, services or facilities already provided in the local community;
- Demonstrate how they will comply with all statutory or other regulatory obligations connected to the proposed use and occupation of the property to be transferred;
- Demonstrate how their proposal will protect the asset or the value of the asset for continuing community benefit into the future.

The Council's five pledges to the people of Derbyshire are detailed as follows:

A Derbyshire that works – Building a strong economy that creates jobs, grows businesses and provides a future for our young people;

A healthy Derbyshire – Defending the NHS and tackling health inequalities;

A safer Derbyshire – Fighting crime and building stronger communities;

A Derbyshire that cares – Practical support for children and families and high-quality council-run services for the elderly, disabled and their carers;

A local Derbyshire – Putting communities at the heart of decision making.

The Council reserves the right to refuse a CAT if any of the criteria set out in sections 4, 5 and 6 are not met.

The Process

The process itself should be mutually beneficial, flexible, simple, proportionate and appropriate. The process needs to be accessible, transparent and accountable throughout.

In the event that more than one expression of interest is received for the same property, the Council will consider each application on its own merits and reach a decision on which to progress based on:

- the benefits to the community;
- the contribution towards fulfilling the Council's Strategic priorities;
- the extent that the expression of interest meets the principles underpinning the CAT protocol, as detailed in Section 5 above.

The Council will supply the contact details of a Council officer who will be the main point of contact between the Council and the VCO throughout the CAT process.

Post Community Asset Transfer Completion Support

Following completion of the CAT, the VCO will be required to report to the Council in accordance with the pre-agreed processes and frequencies so that the Council can ensure the asset is managed and being used in accordance with the terms of the CAT and that any pre-agreed expectations are being met. This will ensure that the Council can assess whether the community benefits identified prior to the transfer being completed are being delivered.

Further Information

Further information on Community Asset Transfers can be obtained from:

Derbyshire County Council's Asset Management Team on Tel: 01629 536290.

or:

'Locality' which is the national network of ambitious and enterprising community-led organisations, working together to help neighbourhoods thrive.

<http://locality.org.uk/our-work/assets/>

Tel: 0845 458 8336

Email: info@locality.org.uk

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The Application Process

The process that the Council will follow when considering applications for CATs and undertaking CATs is detailed as follows:

Stage 1

The expression of interest by the VCO.

The VCO should submit a written expression of interest in taking an asset transfer of a property asset from the Council. The expression of interest should clearly state the property asset that is the subject of the application and should include an initial feasibility assessment to show:

- Why the asset is needed
- The aims and objectives
- How the asset will be used and managed

Stage 2

In principle decision on whether the property asset is available for a CAT.

Council officers will consider whether the property asset is suitable and available for a CAT transfer and if deemed suitable and appropriate, submit a report to Members for an 'in principle' decision on whether a CAT transfer can be progressed.

The timescale for this is usually 3 months and will be assessed by a Cabinet Member following a recommendation by Officers.

Stage 3

If successful at Stage 2 the VCO submits a detailed Business Case and Feasibility Assessment

The VCO should show evidence of:

- How the service will be delivered
- Partnership working
- Previous experience
- Capacity
- Needs analysis
- Projected utilisation
- Cash flow forecasts
- Projected income and expenditure
- A risk assessment
- SWOT analysis
- Any professional advice obtained

The timescale for this is usually 3 months.

Stage 4

A full assessment of the proposed CAT Business Case and Feasibility Assessment is undertaken by the Council.

Full details of what should be included in the business case are shown below.

Detailed evaluation of:

- Value/worth of the CAT's benefits
- Benefits to the Community
- Benefits to the Council
- Test against existing facilities (to prevent duplication)
- Test against local policies
- Test against national policies and relevant legislation including State Aid regulations.

The method of assessment is as follows:

- Detailed assessment by Council Officers;
- Meetings with the VCO and supporters;
- Site visit(s);
- Consultation with Departmental Managers;
- Consultation with the community;
- Obtain legal advice and professional support;
- Written report by Council Officers
- Formal decision by Cabinet Members;
- Written notification of the Council's decision

The timescale for this is usually 4 months.

Stage 5

The Completion of Transfer

- Agree post completion support plan and investment plan, including what the Council expects of the VCO and the frequency/process for the VCO to report to the Council.
- Draft heads of terms issued
- Draft freehold transfer documentation and service agreement issued
- Secretary of State consent applied for (where necessary)
- Completion of all agreements and documentation

The timescale for this is usually a minimum 6 months (the length of this stage will differ for each transfer)

This stage requires the VCO, their solicitors and Council Officers to work closely together in order to avoid unnecessary delays.

In order to undertake the desktop assessments at Stages 1 and 4 of the process, the Council will establish a Council Officer Assessment Group comprising officers from Corporate Property, Legal Services, Finance and the service department who are vacating and declaring as surplus the property asset that is the subject to the proposed CAT.

The Business Case and Feasibility Assessment to be submitted at Stage 3 of the CAT process should contain, at a minimum, the following information:

- Who you are
 - What you want to do
 - How do you intend to do it (usually written last)
 - The track record, current plans, partnerships and people, governance and legal structure of the VCO.
 - Project objectives
 - Proposed programme for delivery
 - Proposed impact/benefits of the project
 - Proposals for management and operation of the asset (staff, volunteers) and the capital construction phase where relevant
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- Need – what local needs will the project be responding to (who will be the beneficiaries)? How many will benefit within a year (e.g. community groups, local people)?
 - Supply – who else is delivering similar activities or services within the same area? Is there potential for collaboration or will it result in competition? If the latter, how will you respond to it?
 - Demand – Who will purchase or use the products/services that you provide?
 - Pricing – what is your rationale for pricing the services you will provide, e.g. the renting of space?
 - What is your marketing policy?
 - What methods will you use (Online, Direct to customers, etc.)?
 - Who will you target?

Who will do it (in-house or external)?

- Financial projections
- A cash flow for the first year
- Budgets for subsequent years (at least for the next 3-5 years)
- Examination of profit and loss and capital expenditure (if capital is required to redevelop the building, sources secured or identified should be detailed)

Explanatory notes regarding the rationale for projections and assumptions made. This should include assumptions about timings and the level of commitment for both income and expenditure.

The Business Plan element of the CAT process should contain, at a minimum, the following information:

- Who you are
- What you want to do
- How do you intend to do it (usually written last)

- The track record, current plans, partnerships and people, governance and legal structure of the VCO.
- Project objectives
- Proposed programme for delivery
- Proposed impact/benefits of the project
- Proposals for management and operation of the asset (staff, volunteers) and the capital construction phase where relevant

- Need – what local needs will the project be responding to (who will be the beneficiaries)? How many will benefit within a year (e.g. community groups, local people)?
- Supply – who else is delivering similar activities or services within the same area? Is there potential for collaboration or will it result in competition? If the latter, how will you respond to it?
- Demand – Who will purchase or use the products/services that you provide?
- Pricing – what is your rationale for pricing the services you will provide, e.g. the renting of space?

- What is your marketing policy?
- What methods will you use (Online, Direct to customers, etc.)?
- Who will you target?
- Who will do it (in-house or external)?

- Financial projections
- A cash flow for the first year
- Budgets for subsequent years (at least for the next 3-5 years)
- Examination of profit and loss and capital expenditure (if capital is required to redevelop the building, sources secured or identified should be detailed)
- Explanatory notes regarding the rationale for projections and assumptions made. This should include assumptions about timings and the level of commitment for both income and expenditure.

- Identification of the different risks associated with the project and a description of the implications of those risks occurring. Risks should be evaluated in two ways – the likelihood that the risk item will occur and the level of impact should the risk item occur.
- Details of the VCOs policy for preventing the risk items from occurring, or for coping with them if they do, should also be provided.

Expressions of interest including the Business Case and Feasibility Assessment should be sent to:

Assistant Director of Property (Asset Management)
Corporate Property Division
Commissioning, Communities and Policy Directorate
Derbyshire County Council
Chatsworth Hall
Chesterfield Road
Matlock
Derbyshire
DE4 3FW