

# **Community Asset Transfer Policy**

**Updated July 2019**

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### Purpose Of The Policy

This policy outlines Rotherham Council's approach to Community Asset Transfer. It sets out a transparent and positive framework to enable and manage, where appropriate, asset transfers from the Council to the voluntary and community sector and promote their long term success.

### What Is Community Asset Transfer

Community Asset Transfer is the transfer of management and/or ownership of public land and/or buildings to a community organisation usually at less than market value to achieve an economic, social or environmental benefit.

### Policy Statement On Community Asset Transfer

A core principle of Rotherham Council is to help people to help themselves. An effective way of achieving this is to empower community organisations so that they may deliver their own solutions to meet local needs and demands. 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 by entering in to partnerships with community and voluntary organisations.

Community Asset Transfer will not be suitable for all property assets or all organisations, and 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.

### National Policy Context

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 now 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.

#### Local Policy Context

This refreshed policy is in keeping with the Council's Thriving Neighbourhoods Strategy 2018 - 2025, which sets out how the Council intends to support communities to find solutions to local issues.

#### Legal Framework & Enabling Powers:

Section 123 of the Local Government Act 1972 requires that all disposals to be at the best consideration reasonably obtainable under the circumstances. This applies to the disposal of any interest in land and property.

However this was subsequently amended under the Local Government Act 1972 General Disposal Consent Order (England) 2003, which gave Council's wider powers to dispose of land and property assets at less than market value where it could be demonstrated that they promoted the economic, social and environmental well-being of the area; and provided that the unrestricted undervalue of the asset to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

#### Potential Benefits Of Community Asset Transfer

- Supporting the delivery of the Council's corporate aims and objectives.
- Improved relationships with the local community.
- Facilities and services which are more responsive to local needs.
- For the Council there is likely revenue and capital spend savings.
- Improved management of buildings.
- Additional 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.
- Empowered local communities
- Decision making devolved to a neighbourhood level
- Encourages community participation in activities

#### Potential Risks Of Community Asset Transfer

- Potential loss of revenue income, capital receipt or future opportunity cost for the Council.
- The asset transferred will not be used in the public interests or inclusive to the wider community.
- Expectations of the Council and the community organisation may differ.
- Competing applications between different community organisations.

- The community organisation taking ownership of the asset lacks adequate experience or financial means to deliver the service.
- Lack of control of the future of the asset by the Council.
- Council requires the asset for its own future requirements.
- Not transferring assets to a community based organisation may result in local communities missing out on services/facilities that improve the social well-being.

In order to minimise potential risks and achieve a successful Community Asset Transfer, the Council will appoint an internal working group that brings together the essential skill base required to assess potential transfers. As a minimum this group will include officers from Asset Management, Neighbourhoods, Safeguarding, Legal and Finance. With a suitably qualified working group established it is much more likely that the potential risks will be avoided or managed, and the success of the transfer be realised.

#### Community Asset Transfer Officer Working Group

The purpose/remit of the group will be:

- To engage with local community organisations to understand the needs of the local area and determine if these align to the corporate aims of the Council.
- Brief local ward members on proposals.
- Advertise suitable available assets to the wider community.
- 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 the group's application and evaluate them on the agreed criteria. Having standard and transparent criteria will be essential in appraising applications, especially where there may be competing applications.
- If the application is considered to adequately meet the criteria, to implement the transfer based on the principles within this policy.
- To determine the appropriate means of transfer and agree 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 has been competing applications, to inform the unsuccessful applicant(s) on why they were not successful.
- To determine the level of subsidy the transfer represents to the Council i.e. potential loss of revenue income or capital receipt.

#### Organisations Eligible For Community Asset Transfer

Applications will be considered from community and voluntary sector groups and other third sector not for profit organisations. All applicant groups should be able to demonstrate good governance and an appropriate legal structure.

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 provided they are not part of the Government or statutory sector.
- 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 which can allow for the management/ownership of buildings and/or provision of services.
- Demonstrate good governance – by operating through open and accountable co-operative processes, with adequate monitoring, evaluation and financial management systems and be able to provide copies of the accounts of the organisation on request.
- Have well defined community benefit objectives - and can demonstrate that it has the skills and capacity within, or available to its managing body, to effectively deliver services and manage the asset.
- Have experience and knowledge of property management - and can demonstrate that it understands health and safety issues and compliance with legislation/statutory requirements arising from ownership or management of the asset.
- Demonstrate community engagement - by proactive involvement in economic, environmental or social regeneration in Rotherham or be providing a service of community benefit in line with the Council's core purposes. The Applicant must also provide evidence of the need and demand for the activities being proposed within the local community.
- Prove community cohesion - and embrace diversity and work to improve community cohesion and reduce inequalities. The proposed use will ensure extensive reach into the community and will be open to all.
- Demonstrate sustainability – the Applicant will need to establish how the proposed use can maximise opportunities to ensure sustainability, for example through income generation, social enterprise and the hiring of space and facilities.

#### Assets Suitable For Community Asset Transfer

Firstly the asset must be in the freehold ownership of the Council and by way of the Community Asset Transfer should assist in delivering the corporate aims of the Council.

Potentially suitable assets may include the following:-

- Ownership - An asset is either land or buildings or both in the ownership of the Council. The policy should not specifically include or exclude any type of asset from potential transfer to a community group, allowing each case to be considered on its own merits in consideration of the exclusions below.
- Proposed Use - The applicant and asset will assist in delivering the core purpose and corporate outcomes of the Council
- Service Delivery - An asset that is not currently required or used for direct service delivery will be considered for transfer. Should the applicant be able to

deliver the same service from the asset in question, then this asset should not be precluded from an asset transfer.

### 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:-

- Service delivery – the asset is required for service delivery.
- Capital receipt or revenue income –
  - the asset has been identified within the capital receipts programme,
  - the asset is held for revenue income,
  - the asset is held for long term future capital appreciation,
  - the estimated capital receipt from the asset could make a contribution to the overall capital receipts programme.
- Opportunity costs – any asset where the market value or development value is greater than its existing use value at the time of application will be excluded from the Community Asset Transfer policy and transferred to the Estates team to manage the capital receipts programme. This applies to assets on their own or where they form part of an amalgamated site.
- Housing development – any asset that can contribute to the Council's housing development programme.
- Assets that are not fit for purpose and/or require significant investment will generally be excluded from the policy. Exceptions may be made where the community organisations can secure the financial resources available to bring the property back into a state of repair.
- Corporate Priority - Any asset that has been identified to implement a Corporate Priority and hence service delivery which can only be delivered by the Council is to be excluded from the transfer policy.
- The Council reserves the right to exclude Community Asset Transfer where the proposal only relates to part of an asset.

### 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

The process may be started by the Council or by an organisation making a speculative request to manage a specific asset. In both cases it is the Council who will determine whether an asset is to be made available for Community Asset Transfer or not.

If an asset is available for Community Asset Transfer the Council will advertise the fact via a number of sources including (but not limited to):-

- Council website
- Voluntary Action Rotherham e-newsletter
- Council approved social media sources

### Stage 1 - Expression Of Interest

Interested parties are asked to complete and Expression of Interest form by a specific date outlined in the advertisement. This form should outline a summary of how the organisation proposes to use the asset.

All Expressions of Interest will be presented to the Council's Asset Management Board for consideration. Any interested group will be informed on the outcome of the Asset Management 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 next stage in the process is for the organisation to 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, and as a minimum requirement should address the following points:-

- 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
- 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
- which of the Council's strategic objectives the organisation deliver against and what outcomes will be delivered as a result of their managing the asset
- a community need statement outlining the community need and any community benefits from the organisation managing the asset (the how, the who, how many) and this will be measured, including details of stakeholders and evidence of community involvement and consultation
- what improvements, both physical and cosmetic the organisation intends to make to the asset (if any), including indicative costs and how these are to be financed
- a cash flow forecast and budget detailing the financial viability and sustainability of the organisation. This should demonstrate their ability to manage the asset and 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 principles – *Rotherham Council*

*believes that every child, young person and adult, regardless of their background, age, culture, sexual orientation, gender identity, disability, ethnicity or religious believe, should be able to participate in a safe society without any fear, violence, abuse, bullying, discrimination or exploitation.*

The Council will specify to the organisation the deadline for submission of their business case after which it will be evaluated by cross-service panel and the Community Asset Transfer Matrix will be used to record the assessment. A recommendation will then be made to the Council's Asset Management Board as to whether or not the proposal should be supported.

### Stage 3 – Heads of Terms and Joint Working Agreement

The final stage of the process would be to agree heads of terms for the asset transfer and would be subject to the organisation entering in to 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 it is advised that applicants seek their own independent professional advice.

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

- Operation of the asset in accordance to the terms of the lease/licence 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.

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.

**Please note all Community Asset Transfers will be subject to approval under the Property Officer's Delegated Powers under paragraph 41.5.12 of the Council's Financial and Procurement Procedure Rules (or any such amendment thereof).**