

# Asset Transfer Policy Principles

## Introduction

This document sets out the principles and details behind Rotherham Metropolitan Borough Councils approach to enable the transfer of Council held land and property assets to the community in an efficient and sustainable way, for the benefit of the community as a whole. The principals within this document should be used as a guide and is not exhaustive, but will give the necessary direction on the application process.

## Qualifying Criteria For The Applicant

Applicants should only be considered from the Third Sector, which includes Voluntary Organisations, Community Groups, Charities Co-operatives and other not for profit organisations. All applications should include a full business and project plan which addresses the following criteria;

- **Non-Profit Distributing** – no applications will be accept 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;
- **Appropriately Constituted** - Is appropriately constituted, for example, a registered charity, a community interest company or a charitable incorporated organisation, a not for profit company; a co-operative etc which can allow for the management/ownership of buildings and or provision of services.
- **Governance** - Can demonstrate good governance by operating through open and accountable co-operative processes, with adequate monitoring, evaluation and financial management systems and be able provide copies of the accounts of the organisation on request.
- **Well Defined Community Objectives** - Has 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
- **Experience & Knowledge of Property Management** - Can demonstrate that it understands health and safety issues and compliance with legislation/statutory requirements arising from ownership or management of the asset
- **Community Engagement** - Can engage in economic, environmental or social regeneration in Rotherham or be providing a service of community benefit in line with the Councils core purposes. It will also need to provide evidenced need and demand for the activities being proposed within the local community.

- **Community Cohesion** - Can 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.
- **Sustainability** - The applicant will need to establish how much space it requires to deliver its proposals, and how proposed use can maximise opportunities to ensure sustainability, for example, through income generation, social enterprise and the hiring of space and facilities. The applicant will need to demonstrate how it will address any capacity building requirements within the organisation.
- **Property Management** - The applicant will need to demonstrate how the premises will be managed on a day to day basis, and take account of legislation affecting occupation of premises

Applications will be accepted from both Parish and Town Councils though must not be part of the statutory sector such as Central or other Government body, NHS, Police Authority, Fire Service etc.

Where only part of the above criteria is met, applications can still be considered for transfer subject to the implementation of necessary safeguards within agreement under the Basis of Transfer.

### **The Asset Subject To Transfer**

The asset that is capable of transfer shall be defined as follows;

- **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 Transfer**

- **Capital Receipt & Revenue Income** - Any asset that has been identified within the Capital Receipts Programme or specifically held for revenue income or long term future capital appreciation will not be considered for asset transfer.

- **Opportunity Costs** – Any asset that is has not been identified within the Capital Receipts Programme as above, but has a Market or Development Value either in its entirety or forming part of an amalgamated site, greater than its Existing Use Value at the time of application, will be excluded from the transfer and transferred to the Capital Receipts Programme accordingly.
- **Assets Not Fit For Purpose** - Asset that are not fit for purpose due to existing state of repair or for other reasons would impose an unreasonable liability to the applicant should not be considered for transfer. This should not however preclude applications for transfer from applicants whom have the opportunity to seek the necessary funding to make the necessary refurbishments/improvements as required.
- **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

### The Basis Of Asset Transfer

- **Grant Of A Lease/Licence** - the default position will be that the basis of an Asset Transfer will be by way of a lease or a licence rather than a freehold transfer. A lease to the applicant will give exclusive right to use the asset for the duration of the lease. A licence will be granted for a temporary period which will give restrictions on use.
- **Period Of The Agreement**- An agreement will be granted for any period, dependant upon the nature of the asset and the applicant – from 1 to 125 years. For established applicants with a proven track record of service delivery and managing properties, whom fulfil the majority of the Qualifying Criteria, a lease can be entered into for a period of time that satisfies that particular group's grant funding conditions if applicable. For applications from newly formed groups an initial Licence should be granted allowing for a 'trial' period prior to entering into a full lease as detailed above.
- **Lease Rent/Licence Fee** – For all the agreements were the Applicants fulfil the Qualifying Criteria the rent shall be a nominal £1 per annum.
- **Landlord & Tenant Act** – All agreements will be contracted out of Part 2 of the 1954 Landlord and Tenant Act
- **Insuring Liabilities** – The Applicant will be responsible for the full cost of insuring the asset transferred under the agreement. The application process will determine whether the asset is capable of being insured directly by the Applicant, the default position, or in certain circumstance under the Council's existing block insurance policy and the cost recovered in full. This will apply in cases where there are shared buildings or where there is a Corporate or Statutory requirement to utilise the block insurance policy.
- **Public Liability Insurance** - The applicant will ensure that it holds Public Liability Insurance for a sum of not less than £5,000,000 (Five Million Pounds).

- **Repairing Liabilities** – The applicant will be responsible for the cost of repairing and ongoing maintenance of the asset transferred for the duration of the agreement. In the event where the applicant is unable to take on the full repair and maintenance of an asset itself (i.e. in the case of joint or shared occupation), the appropriate mechanism for recovering the cost in full will be incorporated within the agreement.
- **Lease Covenants** - All agreements will contain the necessary covenants to ensure that the applicant adheres to the principles and criteria of the Asset Transfer Policy and any requirements or stipulations identified within the application process.
- **Termination Of Agreement** – All agreements shall contain the necessary mechanisms to terminate should the lease covenants not be adhered to as detailed above, or that the benefits of transfer are not realised, or the applicant ceases operations. In the event that the applicant wishes to terminate the agreement for whatever reason, the asset will return to the Council at a nil consideration with the cost of liabilities at the time of termination being recovered from the applicant.
- **Break Option** – All agreements shall contain a break option in favour of the Council, in the unlikely but possible event that the asset transferred by way of a lease or licence is required for wider community development directly (the asset or surrounding site itself) or indirectly (for the benefit of a capital receipt). In operating this Break Option the Council will have to consider compensating the applicant in order to repay grants to third parties and any capital expenditure incurred. It shall also make every effort to provide an alternative asset if appropriate.

### **Implementation Of The Policy**

Applications received for the transfer of a Directorate specific asset or which will deliver a service that is Directorate specific shall be administered by an Officer nominated by the Directorate concerned under the terms of this policy.

For all other applications Officers within Asset Management will administer the applications.

Existing agreements with held by qualifying applicants will be reviewed at the appropriate lease termination/ break date on a rolling basis.

Where the application complies with the policy, this will be reported to the Capital Strategy and Asset Review Team for approval by the Director of Asset Management under delegated powers.

As a minimum, all reports shall contain the following information;

- **Applicants Details** - A brief resume of the applicants organisation, including its community aims, targets and plans and reference to its compliance with any of the Councils Core Objectives
- **Business Plan** - A resume of the full business plan forming part of application and confirmation of compliance of the Qualifying Criteria

- **Lease Agreement Requirements** - The requirements of the applicant in terms of length of agreement or other conditions – ie minimum agreement periods to satisfy funding requirements
- **Opportunity Costs** - Confirmation that Asset Management have been consulted on the proposals in order to confirm that no Opportunity Costs have been identified that would support the Capital Receipts Programme.
- **Revenue Implications** - Details of any revenue losses or savings with regards to loss of rent or savings on building maintenance costs should be reported

Applications falling outside of the policy will be presented to Cabinet for approval.

The ongoing monitoring of the Applicants following asset transfer in terms of community benefit and service delivery will be carried out by officers within the administering Directorate. Monitoring of compliance with the agreements in relation to the maintenance, health and safety, statutory and other property related issues will be carried out by officers within Asset Management.

### **Costs**

The Applicant is to bear the Councils Professional and Legal costs in the preparation of all agreements. The cost of the monitoring of compliance with the agreements in relation to property related issues is to be agreed between the Administering Directorate and Asset Management through a Service Level Agreement, which will be recovered from the Applicant where appropriate.