

# **Barnsley Metropolitan Borough Council Community Asset Transfer Policy – May 2021**

## **1.0 Background**

The Council has been letting/transferring land and buildings such as community halls, sports facilities and open spaces to voluntary and community groups for a number of years and have been dealt with in accordance with the existing Community Asset Transfer Policy.

Within the Localism Act 2011 Community Asset Transfer (CAT) involves the transfer of ownership and/or management of land or buildings from the Council to a community-based organisation or group (such as a charity or community interest organisation). CAT is not a legal requirement, but a voluntary process at the discretion of the Council.

This CAT Policy provides a revised framework against which sustainable community empowerment becomes the focus of future transfers and consistency of approach is applied to all requests. This focus has become increasingly critical as the Council faces, and continues to face, financial pressures.

We want to encourage communities to make the best use of assets and have the best chance of securing long term sustainability through sharing the occupation and use of buildings as well as ensuring that the assets continue to be used by, and benefit, the widest section of the local community as possible

## **2.0 Scope**

This policy covers all CAT enquiries for any Council owned assets (land and/or buildings).

## **3.0 Policy Statement**

Barnsley Metropolitan Borough Council (BMBC) will provide organisations interested in a CAT with guidance, to ensure they have a clear understanding of the Council's approach and a fair, transparent and consistent process for such transactions.

## **4.0 Definitions**

**CAT: Community Asset Transfer** - The transfer of assets (land or buildings) into the stewardship of third sector organisations by lease.

## **5.0 Related Documents**

This CAT Policy links to BMBC existing policy framework and planning processes within the:-

- Barnsley Corporate Plan 2021 – 24
- Asset Management Strategy

## **6.0 Legal Context**

Section 123 of the Local Government Act 1972 requires the Council to obtain best consideration when disposing of land and property. There are two exceptions to this:

The Council may dispose of an interest in land and property at an undervalue up to £2 million below market value where the Council considers that the disposal will promote improvement of the economic, social or environmental well-being of an area.

Section 123 does not apply to a disposal consisting of a grant of a lease term not exceeding 7 years.

Whilst each CAT proposal will be assessed on its own merits following a set process, due to the requirement to comply with Section 123 and to ensure that transferred properties continue to be used for community benefit, disposals for CAT will usually take the form of leasehold transfers. The lease term will be appropriate to support the project with market rent assessed and recorded in the lease.

## **7.0 The Policy**

### **7.1 Suitability**

The Council holds land and property assets for a variety of purposes and not all of these can be considered for community asset transfer.

There are some assets that must remain under Council ownership in order to support the delivery of essential services, continue to provide an income to the Council or to support economic activity in an area.

The Council must also balance the needs of the community and its commitment to CAT against its need to generate capital receipts in order to invest in essential capital projects. Assets which have the potential to generate significant capital receipts for the Council may not be considered suitable for transfer.

Land and property which forms part of the investment estate is held by the council for the generation of rental income or capital appreciation and is not available for CAT.

There are also some assets that may be considered unsuitable for transfer because of restrictive covenants e. assets gifted to the Council for educational purposes, etc some restrictive agreements can be lifted but it can take time.

Ownership in a trustee capacity may also be considered as a disposal may require the consent of the Charity Commission and/or the Court of Session.

## **7.2 Assets Considered Suitable For a CAT**

Assets no longer required by the Council for direct service delivery together with those assets already let to community groups may be considered for CAT. These may include public halls, town halls, community centres, bowling greens, public conveniences play areas and small museums (this list is not exhaustive).

Other assets identified by the Council as being surplus to requirement or under-performing may also be considered.

Each application will be considered for eligible transfer on a case-by-case basis against the criteria outlined in the policy.

## **7.3 Who can apply for a CAT**

The Council will consider applications for CAT of qualifying assets from third sector organisations or groups based and operating within the District. Such organisations may take the form of Parish Councils, local community groups; charitable or not-for-profit organisations; social enterprises, co-operatives; or community benefit Industrial & Provident Societies with an asset lock.

When considering applications for CAT the Council has an expectation that applications and proposals put forward will demonstrate how the CAT and the applicant will;

- Generate social, economic or environmental benefits which directly benefit the people of Barnsley and its district.
- Demonstrate a clear community or social demand for the CAT which will benefit as wide and diverse a range of local people as possible.
- Have a well-prepared business case.
- Have robust systems, governance and policies, as evidenced by a recognised quality mark or by meeting all the basic requirements set out in the assessment criteria table.

- Have the capacity to manage the asset and have directors or committee members who have the necessary experience and skill.
- Have viable proposals in place to access capital and revenue streams to support the project and future management and maintenance of the asset.
- Contribute towards the Council's corporate objectives, community priorities and the priorities of the Council's strategic partners.
- Must not duplicate or negatively impact on services or facilities already provided in the local community.

## **7.4 Criteria for a CAT**

### **7.4.1 Length of leases**

Transfer will take place in line with this policy, under the legal context within the document and in compliance with other relevant statutory or regulatory legislation.

Length of the lease terms will be based on the needs that are clearly outlined within the business case and the capacity of the organisation to manage the asset. As an indication, the following is a guide to the length of term that may apply to new CAT's:

- A lease term as appropriate to the project but generally not in excess of 50 years.
- As an interim holding position to support the Applicant, a management licence or agreement could be granted for up to 12 months.

### **7.4.2 Rent Payable**

The rental payable under leases granted through the CAT process is assessed upon the business case. It will under no circumstance be less than the current rental payable. Other criteria include:

- Assessments will focus on whether or not the Council wishes to support the use or services delivered from the asset.
- Regard given to how the use of the asset benefits the wider community.
- How it is made available for other groups to use.
- How well the asset is managed and maintained.
- The extent to which the asset is being used to deliver or support district and area priorities.

The rent payable may be up to the market rental of the asset for a commercial use.

If the use of asset varies from the original business case to include commercial uses (other than commercial uses which are strictly ancillary to the use) and where any profit is reinvested in community uses, the Council may review the rent up to the market rental depending upon the degree of commerciality. Once the rent is reviewed it shall be subject to 5 yearly reviews.

### **7.5 Rental Subsidy**

The Council has traditionally granted leases to third sector organisations at market rent and granted rental subsidies based on a completed application form and financial information submitted by the third sector organisation.

### **7.6 Exceptional Circumstances**

The Council reserves the right to go forward with a CAT where there is a lease with the benefit of rental subsidy if it feels that there are exceptional circumstances

### **7.7 State Aid**

Before entering into any CAT, the Council will need to satisfy itself that the transfer does not contravene State Aid legislation.

### **8.0 Decision Making**

In the case of proposals affecting a specific area Portfolio Holders and Ward Members will be notified by appropriate officers in line with the agreed process as part of this policy.

At the initial stage of interest from the Third Party the proposal will be taken to the Property and Asset Management Group for discussion and approval to move to the next stage.

The decision 'in principle' will be made by the Executive Director Place who will consider the recommendation/s put forward by the assessing officers.

It will be at the Director's discretion following recommendation from the Property and Asset Management Group whether a proposal requires escalation to the Council's Senior Management Team and Cabinet for a final decision.

Parish Councils will be notified of proposed community asset transfers in line with the procedure set out in the Land and Property Disposal Policy.

Where a proposal is service driven, the driving service will be consulted as part of the assessment process.

If the Council is reasonably satisfied that the Applicant is delaying the process without just cause then the Council has the right to stop the process and close the application.

The Council retains the right to manage the process to its effective conclusion to ensure the best needs of the Council and community are assured.

## 9.0 Application Process

Due to the need for the Council to strategically manage all of its land and buildings, all proposals for a CAT will be managed by the Council's Asset Management Team, regardless of whether the initial CAT proposal is formulated by a service department within the Council or an external body or group.

There are four stages to the approval process (five if you include the monitoring). It is important that the Applicant follows the process and provides the necessary evidence to support the application at the different stages.

Whilst an indication has been given for the length of time that it is anticipated to take for the various stages of the process, it is important to note that external/unexpected factors may impact on those timeframes e.g. availability of people (Applicant/Ward Members/Officers) for consultation/additional information or the next available opportunity to submit information to the Executive (if escalated) for a decision.

## 10. Contents of submission for stages of process

Prior to starting formal stages advice and support will be available to interested parties to discuss feasibility of their proposals

Steps	Elements/ Documentation	Assessors/Decision Makers	Timescales
<b>Stage 1</b> Formal expression of interest by the Applicant	Submission of outline business case and feasibility assessment to evidence: <ul style="list-style-type: none"> <li>Why the asset is needed</li> <li>Aims and objectives</li> <li>Support from others</li> <li>Effective management of the asset (for cases where the organisation already occupies the property)</li> </ul>	<ol style="list-style-type: none"> <li>Desktop assessment by Council Officers (EM Programmes will lead the process and notify the Stronger Communities Team and/or other relevant Council Services.</li> <li>Portfolio Holder, Ward/ Parish/Town Councillors and Ward Officer(s) notified by email.</li> <li>Expression of interest goes to the Property and Asset Management group for</li> </ol>	2 weeks from receipt of application or as soon as possible thereafter

	<ul style="list-style-type: none"> <li>Is a concession being applied for?</li> </ul> <p>Applicants may use the formal EOI form (CAT1) or if at an advanced level by direct contact with Council Officers.</p>	<p>discussion/direction with an expectation that this group will be informed of any progress/barriers.</p> <p>Information Sharing:-</p> <p>If the Applicant is invited to pursue the CAT to the next stage, then Council Officers should provide the following information:-</p> <p>Utility Costs Condition surveys and maintenance liabilities Business rate information Request planning history where required</p>	
<p><b>Stage 2</b> If successful at Stage 1, the Applicant is invited to submit a formal application</p>	<ul style="list-style-type: none"> <li>Evidence required of Product/service delivery</li> <li>Partnership working</li> <li>Experience</li> <li>Track record</li> <li>Capacity</li> <li>Needs analysis</li> <li>Projected utilisation</li> <li>Cash flow forecasts</li> <li>Projected income and expenditure</li> <li>Risk assessment</li> <li>Professional advice obtained</li> </ul>	<ol style="list-style-type: none"> <li>Co-ordinated by EM Programmes, a desktop assessment by Council officers in consultation with Stronger Communities and Finance and other Directorate Services as required</li> <li>Meetings with Applicant and/or supporters.</li> <li>Site visit(s) as required</li> <li>Gap analysis of necessary Information</li> <li>Align with Barnsley Council's Asset Management Strategy Plan 2017-2020</li> </ol>	<p>The Full Business Plan and supporting documentation should be submitted within 12 weeks or as soon as possible thereafter.</p>
<p><b>Stage 3</b> Evaluation and consultation of submission by officers</p> <p>Formal decision by Property and Asset Management</p>	<p>Detailed evaluation of:</p> <ul style="list-style-type: none"> <li>Value/worth of the CATs benefits</li> <li>Any concession awarded</li> <li>Benefit to the Council</li> </ul>	<ol style="list-style-type: none"> <li>Detailed assessment by Council officers and recommendations and/or conditions prepared</li> <li>Portfolio Holder notified by email of</li> </ol>	<p>Timescales are dependent on the complexity of the proposal and reporting timeframes. However, it is aimed to obtain a final decision</p>

<p>Group in consultation with the Executive Director of Place</p>	<ul style="list-style-type: none"> <li>• Check against existing facilities (duplication)</li> <li>• Check against local policies</li> <li>• Check against any local plans</li> <li>• Check against national policies and relevant legislation including State Aid and VAT</li> <li>• regulations and the Local Government Act etc.</li> </ul>	<p>Stage 2 formal application</p> <ol style="list-style-type: none"> <li>3. The Property and Asset Management are notified by email of Stage 2 formal application and approval sought to proceed to Stage 4.</li> <li>4. Ward/ Parish /Town Councillors, Ward Officers, Legal Services and Departmental Service notified by email of Stage 2 formal application.</li> </ol> <p>The final decision may be subject to ratification by the Executive Team.</p> <p>The decision is subject to subsequent call in by Scrutiny Committee in accordance with the Council's Constitution and call-in procedure under the decision-making process.</p> <p>There is no appeals process.</p> <p>Written notification of the Council's decision to Applicant</p>	<p>within 12 weeks or as soon as possible thereafter.</p>
<p><b>Stage 4</b> Planning and implementation of CAT</p>	<p>Instructions given to process legal documentation:-</p> <ul style="list-style-type: none"> <li>• Draft heads of terms issued</li> <li>• Agree support plan and investment plan</li> <li>• Draft lease and service agreement issued and Secretary of State's consent</li> </ul>	<p>Applicant organisation required to work with Council officers from Estate Management and Legal Services to avoid unnecessary delays.</p> <p>Applicant advised of timescales of CAT.</p> <p>Council Officers to document any monitoring agreements if the Applicant is to replace or expand the provision of existing services by documenting:-</p>	<p>Approximately 6 months (or as soon as possible thereafter) but dependant on external factors to ensure statutory, regulatory or funding compliance and/or within 3 months of acceptance/ratification of heads of terms (or as soon as</p>

	<p>applied for (where required)</p> <ul style="list-style-type: none"> <li>• All funding secured</li> <li>• Completion of all agreements and documentation</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum operating hours</li> <li>• Scope of activities</li> <li>• Quality standards</li> <li>• Safeguarding issues addressed</li> <li>• Basis for monitoring and measuring outputs</li> </ul>	possible thereafter)
Monitoring and Outcomes		<p>All CATs will be subject to quarterly monitoring meetings. These meetings will be carried out by the appropriate Council Officer/s and will be part of the overall agreement.</p> <p>Key issues to monitor could include the quality of service provision, maintenance of premises, compliance with lease terms and an opportunity to raise any issues as they happen and to allow for these to be addressed as soon as possible.</p> <p>*These monitoring meetings need to be attended by the managing individuals and key reps from the governing body</p>	

## 11. Further Information

My community rights: <http://mycommunity.org.uk/community-right-to-bid/>

National CLT Network: <http://www.communitylandtrusts.org.uk/>

Locality: [Locality.org.uk](http://Locality.org.uk)

## 12. Outcomes

- Community empowerment and pride
- Stronger, cohesive and sustainable communities
- Fair and transparent process
- Reduced running costs and maintenance liabilities
- Sustainable CAT's not competing with other community projects within the local area
- Compliance with Legislation (e.g. Section 123 of the Local Government Act

### **13. Policy Updates**

This Policy replaces all previous versions of CAT policy. Regular review will continue to take place as and when required.