

Community Asset Transfer Policy

August 2020

Policy Document Revisions

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| Corporate Policy – Community Asset Transfer | ## October 2020 |
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1. Purpose of the Policy

- 1.1 Community Asset Transfer (CAT) 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.
- 1.2 This policy outlines Tameside Council's approach to CAT. It sets out a transparent, positive and proactive framework to enable and manage asset transfer from the Council to the Voluntary and Community Sector (VCS) and ensure the long-term sustainability of the proposal.
- 1.3 Tameside Council recognises the positive contribution that VCS organisations bring to their communities and the purpose of this policy is to facilitate and support these organisations to access Council property for the delivery of community services to the local area.
- 1.4 As part of its 'Vision for Tameside', the Council acknowledges that as a representative body, it exists to maximise the well-being of the people of the Borough. In pursuing this aim, it will:
 - Establish open systems of listening and communication;
 - Develop innovative ways of involving the community;
 - Be flexible and adaptive to the changing needs of the Borough;
 - Work in a co-operative and co-ordinated way continually to improve the quality of its delivered services;
 - Provide equality of access to those services.
- 1.5 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 VCS organisations.

- 1.6 It is also acknowledged that CAT may provide a long-term sustainable option for services that may have otherwise faced challenges to their continued delivery.
- 1.7 Putting in place a robust CAT Policy is an active management step by Tameside Council to support VCS organisations and local communities to take responsibility of property assets to support delivery of community services.

2. Principles Underpinning the Community Asset Transfer Policy

- 2.1 The Council supports a strong and sustainable VCS as a key partner in the delivery of services and in providing a link with local communities. It recognises that VCS organisations have a vital role to play within the Borough.
- 2.2 Tameside Council already benefits from a strong Voluntary and Community Sector with an estimated 1,167 voluntary organisations and 34,000 volunteers operating within the Borough. There are currently 14 Council owned buildings occupied by Voluntary and Community Sector (VCS) organisations providing a range of services to the Communities within Tameside.
- 2.3 The Council, therefore, recognises that the way its physical assets are managed can have a positive impact on the long-term strength of VCS organisations and local communities. In holding a legal interest in their asset, VCS organisations can grow and become more secure and gain access to external funding sources not available to the Council.
- 2.4 The Council's aim is to ensure that the way assets are managed via CAT adhere to the Council's corporate objectives and enable VCS organisations to grow and become sustainable on a long-term basis.

3. Policy Statement on Community Asset Transfer

- 3.1 As part of its wider Disposal of Council Owned Land and Property Policy (as approved at Cabinet in September 2020), the Council recognises the value of Community Asset Transfer in supporting the VCS in the continued delivery of community services through the transfer of its property asset.
- 3.2 The Council notes that CAT provides an opportunity to give local people and organisations greater control over the future of their area and community. This policy recognises the potential benefits that CAT can bring to the community, to the organisation proposing an asset transfer and to the Council.
- 3.3 It is important to recognise that CAT is not suitable for all properties or all organisations and the Council, where possible, will continue to work with local organisations to ensure that a range of tools, programmes and initiatives are

in place to support the development of a strong and sustainable Voluntary and Community Sector in Tameside.

- 3.4 The opportunity to transfer an asset via CAT will in most cases be prompted by the Council declaring a suitable property as surplus to requirements. However, in some cases the option to consider CAT may be as a result of a direct approach to the Council by a VCS organisation.
- 3.5 The Council will consider transfer of an asset to any organisation that makes a credible application on an asset deemed suitable for CAT and providing the process identified below is followed.
- 3.6 While fully supporting the principle of CAT, this policy also recognises that some assets must remain under Council control in order to support the delivery of essential services or Strategic Corporate Objectives. Greater detail is provided below on those assets that are to be excluded from Community Asset Transfer.
- 3.7 It is important to recognise as part of this policy that the Council is under no obligation to transfer property assets to the community or VCS organisations. This policy must take into account the approach and desired outcomes of other Council strategies, policies and initiatives and all proposals for CAT must make an explicit contribution and impact to the needs of the Borough.

4. National Policy Context

- 4.1 Prior to 2010 CAT was encompassed within policies to create sustainable communities, empowerment and regeneration (e.g. the 2008 white paper "Communities in Control: Real People Real Power").
- 4.2 The community ownership and management of assets has also been strongly promoted by Government in recent years, most recently as part of the "Big Society" agenda. The Department for Communities and Local Government (DCLG), who commissioned the Quirk Review "Making Assets Work" published in 2007, made this agenda prominent.
- 4.3 The Quirk Review strongly advocated local ownership and management of public assets and sets out the clear benefits to local groups, which own or manage public assets – such as community centres, building preservation trusts and community business enterprises. The review found and recommended that: -
 - the social or community benefits of community management and ownership of public assets can outweigh the risks and often the opportunity costs in appropriate circumstances;
 - a major programme of awareness raising and capacity building for the evaluation of benefits and risks needs to be generated;

- Local authorities and other public bodies should take a more corporate approach to their asset portfolio and their relationship with the community sector.
- 4.4 Since 2010 and following the Quirk Review, CAT has been incorporated in the “Big Society” policy agenda which has at its core greater empowerment to communities, opening up public services to the VCS, social enterprises and the private sector and enabling and encouraging people to play a more active part in society and promote more volunteering.
- 4.5 There is now a clear multi-party policy at a national level to encourage the transfer of ownership and management of public sector land and assets to community organisations. Such transfers are increasingly seen as a means to achieve a range of objectives from promoting civic renewal, active citizenship and improving local public services to tackling poverty and promoting economic regeneration.
- 4.6 The Localism Act (2011) further devolves decision making powers to a neighbourhood level and advocates additional rights and powers for communities and individuals such as the “Community Right to Challenge” and “Community to Bid”.
- 4.7 Although sharing some common principles, Community Asset Transfer is a separate process to Community Right to Challenge and Community Right to Bid.

Please note this policy relates to Community Asset Transfer only. The processes relating to Community Right to Challenge and Community Right to Bid, will be outlined in a separate policy documents.

5. Legal Framework and Enabling Powers

- 5.1 CAT involves the transfer of Council or other publicly owned property assets, usually at less than Market Value, as a means to further local social, economic and / or environmental objectives.
- 5.2 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.
- 5.3 However this was substantially 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 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).

6. Potential Benefits of Community Asset Transfer

6.1 The potential benefits that a successful Community Asset Transfer may afford are far reaching and widely recognised.

6.2 For the community and VCS organisation, Community Asset Transfer may: -

- Strengthen the organisation's confidence.
- Provide greater opportunity to raise funding from grant bodies not available to Local Authorities.
- Further strengthen the organisations' community ties.
- Provide a catalyst for local volunteering, stimulating the direct involvement of local people in shaping and regenerating their communities and increasing community cohesion.
- Provide the opportunity for the organisation to develop the asset to meet the communities' needs and aspirations.
- Increased use of facilities and a wider range of activities with improved health and other wellbeing outcomes for the community.
- Decision making devolved to a local level.

6.3 For the Council, Community Asset Transfer offers the following benefits: -

- Strengthened relationships with the local community and opportunity for long-term partnership working between sectors and delivery of shared priorities.
- Greater opportunity for external investment in the asset.
- Potential for assets to be brought back in to more beneficial use.
- Opportunity to restore "iconic" buildings.
- More efficient use of the Council's asset base and greater focus on community outcomes.
- Supporting the Council's Corporate aims and objectives.
- Delivery of social, economic and environmental benefits.

7. Potential Risks of Community Asset Transfer

7.1 Whilst it is acknowledged that CAT may provide many positive outcomes to the Council, VCS organisations and local communities; if not managed correctly and in accordance with a clear and robust policy, it could present a number of risks. These risks may include (but not limited to) the following: -

- The asset transferred will not be used in the public interests or inclusive of the wider community.
- The organisation taking responsibility for the asset may not have the capability, experience or financial understanding to deliver the service proposed.
- The expectations of the Council and the VCS organisation may differ.
- The Council's loss in control over the future of the asset.

- Potential loss of revenue income, capital receipt or future opportunity cost for the Council.
- 7.2 In order to minimise potential risks and achieve a successful Community Asset Transfer, there needs to be a robust, transparent and clear policy in place.
- 7.3 In order to assess potential CAT's and minimise risk, the Council will appoint an internal working group that brings together the essential skill base required to assess applications and make recommendations as to whether an application be supported.
- 7.4 With a suitably qualified working group established it is much more likely that the potential risks will be avoided or managed, and a successful transfer be realised.

8. Organisations Eligible for Community Asset Transfer

- 8.1 Applications will be considered from Voluntary and Community Sector organisations. Applicants should be able to demonstrate good governance and an appropriate legal structure.
- 8.2 The applicant must: -
 - Be non-profit distributing – applications will not be considered from private companies, private individuals or other organisation not fulfilling the criteria. Any applicants that are profit making must reinvest any surpluses to further the social/community services offered from the asset.
 - Be a Voluntary or Community Sector organisation - i.e. must be a legal entity which is not governmental or part of the statutory sector. However, applications may 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 open and accountable processes, with adequate monitoring and financial management systems and be able to provide copies of the organisations accounts upon request.
 - Have well defined community benefit objectives – and demonstrate it has the necessary skills, capacity and resources to effectively deliver the services identified and manage the asset.

- Have appropriate experience and knowledge of property management – and can demonstrate it understands health and safety issues and compliance with legislation/statutory requirements arising from the transfer and management of the asset.
- Demonstrate sustainability – the applicant will need to be able identify and maximise opportunities to ensure long term sustainability.

9. Assets Potentially Suitable for Community Asset Transfer

- 9.1 The asset must be in the freehold ownership of the Council and the Community Asset Transfer should assist in delivering the corporate aims of the Council.
- 9.2 The policy should not specifically include or exclude any type of asset from the potential transfer to a VCS organisation, allowing each case to be considered on its own merits, having consideration of the exclusions identified below.

10. Assets to be Excluded from Community Asset Transfer

- 10.1 The Council will not support Community Asset Transfer where any of the following apply: -
- The asset is required for service delivery.
 - The asset has been identified for capital receipt: -
 - either within the capital receipts programme,
 - is held for long-term future capital appreciation, or whereby
 - the receipt from the asset could make a contribution to the overall capital receipts programme.
 - The asset is held or identified for revenue income.
 - The asset could contribute to the Council's housing development programme.
 - Where there's potential for an enhanced alternative use value (opportunity cost), either as an individual asset or where the asset may be part of an amalgamated site.
 - Assets that are considered unfit for purpose and/or require significant investment will generally be excluded from the policy. However, exceptions may be made where the VCS organisation can secure the financial resources to bring the property back into repair and beneficial use.
 - Proposals that only relate to part of an asset will generally be excluded from Community Asset Transfer. However, in exceptional circumstances the Council reserves the right to reconsider.

11. The Community Asset Transfer Process

- 11.1 Although a number of steps are involved in Community Asset Transfer, there are three key stages for those individuals or groups who are interested: -
- 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.
- 11.2 The CAT process may be started by either the Council advertising an opportunity or by an individual/organisation making a speculative request to take on management responsibility for an asset.
- 11.3 If the asset is available for Community Asset Transfer, the opportunity will be advertised with Expressions of Interest sought via a number of methods to include (but not limited to): -
- Local press.
 - Tameside Council website.
 - Community networks/partners.
 - Tameside Council social media outlet.
- 11.4 It should be noted that if a speculative request is received, and if that asset is deemed suitable for Community Asset Transfer, then in accordance with this policy the opportunity will be advertised to the wider voluntary and community sector.
- 11.5 Where there are any existing agreements with VCS organisations for the occupation of Council property (land or buildings) and where these agreements are nearing expiry (and there are no automatic rights to a renewal tenancy under the Landlord & Tenant Act 1954), the Council will notify the group of its intention to advertise the opportunity to the wider community sector. Applications from existing user groups will be encouraged and will be considered alongside any other applications and in accordance with this policy.
- 11.6 A flow chart identifying all the steps involved in the Community Asset Transfer process is attached at Appendix A

12. Community Asset Transfer Stages

12.1 Stage 1 – Expressions of Interest

- All applications are to be initially directed to the Estates Team within the Growth Directorate (or successor team).
- Interested organisations are asked to complete and return an Expression of Interest form by a specific date outlined in the advertisement. The Expression of Interest form is attached at **Appendix B**

- The Expression of Interest form should outline a summary of how the asset will be used along with a summary of the anticipated benefits to the local community. A number of organisations may be asked to submit a full application for further consideration, this will be assessed further as described below.
- All Expressions of Interest will be presented to the Asset Management Working Group for consideration and the VCS organisation(s) will be notified of the outcome.
- Should the Asset Management Working Group support an initial application. The organisation(s) will be informed of the next stage.

12.2 Stage 2 - Full Application and Business Case

12.2.1 Following the initial Expression of Interest Stage, successful applicants will be invited to submit a Full Application form (copy attached at **Appendix C**) together with a supporting Business Case. Timescales for completion of Business Cases and Applications will be agreed at this point.

12.2.2 The Application form and Business Case will be assessed against the criteria contained within the CAT Assessment Matrix (copy attached at **Appendix D**) by a panel comprising representatives of the Estates Team, Legal Services, Finance and any other Council service which aligns with the aims and objectives of the Community Group.

12.2.3 Where multiple applications are received for the same asset, each will be considered against the scoring matrix, other relevant Council Policies and objectives and in consultation with Local Ward Members.

12.2.4 Please note that any recommendation on whether to proceed with CAT requires approval by the Asset Management Working Group (which includes the Executive Member for Finance and Economic Growth) in accordance with the Council's Strategic Asset Management Plan, Delegated Powers and Council constitution. Please note formal approval will be via an Executive Decision Notice

(i) The Application and Business Case

Should include the following: -

- A summary of the proposal outlining how the asset will be used.
- Details of the outcomes to be delivered, how the use of the asset will support the Council's aims and objectives and how this will benefit the community.
- A description of who the organisations clients/users are i.e. the organisations target group.
- A community need statement outlining the community need and any community benefits resulting from the organisation managing the asset (the how, the who, the how many). Evidence of community involvement and consultation will be expected.

- Details of which of the Council's strategic objectives the organisation will deliver against and what outcomes will be delivered as a result of their managing the asset.
- Details of funds held by the organisation, cash flow and budgeting details. How the organisation intends to secure future capital and revenue funds to invest into and support the project.
- The capacity of the organisation to manage the asset.
- The experience and skill of the organisations Board/Managing Group.
- Confirmation of the organisations legal structure and how it will hold the asset. Any successful applicant must be a legally constituted community group, charity or not for profit organisation with articles of association that define the roles and responsibilities of trustees etc.
- Succession planning to ensure that the organisation maintains the right skills and knowledge to manage the asset in the longer term.
- Details of the organisations safeguarding policy and demonstration of how it meets the Council's own safeguarding principles.

12.2.5 The Council will specify the timescales for submission of the application and business case, after which they will be assessed by a cross-service panel and evaluated in accordance with the Community Asset Transfer Assessment Matrix. A recommendation will then be made to the Asset Management Working Group as to whether or not the proposal should be supported. Organisation(s) will then be informed of the outcome.

(ii) **The Community Asset Transfer Assessment Matrix**

The CAT Assessment Matrix will be used to record the assessment decision. Copy of Assessment Matrix included at **Appendix D**.

During this assessment period the Council may enter into a dialogue with the organisations who have submitted the application to seek clarification and additional information / evidence in support of the organisations aspiration to acquire the asset. In certain circumstances, the Council may ask a number of organisations to explore a collaborative bid for the asset.

(iii) **In the Event of an Application being Approved**

Where an application is supported and approval is in place to progress to the next stage, the organisation will be contacted to agree Heads of Terms and the basis for the Joint Working Agreement.

Local Elected Members will be informed of all decisions relating to Community Asset Transfers within their wards.

12.3 **Stage 3 – Heads of Terms and Joint Working Agreement**

- 12.3.1 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.
- 12.3.2 There may be additional legal issues which may arise in context of the CAT for example (including but not limited to) – State Aid (public procurement), transfer of undertakings such as protection of employment “TUPE” etc.
- 12.3.3 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.
- 12.3.4 The Council have prepared a draft Heads of Terms document for CAT use, this identifies some of the key terms and conditions that need to be considered for any proposed transfer. A copy of the draft CAT Heads of Terms can be found at **Appendix E**.
- 12.3.5 It should be noted that the standard CAT lease agreement shall include a break clause in favour of the Landlord in the event that the Council require the asset (or any part thereof) for wider development or for the generation of a capital receipt. In operating this Break Option the Council acknowledges that it may have to compensate the applicant where they are legally obliged to repay any grants that have been secured on the premises for purposes of delivering the agreed community service.
- 12.3.6 In the event that a prospective VCS requires a lease that does not contain any landlord break provisions, for instance as a requirement for securing external funding, then all such requests will be considered on their own merits and approval of such will be required by the Executive Member for Finance and Economic Growth in conjunction with the Director of Growth.
- 12.3.7 The decision to enter into a Lease as part of a Community Asset Transfer sits with the Director of Growth as described in the Constitution agreed 25th July 2019, Part 3a – Terms of Reference and Scheme of Delegation; F. Director (Growth), and any subsequent revision thereof. The Director shall exercise this power in consultation with the Executive Member for Finance and Economic Growth.
- 12.3.8 Any deviation from this policy, including any amendments to an existing Community Asset Transfer agreement, will be considered on their own merits and will be subject to obtaining further approval by the Executive Member for Finance and Economic Growth in conjunction with the Director of Growth
- 12.3.9 If the Executive Member for Finance and Economic Growth or Ward Members are not in agreement with the recommendation, the matter will be referred to Board before requesting Director and Executive Member Approval.

Note:

Any recommendation fully supported by the Executive Member and Ward Members will not be reported to Board.

13. Legal Considerations

13.1 Any application will be considered against the Council's Disposal Policy and its legal obligations in respect of property transfer, namely: -

13.2 State Aid

State Aid refers to forms of assistance from a public body give to certain organisations which has the potential to distort competition and affect trade between member states of the European Union.

13.3 The European Commission monitors and controls State Aid in the EU. Member States are obliged to notify and seek approval from the Commission before granting State Aid.

13.4 This gives the Commission the opportunity to approve or refuse to approve the proposed measure. The Council will need to consider whether the terms of the transfer proposed by the VCS organisation could amount to State Aid and if so, whether exemptions exist that might allow the transfer to proceed legally.

13.5 Property held on Charitable Trust

The Council holds some property on Charitable Trust. Transfers of such property can only take place where the terms of the transfer accord with the terms of the Trust and are otherwise approved by the Charitable Trust Committee, complies with Charity Law and if required seek the approval of the Charity Commission.

13.6 Other Potential Legal Matters

As indicated above, issues may arise transfer of undertakings and in particular the protection of employment "TUPE".

13.7 Whilst the Council will endeavour to advise applicants on their legal responsibilities associated with an asset transfer, it is strongly recommended that organisation seek to obtain their own independent professional advice.

14. On Completion of a Community Asset Transfer

14.1 Once the CAT is completed, the acquiring organisation(s) will become responsible for:

- Operation of the asset in accordance with 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 agreed outcomes.
- 14.2 The above will be effective from the date of legal completion of the asset transfer.
- 14.3 Failure to comply with the agreement may result in the Council terminating the lease/licence agreement and the organisation having to hand back the asset to the Council.

15. Following Transfer of the Asset

- 15.1 The successful organisation(s) will be required to submit an Annual Report to the Councils agreed representative which will demonstrate that the agreed outcomes have been delivered.
- 15.2 Every transfer will be subject to review on an annual basis (where possible and practicable), in order to measure the success of the CAT. The review will assess the sustainability of the transfer and check that the outcomes agreed as part of the transfer are being achieved.
- 15.3 The acquiring organisation will provide proof on demand that all statutory and legal requirements are complied with.

16. Further Community Asset Transfer Considerations

- 16.1 The following matters should be considered when putting a Community Asset Transfer into practice: -
- Priority for the opportunity to have a community asset transfer will be given to the asset's existing users and community organisations.
 - Where there are several interested parties for an asset, a competitive evaluation process will be used to decide the preferred organisation, if any.
 - There is no guarantee of exclusivity on a first come first served basis when considering asset transfers and other expressions of interest will be considered, as appropriate.
 - Collaboration between community-based organisations and the sharing of assets to optimise social value and value for money across the borough will be encouraged.
 - Proposed asset transfers will be managed on a case by case basis and in accordance with this policy and any decision to transfer an asset should not be regarded as setting a precedent.
 - The Council will share information regarding the condition and operating costs of the asset with the interested party.

- It cannot be assumed that the council will make good any defects with the asset before the transfer.
- Any significant repair costs or remodelling would bring in to question the suitability of the asset for a transfer unless an interested party can deliver the necessary investment as part of their business plan.
- The community organisation will need to be a legal entity and be able to demonstrate a sustainable business plan.
- Elected members, including ward members, will be engaged appropriately throughout the process.
- Any proposed CAT must promote social, economic or environmental wellbeing (social value) and support the stated aims and priorities of the council.
- The community organisation will be responsible for the running costs, including repairs, maintenance, and insurances.
- The Council does not provide any financial support for community asset transfers.
- Any transfer for community use should be on a leasehold/licence basis. This protects the future of these assets and ensures the council can determine any future changes in use and occupation during the lifetime of the agreement.
- The length of the agreement should be appropriate to the business case and where appropriate, long enough to attract funders and investments.
- Where an element of wider community usage is retained after the transfer then there will be a requirement to protect existing user groups in terms of usage and charges for a limited period.
- The social value and outcomes to be delivered, along with any other conditions or grants will form part of a business case and subsequent lease/licence agreement.
- Compliance with the objectives of the CAT will be monitored by the Council as specified in the relevant agreements.
- A rental will be agreed to a minimum of £1,000p.a. or 25% of current Market Rent, this rental will be subject to 5 yearly rent reviews and based upon Retail Price Index changes.
- In the event that a Nil rental is requested by a proposed tenant, this request will be referred to the Director of Growth as Delegated Officer for further consideration in conjunction with the Leader of the Council and relevant Executive Member.
- Failure to comply with the terms specified in the Joint Working Agreement and transfer document may result in termination of the lease/licence at the Councils discretion.

