

Community Asset Transfer policy and guidance for applicants

Foreword

Whilst Shropshire is one of the most sparsely populated rural counties in England, with a high percentage of its area classified as rural, it has a diverse range of local towns and villages which form our communities in which many of our 300,000+ residents live.

As part of our core objective to strengthen our local towns and villages the council, through working with the local town, parish council and voluntary sector, may enable the transfer of suitable land and/or buildings to community groups and organisations.

The Community Asset Transfer (CAT) policy sets out the council's approach to community asset transfer. It has been prepared to help support the council's core objectives of a good place to do business, and sustainable places and communities. The policy supports the following organisation principles:



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Shropshire Council Community Asset Transfer Policy

1. Statement of Commitment:

Shropshire Council recognises that Community Asset Transfer (CAT) forms a valuable part of the overall framework of supporting and sustaining the voluntary and community sector in Shropshire. Shropshire Council is committed to such transfers where it will bring benefits to our communities; contributing towards the council's aims and objectives.

In developing this policy Shropshire Council has committed to utilising designated council assets to form long-term partnerships with Voluntary and Community Sector Organisations (VCSOs) that meet the council's criteria.

The council will investigate potential opportunities for CAT to local communities and social enterprises, where the assets may be beneficially managed by those who regularly use them, and in doing are enabled to create stronger, more cohesive and more sustainable communities. Such transfers will enable the council to minimise its financial responsibilities in transferred assets, allowing reinvestment in its core portfolio and achievement of corporate objectives.

A transparent process for CAT, with a defined method of assessing all applications will ensure that transfers are made in the best interest of the council and the communities it serves.

Our policy will integrate with the Localism Bill 2011.

2. What is Community Asset Transfer (CAT)?

2.1 **Definition:** The transfer of a council-owned asset (usually land or buildings) to a community organisation at less than market value either at a reduced cost, or for a nominal consideration, to achieve a local social, economic or environmental benefit, usually by way of a long lease. The social, economic or environmental benefits of the proposed transfer may be taken into account in determining the value.

2.2 CAT can take place in different forms:

- Management agreement
- licence to occupy
- short lease
- long lease

A Freehold transfer may be considered but only in exceptional circumstances

2.3 CAT can apply to land and buildings used by the community. A community building is defined as “a free-standing building that is managed, occupied or used primarily by the voluntary and community sector and where community-led activities for community benefit are the primary use of the building”.

3. Why the council transfer assets to Voluntary & Community Sector Organisations

- 3.1 VCSOs are often best placed to manage facilities in their local communities. They make extensive use of volunteers and their local knowledge and hands-on management of the asset can result in lower overheads and better value-for-money, as well as a more intensive use of the asset.
- 3.2 Community management of assets directly supports the council's devolved decision-making process. CATs empower local communities, puts local organisations in control, encourages pride of place, and improves communities.
- 3.3 An asset can provide a VCSO with greater financial viability and reduce its dependency on grants. The asset may enable it to apply for external funding that is not available to the Council, and/or secure loan finance on the value of the asset.
- 3.4 Some CATs may have a requirement to provide certain services on behalf of the council. Where this is the case, it will be made clear at the outset and applicants will be required to incorporate the requirement into their business plan.

4. Eligible organisations

4.1 The following VCSOs or organisations that are not for private profit can be considered for CAT:

- Unincorporated charitable organisations
- Companies limited by guarantee with charitable status
- Community Interest Companies (CIC) limited by guarantee or by shares
- Community benefit industrial & provident societies with an asset lock
- Charitable Incorporated Organisation
- CASC Community Amateur Sports Club

Other charitable bodies may be considered at the council's discretion. Each applicant must provide financial evidence (eg profit & loss accounts) to allow the council to verify that they are operating on a non-profit basis, in accordance with overall CAT terms and conditions

4.2 Privately-owned or commercial organisations can only be considered if their main aim is to deliver social, economic or environmental benefits and they meet the criteria in paragraph 5.

4.3 National organisations whose remit is regional or nationwide are not normally considered for CAT unless they meet the criteria in paragraph 5. It will be at the sole discretion of the council as to whether they will prioritise a transfer of assets to an organisation whose remit appears to be disproportionate in terms of regional and/or nationwide provision as against of benefit to the local community

4.4 The potential transfer of assets to town and parish councils will be managed separately through the council's disposal of property procedure

4.5 The council will not consider applications for transfer in the following circumstances:

- Assets which accommodate fixed or core services (eg schools, social care establishments, sheltered accommodation etc – this is not an exhaustive list)
- Assets which have been identified as having a potential significant capital receipt, or where a significant amount of revenue income would be lost unless the council's cabinet deem the social, environmental and/or economic benefits match/outweigh any potential financial loss
- Assets which have been identified as being required for strategic, planning or redevelopment/regeneration reasons
- Transfers to individuals 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.
- Transfers to individuals
- Where transfers contravene State Aid or procurement rules
- We will not accept applications from organisations that remunerate their directors other than for the provision of services required to run the organisation

The council will consider applications for transfers from faith, religious or political groups who can demonstrate that they are, or will be, properly constituted with strong and open governance arrangements, and open to and demonstrate an inclusive approach to members of the wider community. Organisations that operate solely for faith, religious or political purposes cannot apply.

The final decision on any transfer will be taken by the council in line with the council's constitution at the time.

5. Eligibility criteria

CAT applicants can be of any size, but need to be able to clearly demonstrate all of the following in a comprehensive business case, which demonstrates that the organisation:

- Aims to deliver social, economic and/or environmental benefits that directly benefit the people of Shropshire
- Benefits as wide and diverse a range of local people as possible in Shropshire
- Shows a clear community/social demand for the proposed CAT
- Demonstrates an inclusive approach to members of the community in which it is based
- Is properly constituted with strong and open governance arrangements, an appropriate governing document and clear policies
- Have written policies covering payment of Trustees/Directors/Management Committee Members and volunteers, have a Reserves Policy, have procedures for paying/reclaiming the correct amounts of tax, NI and VAT
- Has the capability to manage the asset efficiently, including with robust financial systems, health and safety and other operational issues
- Has the capacity and resources to manage the asset, with directors or management committee members who have the necessary experience and skills and clearly defined roles and responsibilities for all key roles
- Is non-profit making and exists for community/ social/environmental/ economic benefit. Applicants may have a business element to their operations such as a community café, but this type of activity and financial gain must not be the main driver and must not distribute any financial surplus to owners or members. Any profit from such activity must be applied to serving core community aims and objectives
- Is able to submit an annual certified financial statement audited and signed off by a certified, independent auditor and is issued with an audit report

- Is in a position to hold property
- Operates a consistent charging and lettings policy that balances the needs of the organisation with the needs of local groups
- Comply with relevant equal opportunities legislation in its work and recruitment/ employment of staff
- Has the correct licences, permissions, and insurance cover, where applicable
- Has a separate trading company with a clear legal relationship, where applicable
- Comply with all Charity Commission and Companies House requirements as may be required
- Contributes towards the council's corporate and strategic objectives
- Can demonstrate that the proposed use of the asset will not adversely impact on activities, services or facilities already provided by and in the local community

Applicants must be prepared to provide a full breakdown of all users of the facility at the outset and throughout any lease period, including but not limited to, numbers, frequency and nature of occupation, costs, commercial standing etc to demonstrate that any successful transfer is sustainable, meets community need and is not a vehicle for a commercial venture.

6. Transfer terms

- 6.1 In determining the basis of transfer the council will consider the specific needs of the applicant, the condition of the asset, and the requirements of potential funders or lenders. The default basis of transfer is through the grant of a lease. The length of the lease term will be determined by the needs of the applicant, their capacity to manage the asset as demonstrated in the business case, and the council's corporate objectives. In certain cases, a phased transfer may be offered.
- 6.2 The applicant will be expected to use the majority of the building for community benefit by not for profit organisations. However, in cases where the entire building is not required for that purpose, a commercial use of the surplus area/time would be considered. This would be on the basis of all rental income generated from the commercial letting being reinvested in the asset or a rent being payable to the council under the CAT lease. The council will determine the amount of commercial use permitted, and payment mechanism.
- 6.3 The applicant will be expected to submit annual audited accounts. The submission of other types of accounts will only be considered in exceptional circumstances on a case-by-case basis which must be agreed with the CAT panel in advance.
- 6.4 The applicants constitution and/or articles of association must contain a clause along the following lines:
director's remuneration may only:-
 - a) take the form of hourly pay at the rate of the of the Living Wage or
 - b) Take the form of an individually negotiated contract at competitive rates in an open tendering process.
 - c) No other forms of remuneration are available to the directors.Directors are accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Lease length

- 6.5 The following is a guide to the length of term that may apply to CATs,
- A management agreement or licence will normally be granted for up to 12 months
 - A lease of up to 25 years with break clauses
 - In exceptional cases, a lease longer than 25 years may be appropriate if supported by a business case that demonstrates special circumstances or requirements from funders or lenders.
- 6.6 Leases longer than 7 years will normally only be granted to organisations that have an ‘asset lock’ and will contain clauses that prevent the asset being assigned or sold on for unintended financial gain and, where appropriate, the loss of the agreed benefits
- 6.7 The transfer of the freehold of the property will only be considered in exceptional circumstances and will be considered on a case by case basis. An example of this may be where the applicant already owns adjacent property and/or land and wishes to integrate the asset into its existing property.

Rent and outgoings

- 6.8 The council will determine rent payments or purchase costs on a case-by-case basis, for example, an organisation that has a substantial commercial use of a building that generates large profits in excess of the running costs would be expected to make a larger payment whereas a small community-based group managing a small property may be asked to make a smaller or nominal payment.
- 6.9 The council will expect community-based groups to be responsible for all running costs of the building, including repairs, maintenance and all insurance.

- 6.10 The terms of transfer will be negotiated on a case-by-case basis with the interested organisations. Any transfer at below market value will need to comply with State Aid rules, this will form part of the transfer process and assessment.
- 6.11 The council will work the applicant when defining lease clauses, so that maximum benefit is achieved for both the applicant and the council.
- 6.12 Once granted, leases may be renegotiated at a future stage, for example to meet the applicant's changed activities or circumstances, or to meet the requirements of potential funders or lenders.
- 6.13 Leases may, where the transferred asset forms part of an agreement for the provision of services, be accompanied by a service agreement that will secure the longer-term benefits of the CAT. This will set out the agreed minimum standards, opening hours and activities, and how these will be measured and monitored. It will also ensure that the applicant meets all necessary requirements to achieve optimum community benefit and use of the asset.

Key clauses

- 6.14 The council is committed to the successful transfer of assets to community-based groups. However, it is also recognised that running a building is an onerous commitment. The council does not want local people to be deterred from engaging in community asset transfer because they are apprehensive about the possible risks of transfer. Therefore the binding agreement leading to Community Asset Transfer, will include:
 - (a) transfer or return of building should the venture cease, including dissolution, insolvency or corruption,
 - (b) the council retaining the right to cease the agreement should conditions of transfer be breached ,
 - (c) appropriate covenants regarding future use of property and

(d) provisions to enable the council to inspect the building and the services being provided to ensure that it is being used and managed appropriately.

In the case of (a) a dilapidations liability may well apply. In accepting the return of an asset the council will not normally assume any responsibilities or liabilities of the applicant. In addition the council will not normally act as guarantor for an applicant when transferring an asset or subsequently after transfer

- 6.15 Most Leases will be on Full Repairing and Insuring (FRI) terms whereby within a specific time period, for example 5 years, the applicant will be required to put the building in good order and carry out a refurbishment, usually after obtaining grant funding to assist with this.
- 6.16 The council will share with applicants information without warranty or liability to a third party, regarding the condition and operating costs of the asset proposed for the transfer. The applicant should take appropriate professional advice as to the condition, future repairs and maintenance liabilities and premises management requirements. The applicant will need to demonstrate that they will be able to maintain the building satisfactorily after transfer.

7. The application process

7.1 Assets available for CAT are listed on the CAT register, which is available on the council's website. Applicants may also request a CAT of a council-owned asset that is not on the register. Should the council determine that such an asset is suitable for CAT, it will be placed on the register for a reasonable period of time to enable all interested parties to consider and make an application as appropriate.

7.2 Applicants need to apply using the Initial Expression of Interest (IEOI) Form, which is available on the council's website. This stage of the process is to determine if the asset requested is suitable for transfer, and that the applicant is a qualifying organisation and its aims and objectives meet those of the CAT policy.

Successful applicants at the IEOI stage will be invited to submit a Formal Expression of Interest (FEOI) and the council will mobilise a CAT panel to progress the application.

7.3 The Formal Expression of Interest requires the submission of an outline business plan. This needs to demonstrate how the applicant meets the aims and objectives of the CAT policy, is a sustainable venture, and is capable of managing the asset. This stage of the process is to determine if the applicant has the capability and capacity to manage the asset in accordance with the CAT policy.

Successful applicants at FEOI stage will be invited to submit a detailed business plan. This stage of the process is to determine if the applicant meets all policy, statutory and legislative requirements.

Further detail of the required sections of the business plan are set out in the relevant Section of the Guidance Notes for completing the Formal Expression of Interest.

7.4 The community asset transfer process only works when all parties are open, flexible and accessible and that all the information provided is fully transparent, particularly in relation to financial statements and timescales. Clarity at an early stage is essential. The council will not consider a transfer of an asset to any organisation if the clear intention is to use it as a vehicle for a commercial venture.

7.5 Once the CAT panel determines an application as meeting the requirements of the CAT policy it will be considered for final review and approval; the level of which will be determined by the length of the proposed lease, and/or any significant/unique factors. As a guide:

- Transfers up to 10 years will be considered by the Head of Property and Development
- Transfers between 10 and 25 years will be considered by the Director of Place
- Transfers longer than 25 years will be considered by Cabinet and/or council

Complex and/or significant transfers may require more than one stage of approval.

7.6 Following approval of the transfer heads of terms will be agreed. These set out the terms upon which the formal lease agreement between the applicant and the council will be based. These typically include the permitted use of the property, the length of agreement, the amount of rent (if applicable), who is responsible for repair and maintenance, statutory compliance, building and 3rd party insurance liability etc.

Applicants should take professional advice as appropriate in respect of reviewing and agreeing the heads of terms.

Upon agreement of the heads of terms and any other approvals deemed necessary, the council's Legal department will complete the transaction and the transfer will be complete.

8. Post transfer requirements

To ensure that the transfer continues to meet the aims and objectives of the applicant's business plan and the CAT policy, a monitoring programme will be put in place. At a minimum this will require the annual submission of audited accounts and use and occupation data, and a periodic external inspection by a council property surveyor. Any other monitoring requirements will be agreed as part of the CAT application process and listed in the heads of terms.

Glossary of terms:

Agreement for or to lease

Before the tenant takes a lease (confirming his leasehold ownership), the landlord might confirm in a written document called an agreement for lease that they will give the tenant a lease if certain conditions are met. If they are not met the tenant will not get the leasehold ownership. Therefore, you must be sure that you can meet the conditions of an agreement for lease if the grant depends on you having a leasehold ownership.

Asset

An item of property in ownership, guardianship or lease. In terms of asset management, relates to land and buildings, but may sometimes include other moveable items.

Asset Lock

An asset lock is a restriction arising from an organisation's legal status that means that any surpluses are reinvested in the project or the building, and used to support the organisation's stated purpose. This provision ensures the asset always remains in community benefit.

Asset management

Systematic and coordinated activities and practices through which an organisation optimally and sustainably manages its assets and asset systems, their associated performance, risks and expenditures over their life-cycles for the purpose of achieving its organisational strategic plan.

Assignable lease

A term used for leasehold land and buildings to show whether the land and buildings can be sold to or given to another owner. The lease will say whether the land and buildings can be given to or sold to another owner and therefore if the lease is assignable. Often the lease will contain a number of conditions that have to be met before the lease is assignable. These conditions may include obtaining the consent of the landlord.

Audited Accounts

Audited accounts are those checked by an accountant qualified to conduct an audit and, if all is well, the auditor will state that the accounts give a "true and fair" view of the company's affairs.

Break clause

A provision in a lease that allows the landlord or the tenant or both to bring the lease to an end before the full period of years has elapsed.

Building and engineering works

Work required to deliver the project such as extension, modernisation or conversion.

Buildings insurance certificate

Certificate to show that there is insurance for the building and its use.

Building professional

A professional adviser, or consultant, with specialist training and knowledge employed by you to act for you.

Business case

A business case sets out the justification for a project, together with financial and non-financial assessment of various options and makes recommendations.

Business plan

A business plan is a written document that describes a business, its objectives, its strategies, the market as it is and its financial forecasts.

Capital assets

Assets that have a large monetary value such as land, buildings, equipment and vehicles

Community of interest

A collaborative group of people who share a common interest, goal, mission or business process and therefore may not be easily defined by a particular geographical area.

Community Interest Company (CIC)

CICs are limited companies created for the use of people who want to conduct a business or other activity for community benefit. This is achieved by a 'community interest test' and 'asset lock' (see above). Registration of a company as a CIC has to be approved by the Regulator

Community Amateur Sports Club

A sports clubs which is recognized as a form of charity by HMRC – for further details visit <http://www.hmrc.gov.uk/charities/casc/index.htm>

Covenant

A formal promise to another person to take action or not to take action.

Dilapidations

The repairs that are required to be undertaken to a property by the tenant on surrender or termination of the Lease.

Easements

Rights over property that is owned by someone else eg rights to cross land with vehicles or by laying pipes and cables.

Freehold

A form of ownership of land or buildings where ownership cannot be taken away from the owner unless they agree. This is the most permanent way in which someone can own land or buildings. The owner owns the property forever, or until they sell it or give it away. They do not have to pay anyone for the use of the land and buildings.

Heads of terms

A list of the main terms upon which the formal Community Asset Transfer will be based.

Land Registry

The national land database where landowners can record their ownership. If they do so their land is registered land. Anyone can find out who owns a piece of land if it is registered at the Land Registry.

Lease

An agreement between landlord and tenant granting the tenant the right to possess the leasehold property subject to payment of rent. Under normal circumstances, the tenant is free to do what they want with the property for the duration of the lease, provided they comply with the requirements of the lease.

Leasehold

A form of land ownership that the tenant holds from a landlord for a limited number of years.

Legal charge

A legal document that registers the interest of the person who lent or granted the money/ interest over the property. The legal charge prevents the property owner from selling the land without the consent of the lender, so the charge is the lenders security for the loan/grant. If the owner goes bankrupt or fails to keep to the rules about how the money must be used, the legal charge should mean that some or all of the money could be recovered.

Management committee

Members of your organisation's governing body (who may be called trustees, directors, members of the management committee).

Planning permission or planning consent

The permission required from the Local Authority to build on land or change the use of land or buildings.

Peppercorn rent

Minimal rent paid to keep a claim, or title, in force.

Private sector

Sole traders and organisations run for private profit and that are not controlled by the state.

Refurbish

To renovate, re-equip, or restore

Registered land

Registered land is governed and maintained by the Land Registration system. Land and buildings that are registered at the Land Registry are allocated a unique title number. The particular piece of land is documented by a land registry 'official copy of title', which shows the title number, the property description, the name of the landowner (registered proprietor) and any other matters relevant to the land and recorded by the land registry.

Restriction (on title)

An entry made on the official copy of title at the land registry (see registered land) notifying someone of the lender's interest in the property. The restriction will warn anybody having possible dealings with that property that the landowner needs the lender's consent before selling or leasing the land.

Restrictive covenant

A covenant acknowledged in a deed or lease that restricts the free use or occupancy of property.

Searches

Questions asked before land or buildings are bought to check if there are any rights, restrictions, covenants or other matters affecting the property that may cause the new owner a problem.

Security of tenure

A good, strong and usually well documented right to own or use a property for a period of time.

Social enterprise

A business with primarily social objectives whose surpluses are principally reinvested in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.

State aid

State aid is an EC term for any public support given selectively to an undertaking that could potentially affect competition and intra-community trade. State aid provided by European Union Member States can distort the market, which in turn can result in lower competitiveness for business, less innovation and ultimately higher prices for consumers. There is therefore a need for effective State aid control in order to maintain a level playing field for free and fair competition in the single market.

Tenant

The holder or owner of a lease who pays rent to the landlord for the use of the property.

Tender

A formal process that allows contractors to bid to supply a service or carry out work at a stated cost.

Tenure

The form of right (title) under which land or a building is held or occupied (freehold or leasehold or licence).

Title

The legal right by which property is owned or occupied.

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For more information email

communityright@shropshire.gov.uk

or call 01743 281015