

## Durham County Council

### Community Asset Transfer Policy

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#### What is Community Asset Transfer

Community Asset Transfer is the transfer of management and/or ownership of public land, buildings and/or services to a community organisation to achieve an economic, social or environmental benefit and to allow for the enhancement and/or continuation of service delivery in the community.

The Council's aim in transferring assets to a community organisation is to promote community engagement, empowerment, and sustainable use of its public assets.

#### Policy Purpose

The purpose of this policy is to

- Provide the context and criteria by which Durham County Council will consider the transfer of land, building and/or service from the Council to a community organisation.
- Outline the approach the Council takes in undertaking a transfer to community organisations and set out process and guidelines that will be applied consistently and fairly.

#### Policy Objectives

The application of the policy will ensure the Council supports wider corporate objectives such as the development and empowerment of communities in line with the County Durham Vision. This includes:

- Encouraging active community involvement in the management and utilisation of public assets.
- Facilitating the transfer of an asset to capable and committed community organisations who have charitable purpose.
- Promoting the sustainable use of assets for the benefit of the local community.
- Ensuring transparency, fairness, and accountability in the transfer process.
- Safeguarding the long-term viability of local service provision including the ongoing management and maintenance of community buildings.

## What organisations are eligible for consideration

Not all organisations will be eligible to proceed with a Community Asset Transfer. Applicants will be assessed for eligibility against pre-determined criteria, which will include an evaluation of the organisation's constitution, financial stability, community impact, sustainability, and capacity to manage the land, building and/or service. Community organisations that will be eligible for consideration include those that:

- Are a voluntary or community sector organisation with an appropriate constitution and formal legal status to take on responsibility for the asset.
- Can demonstrate a commitment to providing good governance, robust financial management, and commitment to community engagement principles.
- Can demonstrate a clear vision, purpose, and plan for operation and delivery that aligns with the needs and aspirations of the local community.
- Propose activities and services that address social, economic, or environmental challenges within the local area.

Parish and Town Councils may be eligible. National organisations with a local base or business address may be eligible. Privately owned or commercial organisations will not be eligible.

## What assets will be considered for Community Asset Transfer

To be eligible for a Community Asset Transfer, the asset must be in the freehold ownership of the Council (although there are some properties that the Council holds on leasehold or Trust that may be eligible subject to further approvals outside the Council's control).

In addition, the proposal must clearly demonstrate how the transfer is essential to, contributes to, and positively impacts on the needs of the communities in Durham and helps deliver the corporate aims of the Council.

## What assets will not be considered for Community Asset Transfer

Whilst the Council fully supports the principle of CAT, it is important to recognise that is not suitable for all properties (or all organisations), and the Council is under no obligation to transfer any assets to community organisations. The Council must retain control of some assets in order to support the delivery of essential services or to enable desired outcomes of other Council strategies, policies or initiatives.

The Council will not support Community Asset Transfer where any of the following apply: -

- The asset is required for service delivery or strategic planning.
- The asset has been identified for capital receipt in accordance with the Surplus Property Policy.
- The asset is held for the purposes of revenue income.
- The management of the land, building and/or service is more appropriately controlled by the Council.
- The transfer will have a detrimental impact on an existing Council service or community operation.

Assets that are deemed to be unfit for purpose and/or require significant investment will generally be excluded from the policy. However, exceptions may be made where the community organisation can secure the financial resources to bring the property back into repair and beneficial use.

Proposals for the transfer of only part of an asset will generally be excluded from the policy but may be considered in exceptional circumstances.

In addition, where an existing service is running from a Council owned building and this service could transfer into a non-Council Owned building to be run by the community, this approach may also be considered as part of the transfer options in the business plan.

### What terms will the asset be transferred on

Under a CAT, where land and/or building is to transfer the Council will consider both freehold and leasehold transfers.

#### **Freehold**

The transfer of the freehold of an asset will be considered provided the community organisation can demonstrate a robust business case and its capacity to manage the asset. The Council will consider the stability of the community organisation, the condition of the asset, the requirements of any potential funders or investors and the level of risk to the Council. The organisation would take on all responsibility for running costs, repairs, maintenance, insurance costs and statutory compliance responsibilities.

#### **Leasehold**

The transfer on a full repairing and insuring lease will also be considered. The length of the lease will be appropriate to support the business case and will reflect the stability of the community organisation, the condition of the asset, the requirements of any potential funders or investors and the level of risk to the Council. The full repairing and insuring lease will make the organisation responsible for all running costs, repairs, maintenance and insurance costs (the Council will insure the property and recharge the organisation) and statutory compliance responsibilities. A transfer by way of a lease will be on the Council's standard Community Buildings Lease but variations to reflect specific issues may be subject to detailed negotiation on a case-by-case basis. All leases will be contracted out of Sections 24-28 of the Landlord and Tenant Act 1954 such that there will be no security of tenure at the end of the agreed term.

The terms of any transfer will ensure the Council meets its statutory responsibilities under the Local Government Act 1972 General Disposal Consent Order (England) 2003 and State Aid rules. Any level of subsidy below market value (including reduced rental) will require specific approval in accordance with the Council's Undervalue Policy. The Undervalue Policy requires a nominated lead from a Council Service outside of Corporate Property and Land (CPaL) to be responsible for assessing evidence of the economic, social and environmental well-being benefits intended to be delivered from the proposal. It is therefore essential that an organisation engages with the relevant Council Service at an early stage to ensure the implications of the Undervalue Policy are understood and can be met. This will form part of the assessment and transfer process, but no CAT can be approved until an undervalue approval is given.

In order to ensure the asset continues to provide ongoing benefits to the community, all transfer agreements will include provision for the Council to retake control of the asset in the event of failure of the organisation to meet any of its obligations or ceasing to provide the agreed benefits.

Any variations to these principles may be agreed by exception.

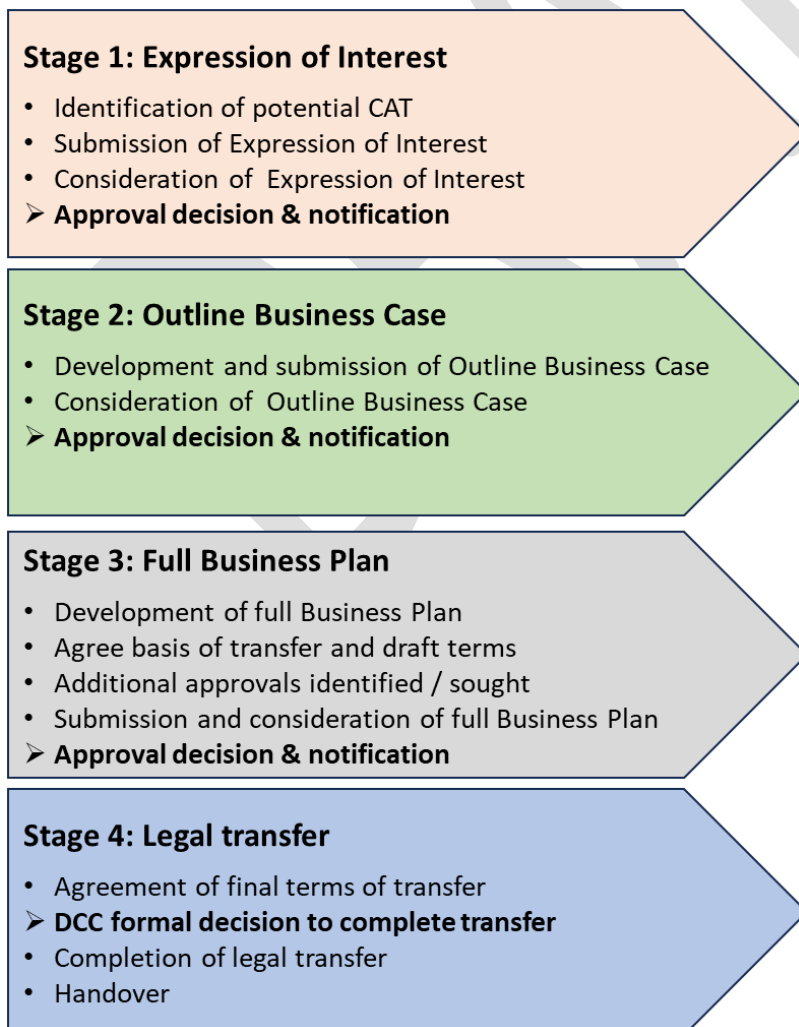
## What is the application / assessment process

The Council recognises that the successful transfer to a community organisation can be a complex, lengthy and potentially daunting process. Whilst each case will be considered individually, the Council wants to ensure the process is as transparent and applied as consistently as possible. Accordingly, the general process will follow the steps set out in the Council's four stage Transfer Process illustrated below. The Council has produced guidance and templates for use at each stage.

The Council's Community Asset Steering Group is responsible for considering requests for Community Asset Transfer and will agree final recommendations for each transfer, subject to formal Council approval to complete the transfer. It should be noted that there are key approval decision points in the process. It is essential that approvals are given in support of the proposal before work will be undertaken to develop further stages. The organisation will be notified of the outcome of the application at each approval decision point and feedback provided.

Whilst the overall process for each CAT will be similar, the specifics of each transfer will be different and the timescales to complete the process will differ accordingly. This is particularly so where additional approvals are required. Some will be in the Council's control (such as an approval at an undervalue). Others may require additional approvals outside the Council's control (such as approvals required if the Council holds the asset by way of a lease or in its capacity as Trustee). Both will impact on the time taken to complete a CAT and it should be noted that the time taken to obtain both internal and external approvals can be considerable.

### The four-stage transfer process



## What support will the Council give to eligible organisations

The Council and other support organisations will provide advice to help community organisations fully understand their responsibilities if a Community Asset Transfer takes place. The Council will provide support and guidance to help steer community organisations through its Community Asset Transfer process. This includes:

- Initial advice on completing and submitting the Expression of Interest form, the Outline Business Case and full Business Plan.
- Directing community organisations to appropriate external bodies who have the relevant expertise to provide specific and technical support during the application process. Such bodies will include Durham Community Action, a voluntary sector infrastructure support organisation.
- Support, input and specialist direction from the Council's relevant Service supporting the transfer. This is essential from the outset to ensure the application is considered in the context of the Council's overall corporate objectives, and the Service expertise will be an integral part of the application. The Council's relevant Service supporting the transfer will also be responsible for ensuring all the requirements of the Undervalue Policy are fully met (if appropriate).

### Points to Note

Acquiring, managing and operating land, a building and/or a service is an onerous commitment, and it is important that prior to undertaking a CAT the community organisation understands:

- Whilst the Council will support the organisation through the application process, it cannot provide professional advice. It is important that the organisation seeks independent professional advice (such as property and legal advice) to ensure its interests are protected.
- It is important that the organisation is aware that there will be costs associated with the transfer (including land registration costs) that must be met by the organisation, and that sufficient funds must be available to cover these costs. This should be reflected in the Outline Business Case and full Business Plan.
- Conditions will be imposed in the asset transfer agreement to ensure the organisation complies with legal obligations, safeguards public interests, and protects the long-term sustainability. These will be set out in the Heads of Terms of any lease or freehold transfer agreement.
- The community organisation will be responsible for the ongoing management and maintenance of the asset following the completion of CAT, in accordance with the terms of a freehold transfer or terms of a lease. This will include responsibility for ensuring the asset is effectively maintained.
- The community organisation will take on all responsibility for the safe operation and use of the building, ensuring that it is compliant with all relevant Health and Safety regulations and meets all statutory compliance requirements. The organisation will be responsible for obtaining any necessary certification, permits or licenses. Failure to comply is illegal and a serious risk to the safety of the community.
- If the asset is leased, as landlord, the Council has the ability to monitor the condition of the asset to ensure the community organisation is fully meeting its legal obligations in accordance with the terms of the lease. Any breaches will result in the Council taking action to require remedial works to be undertaken or further legal redress.
- In accordance with its corporate Compliance Policy, the Council has the ability to monitor the safe operation of the asset to ensure the organisation is fully meeting its legal obligations.

Breaches could result in the Council taking action to require the works to be undertaken or further legal redress.

### What happens if something fails after the formal transfer?

Whilst the aim of this CAT Policy is to support and empower communities to manage and safeguard services for community benefit, the Council recognises that issues may arise that impact on the long-term viability and sustainability of the arrangement. This could include a change in organisational status, changes in the capabilities and skills within the organisation or its dissolution. If such a situation arises, or the community organisation starts to have concerns about its ability to continue to fulfil the requirements of the CAT, it should always contact the Council's Corporate Property and Land service [CPALPropertyManagement@durham.gov.uk](mailto:CPALPropertyManagement@durham.gov.uk) as early as possible to discuss the situation. Any consideration of alternative organisations to take over the asset will be subject to similar approvals in accordance with the requirements of this policy and CAT process guide.

It should be noted that if the transfer has been by way of a lease, the lease is a legal agreement between the Council and the named organisation. It cannot be transferred to any other organisation without the involvement and approval of the Council.

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