

Burnley Borough Council
Draft Community Asset Transfer Policy

Date: 24 October 2016

Contents

Introduction

What is Community Asset Transfer?

Aim of this Policy

Benefits and Challenges of Asset Transfer

Principles of Community Asset Transfer

Asset Transfer Process

Appendix A: Business Plan Expectations

Appendix B: Risk Management – Viability of Transfer

Appendix C: Guidance for Community Organisations

Introduction

Council owned buildings, land and premises have been occupied by various local groups, organisations and sports clubs for many years. This Policy sets out a framework for the Council to follow when it considers the transfer of its buildings or land to different forms of community ownership. It will ensure the Council can work in a consistent manner when embarking on community asset transfer. The purpose of this Policy is to enable the Council to assess applications for community asset transfer against clear criteria that ensures any transfer meets Council objectives and is in the best interests of the community.

What is Community Asset Transfer?

Community Asset Transfer involves the transfer of management and/or ownership of land or buildings from the local authority to community based organisations or other public sector organisations. Examples of community based organisations are a local charity, Community Interest Company or industrial and provident society. The transfer applies to buildings, land and green space where the primary purpose is to enable community activities to take place.

There is a growing trend that community asset transfer is now happening in response to the requirement of local government to reduce its budgets. The pace of reducing budgets can place additional challenge for managing the transfer of assets to voluntary organisations.

Burnley Borough Council has a record of transferring the management of certain facilities over to the community. This has included licensing playing fields and pavilions to local community sports clubs and leasing golf clubhouses, community centres and other space to community organisations and associations. Previously there has been no clear policy for the Council to follow when undertaking this transfer, so licences and leases have often been negotiated and agreed in a reactive and ad-hoc manner.

The Council's Corporate Objectives as restated in the **Councils Strategic Plan 2016/17** highlight the theme of **"People"**:- "creating opportunities and sustaining ambition and **"Places"**:- "making "the Borough a place of choice".

By providing an opportunities for local communities to participate through the management and ownership of community assets the Council can further meet these objectives and might also enable budget efficiencies for the Council.

Aims of this Policy

To identify the process and tools that will enable the successful delivery of a future asset transfer programme.

- *To recognise the capacity needs of local groups wishing to take on Council assets.*
- *To ensure a thorough risk assessment of asset transfer is undertaken.*
- *To define the legal form a transfer agreement would take.*

Benefits and Challenges of Asset Transfer

The potential benefits that community asset transfer can bring:

- *Facilities under financial pressure can remain open*
- *Costs are reduced and volunteer run facilities can access more funding opportunities*
- *Community run facilities can be more responsive to local need.*
- *Community organisations are in a better position to plan for their future*
- *Opportunities for greater creativity and innovation if the running of community facilities are outside Council management or ownership*
- *Development of individual volunteers and the rewards that volunteering brings*
- *Continued community empowerment to enable a secure future for local organisations through the management of local assets*
- *Strong community organisations working in partnership with the Council to achieve its Strategic Objectives*
- *Budget efficiencies for the Council*
- *Positive relationships developed between the Council and local community partners*
- *Assets playing a greater role in bringing communities together for social, economic and wellbeing purposes.*
- *They can become a point for neighbourhood service provision.*

A recent report on the transfer of leisure facilities has also identified the potential challenges posed by community asset transfer:

- *Loss of control by the local authority over community run facilities could mean reduced ability to strategically plan the provision of community facilities*
- *Sustaining the long-term enthusiasm for a group of volunteers to run facilities*
- *The ability of volunteers to succession plan in the management of community facilities*
- *Developing trust between the community organisations and the local authority*
- *Sustaining the long-term financial viability of facilities run by volunteers*
- *The reality of community capacity – this may be higher in more advantaged areas. More disadvantaged areas will require capacity community building support*
- *Capacity building and development of volunteers and community organisations takes time.*
- *Will the expectation of budget reductions over take this? Both in terms of reducing the costs of facilities and reducing the community development support to volunteers and groups*
- *Reduced standards of provision and loss of skilled facility managers and workers.*

Principles of Community Asset Transfer

1. Meeting Community Need

The transfer of an asset must be in the best interests of the community and contribute to the aims and priorities of the Council. This includes ensuring an asset remains accessible to the community, in particular for those with the protected characteristics defined by the Equality Act.

2. Transparency

The Council will provide a clear point of contact, have defined criteria for assessing eligibility of a community organisation and the viability of an asset and each stage of the transfer will be clearly defined and agreed by both parties from the outset.

3. Community Engagement and Empowerment

The Council sees asset transfer as a means to further empower community organisations and to support them in shaping how local need can best be met. It is not about transferring risk and liability over to the community. For any asset transfer to happen the community must be supported to ensure they are in the best position to take on the long-term succession management of that community asset. The Council will ensure any community organisations' meet our viability criteria for taking on an asset.

4. Role of Community Assets

An assessment of the potential for Council assets being eligible for transfer will be made. An options appraisal will include whether an asset is fit-for-purpose for community ownership or management and its proposed future use is of benefit to the wider community. The Council's Asset Management Group will oversee this options appraisal.

5. Robust Business Planning

Any transfer must be financially viable for both the community organisation and the Council. The asset must be fit-for-purpose so the financial implications of this will be considered. The Council will work with community organisations to establish a strong long-term business plan for the future.

6. Preferred Model of Transfer

There is more than one model of community asset transfer that could be adopted in each case. The Council is committed to pursuing the best one in each case that is in the interests of the Council, community organisation and the wider community.

7. Council Support Post Transfer

A transfer agreement will set out the relevant benefits of transfer and how these will be monitored and measured over time. The Council will have a clear point of contact to manage the relationship with the community organisation that has taken on the asset.

8. Property Development and Protecting Community Assets

The Council will seek to safeguard that assets continue to be of benefit to the community and this will be detailed in any agreement of transfer. Such agreements will need to define circumstances when an asset is no longer viable as a community facility. Any future income from the sale of a property needs to be distributed in the best interests of the local community.

9. Timescales

There is not one set timescale for progressing community asset transfer. This will be established on a case-by-case basis. Agreement to transfer an asset will only take place when the Council is satisfied that this is a sustainable option.

The Asset Transfer Process

When embarking on asset transfer the Council will follow a clear process that ensures any decision taken is in the best interests of the Council and community need.

Mapping the Viability of Assets for Transfer

The Council will use a matrix for assessing the viability of assets for transfer to community organisations. This matrix will assess criteria such as health and safety, financial liabilities, existing covenants and asset condition. These assets may include buildings, land, open space or other structures that are in the freehold ownership of the Council.

This options appraisal matrix will be developed and overseen by the Council's Asset Management Group that will determine whether asset transfer is a viable option.

Community Consultation Regarding Potential Asset Transfer

If the Council decides it wishes to pursue community asset transfer as an option for any of its assets it will commence consultation that will:

- *be undertaken once an asset or group of assets have been identified as being eligible for community transfer*
- *provide clarity as to why the Council is considering community transfer as an option*
- *provide sufficient time for the community to respond to the proposals*
- *include consultation with local ward members*
- *be used when making final decisions on transfer.*

Asset Transfer Checklist

1. *Is the asset currently fit-for-purpose for transfer to community ownership or management?*
2. *Does the community organisation meet the Council's viability criteria?*
3. *Consultation on any proposal to transfer an asset, including local ward members.*
4. *What support does it need to fill the gaps?*

5. *Support the development of a robust business plan for asset transfer.*
6. *What is the preferred model of community asset transfer in this instance?*
7. *A transfer agreement addressing all legal and financial liabilities and which determines appropriate governance arrangements.*
8. *Post transfer relationship between the Council and community organisation.*

Eligibility Criteria for Community Organisations

The Council will develop a clear framework for assessing whether a community organisation is appropriate and ready to take on one of its assets. The Council will make the final decision as to whether an organisation/s meets its criteria. This framework will assess an organisation in the following ways:

- *Does the community organisation's governance allows it to be influenced by the local community?*
- *Is it a voluntary and community sector or statutory body?*
- *What is the status of the organisation, is it constituted, a registered charity, community interest company, charitable trust or a not for profit company?*
- *What is the organisation's track record in meeting community need?*
- *Does the organisation have the capability to manage an asset, such as health and safety planning, experience in facility management, a robust plan to develop this expertise and a clear management structure?*
- *Is the organisation's financial status robust enough?*
- *Risk associated with transfer for both the Council and the organisation?*
- *Financial implications for the Council?*
- *Contribution to the Council's aims and objectives and wider community benefit?*
- *Does the organisation have a robust business and development plan, including capacity building needs?*
- *Has the organisation prepared a robust business case for asset transfer?*
- *Does the organisation adhere to equality and diversity principles?*
- *Does the organisation have clear aims and objectives?*

This is about ensuring the community organisation has a robust business plan to enable it to embark on asset transfer. **Appendix A** gives an overview of the key considerations such a business plan will need to have, while **Appendix B** provides a risk assessment framework to guide the Council.

Support for Community Organisations

If an asset is deemed eligible for potential transfer, a support plan may be offered to an interested community organisation by either the Council directly or another organisation with the skills and expertise to offer capacity building, business planning advice and potential feasibility planning. Such an organisation could be a current partner organisation of the Council working locally or a body contracted to offer such support.

The type of support offered to any community organisation or group of volunteers willing to take on a Council's asset may include:

- *assessing the viability of a group taking on a facility*

- *practical advice and support in business planning and accessing external funding*
- *advice in appropriate legal status of a community organisation*
- *support and guidance in the development of a community organisation*
- *skills development of groups in business planning, facility management and volunteer succession planning*
- *financial support for legal advice, stock condition surveys, pre and post transfer capital programme.*
- *advice regarding the liabilities any trustees could face.*

Appendix C offers links to useful guidance to assist in the support of community organisations wishing to explore asset transfer.

Transfer Options;

For whatever form of transfer that is pursued a legal agreement will be drawn up between the Council and the community organisation that receives the asset. Such an agreement will determine the legal and financial liabilities as a consequence of asset transfer. In all cases appropriate legal mechanisms will be established to protect the Council's financial position.

If asset transfer is considered feasible the most likely forms of legal agreement are a licence, lease or a freehold transfer.

Legal Agreement	Definition
Licence	a community organisation is given permission to use an asset but on a shared basis with other community users for the duration of the agreement.
Lease	a community organisation is given permission to use an asset on an exclusive basis for its activities for the duration of the agreement.
Freehold	Where the complete ownership of the asset is passed on to the community organisation.

Licences

The duration of a licence agreement can be as short or as long as required and will be at the discretion of the Council.

Where there is a licence agreement in place it may be that the Council retains some control over the management of the asset given the shared community use. The type of licence agreement covered by this policy is where an asset is going to be used by a community organisation for a specific purpose. The most common example of this, is where a local sports clubs will use a pitch and pavilion on a recreation ground for a period of many years. This policy does not cover a very short term licence where an organisation seeks to use a piece of land for a one-off event.

Leases

A lease could be as short as 5 years or as long as 99 years. However, it should be noted that external funders often look favourably upon a longer-term tenure when offering capital

funding to community organisations. A lease agreement would pass responsibility for building or grounds maintenance, running costs, opening and closing and general management of the site to the community organisation. With a long lease, a community organisation has a sufficient interest to seek external funding and will take full responsibility for the building or land. However, at the end of the term the building or land would return to the Council. Alternatively, it can be re-negotiated with the existing organisation or any other community group providing the Council's eligibility criteria are met.

Freehold

When entering into a freehold arrangement the Council may wish to consider certain covenants to protect the community asset. This is not only to safeguard the legal and financial interest of the Council, but also to prevent local organisations from being deterred from taking on responsibility given the potential risk it involves. Covenants can also ensure an asset continues to be used for the benefit of the wider community.

Options could be:

- *its use remains for local people and meets community need*
- *protection for existing groups to continue to use the asset*
- *future failure of the community organisation means the asset reverts back to the ownership and control of the Council rather than being sold for development*
- *in a situation where it is agreed the asset can be sold, the receipts will be allocated for community rather than individual benefit, i.e. paid to the Council or other public body associated with the asset*
- *in the event of any commercial benefit of a sizeable amount received through use of the asset, an obligation to share part with the Council*
- *the asset is maintained to a reasonable standard.*

Sale Price and Rental Value

The Council will consider current market value of an asset when considering rental or sale price. By virtue of Section 123, Local Government Act 1972, the Council has the power to dispose of land held by it in any manner it wishes but, except with the consent of the Secretary of State, it may not do for a consideration less than the best that can reasonably be obtained (unless the disposal consists of a grant of a term not exceeding seven years).

The Council can, in reliance on the General Disposal Consent (England) 2003, dispose of land at less than best consideration that can be reasonably be obtained in the following circumstances:

- a) where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of anyone or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
 - i) the promotion or improvement of economic well-being;
 - ii) the promotion or improvement of social well-being;
 - iii) the promotion or improvement of environmental well-being; and

- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 .

Any decision would need to balance the Council's own financial need against the wider community wellbeing that asset transfer at an under-value may bring.

State Aid

All Disposals also need to comply with the European Commission's State Aid Rules. When disposing of land at less than best consideration, the Council is providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs the Council must ensure that the nature and amount of subsidy complies with the State Aid Rules particularly if there is no element of competition in the sales process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

Alternatives to Asset Transfer

If an asset is no longer being required by the Council or is no longer suitable for ongoing community use, the authority would consider the sale of the asset on the open market where no community organisation is willing or eligible to take the asset.

Equality Impact Assessment

The Council will conduct an Equality Impact Assessment of any proposed transfer of a facility.

Final Decision

Asset transfer that involves lease or freehold is an Executive decision and given its significance and public interest, final Executive approval will be sought before a transfer takes place. In the case of a simple licence agreement is proposed that a decision can be made according to the constitutional delegations of the relevant Portfolio Holder.

Post Transfer Relationship

The Council will still need to have an on-going relationship with community organisations once asset transfer is complete. This will be as much about relationship management as it will to monitor all requirements set out in a licence, lease or freehold agreement are being fulfilled. In the event of an asset transfer venture failing the Council must be prepared to resource any resulting work. This could include bringing it back into Council control, assessing maintenance liabilities, making necessary repairs, re-housing organisations at alternative sites, managing public relations in such circumstances and identifying and pursuing alternative transfer options.

Appendix A: Business Plan Elements

Organisations which support voluntary sector organisations have developed principles about how to draw up a robust business plan, which include the following:

- *clear purpose and goals of the organisation*
- *motivation for wanting asset transfer*
- *legal structure of the organisation, such as the constitution*
- *turnover or profitability of the organisation*
- *existing or proposed assets of the organisation*
- *profit and loss account and balance sheets*
- *funding available now or in the future*
- *the service the organisation will be providing*
- *why the community or customers would want to use the service*
- *the identified need for the service*
- *what will the service involve and how will it benefit the community*
- *who will use the service and the market research which identifies this*
- *assessment of any competitors*
- *any barriers for delivering the service*
- *marketing objectives and goals*
- *skills and capacity of the organisation to deliver the service*
- *succession plan for volunteers within the organisation*
- *how the service will be provided*
- *description of premises, including planning requirements and permissions,*
- *health and safety expectations and license requirements.*
- *building work required including quotes*
- *financial forecast to assess organisational viability*
- *risk management plan and actions to reduce these*
- *money required and where this comes from*

Appendix B: Risk Management – Viability of Transfer

In order to assess the viability of any transfer of a community asset, the Council will conduct a risk assessment. This will be done in partnership with the community organisation that proposes to take on management or ownership of an asset.

Community organisation has capacity to manage the asset?

If no, transfer will not be successful and will have a negative impact for the wider community.

Action:

Development plan for the community organisation that addresses the gaps in capacity before asset transfer is implemented.

Community organisation has sufficient finances to buy or refurbish the asset?

If no, the asset may not be fit-for-purpose, may not be able to operate at full potential.

Action:

Support and advice regarding external funding opportunities and Council consideration of its capital fund to enable asset to become fit-for-purpose.

Are their limitations regarding State Aid or other public body restrictions?

If yes, external funding potential may be limited.

Action:

Expert legal advice is sought for both parties so the limitations or exemptions are clear.

Community organisation has a robust management plan in place?

If no, risk of financial liability and insufficient capacity to manage the asset effectively, making transfer not viable.

Action:

Support and advice for the development of a robust business plan before transfer is agreed.

Asset to be used to the benefit of the community?

If no, negative reaction or resentment from the wider community and a possible breakdown in community relations.

Action:

Legal transfer agreement to stipulate requirement that the organisation's governing documents give a strong ambition for addressing wider needs of the community.

Community organisation has the financial capacity to upgrade and maintain the asset in the long-term?

If no, in the long-term the asset may depreciate in value and no longer be fit-for purpose.

Action:

Support and advice for the development of a robust business plan before transfer is agreed. Consideration of financial contribution to support the on-going maintenance of the asset.

Community organisation relies on volunteers as opposed to paid staff?

If yes, risk of increased burden on a few volunteers and a lack of new volunteers to take on future management.

Action:

A partnership network to support volunteers, encourage succession planning, enterprise and commercial opportunities.

Community organisation wishes to employ paid staff to manage a facility?

If yes, TUPE implications regarding existing local authority employees would need to be considered.

Action:

Expert legal advice is sought for both parties so the limitations or exemptions are clear.

Ownership of assets across the Council area increasingly fragmented?

If yes, the Council will have less scope to deliver local services and invest in the renewal of local assets.

Action:

Partnership working encouraged to enable greater investment in local facilities.

Transfer agreements to set out the expectations of the Council with regard to the strategic management of assets.

Are all roles, responsibilities and liabilities clear from the outset?

If no, this could cause a breakdown in partnership working with the Council and mean unexpected liabilities to either party.

Action:

Transfer agreements to include all legal, financial and statutory liabilities.

Is there conflict from community organisations competing for transfer of an asset?

If yes, this could mean a breakdown in community relations and cause resentment in the community.

Action:

A clear criteria for being eligible for taking on an asset that advocates strong, well governed, financially viable organisations whose ambitions will ultimately benefit the wider community.

Appendix C: Guidance for Community Organisations

Useful resources for community organisations include:

Ethical Property Foundation

<http://www.ethicalproperty.org.uk/>

To Have and To Hold is a guide to long-term community ownership and development of land and buildings

<http://locality.org.uk/resources/hold/>

Sport England Community Sport Asset Transfer Toolkit - for community groups and local authorities

<http://assettoolkit.sportengland.org/>

Bury St Edmunds Rugby Club

<http://assettoolkit.sportengland.org/BuryStEdmundsRugbyFootballClub.html>

Asset transfer legal information including jargon busters

http://locality.org.uk/?s=as_perform_advancedsearch&as_perform_advancedsearch=true&as_querytype=words&as_posts_pages=both&as_sortby=relevance&s=legal+toolkit

References & Acknowledgements

- 1 "The transfer of public leisure facilities to volunteer delivery." Research report, September 2014, Geoff Nichols, Sheffield University Management School, Deborah Forbes, Newcastle University Business School.
2. Gelding Borough Council Community Asset Transfer Policy.