Community Asset Transfer Policy

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Introduction

This policy is linked to the Council's Disposal Strategy and sets out the Council's approach relating to Community Asset Transfer, the criteria that will be considered in deciding if an asset is suitable for transfer, and the conditions that need to be met by an acquiring organisation.

The purpose of the policy is to provide guidance to those organisations as to assets that might be suitable for community asset transfer.

What is Community Asset Transfer?

Community Asset Transfer (CAT) is a non-statutory process by which the Council transfers the responsibility for, or the ownership of, land or buildings to a Voluntary, Community and Faith Sector (VCFS) organisation or a Town or Parish Council.

The Council will need to consider the risks and benefits of a proposed CAT and, whilst the circumstances of every proposal will be unique, the following key issues will always be considered:

- the nature and capacity of the applicant
- a robust business plan
- clear and achievable benefits to the community
- sustainable management and governance arrangements
- alignment with Council's Corporate Plan priorities and the objectives of its Asset Management Plan and Environmental Sustainability Strategy.

Guiding principles

The key principles of the Policy are that:

- the Council must be the freehold owner of the asset or have a long leasehold interest that permits sub-letting or assignment
- community asset transfer is not an automatic right and all applications will be assessed on a case by case basis
- approved transfers will generally be on a leasehold basis. The leases to be granted will (as a minimum):

  - be on a Full Repair and Insure (FRI) basis, meaning that the organisation will be solely responsible for the insurance of the property along with the repair and maintenance obligations
  - include a suitable "Permitted Use" clause to ensure the asset is used as intended and agreed
  - include suitable clauses to ensure the return of the asset to the Council if the agreed usage is either not met or in the case of dissolution, illegality or insolvency by the organisation
  - include a right of pre-emption (as detailed below) in favour of the Council if the organisation wishes to dispose of the asset
  - will be contracted out of the security of tenure provisions contained in the Landlord and Tenant Act 1954.

- a transfer may be at a nominal or reduced rent / price. This is known as a disposal at less than best consideration. The nominal or reduced rent/price will reflect the value of the asset to the Council and the benefits it delivers to the community and be consulted on through the Council's Community Asset Advisory Group (CAAG)[1] in line with the decision making process set out below
- some transfer applications may require public consultation (e.g. transfer of public open space)
- freeholder transfers will be considered on a case-by-case basis where there are objective reasons why a lease is not the most appropriate form of transfer[2]

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[1] The CAAG will be a Member/Officer working group, with the established function of facilitating the consultation of relevant Executive Members regarding delegated officer decisions. It is anticipated that other Key Members (i.e. the Chair of Overview & Scrutiny and Group Leaders) will be invited to attend and advise. The relevant Executive Members will seek the advice of representatives of the wider membership of the Council through the CAAG.

[2] As a minimum for consideration of freehold organisations must have a robust structure, proven track record, and experience of managing legal and financial responsibilities. Providing evidence it can handle liabilities like insurance, maintenance, and compliance. The Council must also be certain it does not need to retain use of the building for any specific purpose or any other restrictions such as shared use are in place.

- whenever a freehold transfer takes place, it will be accompanied by conditions to require the continued use of the asset for its intended purpose. This is expected to include:
    - **Restrictive covenant (use)**: "The title to the property transferred will be subject to a covenant imposed restricting the use of the property for any purpose other than the benefits agreed at point of transfer e.g. community benefit/not-for-profit or charity or community uses/ youth-based activities etc."
    - **Positive covenant (repair and maintenance)**: "The title to the property transferred will be subject to a positive covenant imposed for the organisation to keep and maintain the property in good and substantial repair and condition."
    - **Right of pre-emption**: "a right of first refusal to be given to the Council [noting that these agreements will be novated to any new or replacement authority] to acquire the property back for £1 in the event that the organisation decides to dispose within a period of 99 years (known as the pre-emption period), to be protected by a restriction on the registered title."
    - Any and all such other rights, restrictions, covenants to be imposed on the disposal as are deemed necessary and appropriate for the subject property being disposed of.

Assessment of an asset's suitability for transfer

An Eligible Organisation may make an application for any Council asset, subject to the restrictions laid out in this policy. If an asset is proposed for CAT, the assessment process will include consultation with the service area that uses the asset to ensure there is no further requirement for the asset, or for comments on the proposed benefits to the community and/or existing users that would result from the transfer.

The Council will not consider applications for Community Asset Transfers where:

- the asset delivers key Council services
- the asset produces a significant net income stream
- the asset has been identified as being required for strategic, planning or redevelopment/regeneration purposes
- the proposed use would be primarily for businesses or commercial purposes
- the proposed use would be primarily for political purposes/activities

- the proposed use would be inconsistent with the Council's duties under the Equality Act 2010 or the Equality objectives in our Corporate Plan
- assets are held by charities where they are managed by Reigate & Banstead.

The Council recognises that:

- common land cannot be disposed of by freehold unless the Secretary of State's written consent is obtained (and replacement common land within the Borough will need to be identified to replace the common land lost at disposal)
- statutory allotments (those formally designated under allotment legislation) cannot be disposed of for a purpose other than allotments unless the Secretary of State's written consent is obtained
- where a Council-owned asset has been listed as an Asset of Community Value under the Community Right to Bid provisions of Localism Act 2011 all the relevant provisions and obligations of that Act will need to be considered.

Eligible organisations

Organisations proposing a CAT must be:

- Registered Charities (Charitable Company; Charitable Incorporated Organisation; Charitable Trust)
- Community Interest Companies (that are limited by guarantee and where they can evidence all profits have been reinvested back into the company and/or for the benefit of the community)
- Town and Parish Councils within Reigate & Banstead
- Other formally constituted non-profit making clubs or groups (i.e. groups that form the VCFS or are a non-profit organisation with a defined governance structure, robust financial systems and an adequate policy framework).

Eligible groups must evidence that:

- they will use the asset to provide community benefits to the residents of Reigate & Banstead
- any asset transferred will enhance the benefits they are able to deliver.

The following groups are not eligible:

- individuals
- companies that exist to trade for profit
- public sector bodies other than Town and Parish Councils within the Borough of Reigate & Banstead
- political organisations
- organisations registered outside the UK.

Application and assessment process

Applications will be by way of a two-stage process. The Council will prepare, and make available on its website, an expression of interest form covering the required information.

Expression of interest (first stage)

The proposing organisation should first submit a written expression of interest identifying the asset that is proposed for CAT, the basis on which they are an eligible organisation, and providing the following information (where the scoring of responses is set out in brackets), to include:

- the organisation's vision, aims and objectives for the future use of the asset. Describing how the vision will benefit the local Reigate & Banstead community (including equalities and environmental objectives). (Score 20%)
- the organisation's management structure/governance, experience and skills of the organisation and its board/committee/trustee members. (Score 15%)
- the organisation's/members' experience and track record of (or plans for): managing/running community facilities or similar; engaging with local community partnerships; supporting community groups and/or residents. (Score 15%)
- an overview of the organisation's current financial status, including how they propose to fund the running cost of the asset and what support the organisation may require to succeed. (Score 25%)
- an initial assessment of how the organisation will practically run the asset. (Score 25%)

- confirmation that the organisation has read and understood this CAT Policy and will, if required, be able to provide the information required as part of a detailed application/business case required (see ‘Detailed business case’ section below).

Initial review

The Council will review the expression of interest and consider:

- if the proposal meets the requirements laid out in this policy (including if the organisation is eligible)
- if the asset is suitable for CAT (please note that this will involve property and legal review of the asset being applied for and any restrictions that might apply to the asset)
- consideration of the level of reduced rent / price that can be offered i.e. an initial view on the potential for disposal at less than best consideration.
- the views of the Council service area that uses the asset (where relevant)
- the views of the relevant local Councillors who will be provided with a summary of the expressions of interest for assets in their wards.

A recommendation as to whether to proceed will be made to an initial assessment panel made up of officers from the Council’s Strategic Property Officer Group and the relevant Executive Members where a decision will be made if the CAT proposal should proceed to the next stage.

The proposer will receive a written response to the expression of interest, either inviting the proposer to submit a business case in the second stage or with an explanation as to why it has been decided that the proposal should not proceed.

Detailed business case (second stage)

Eligible organisations who are invited to the second stage will be asked to complete a five-year business plan. The five-year business plan should include, but is not limited to, the items listed at Annex A and should expand upon the organisation’s initial Expression of Interest. Applicants are encouraged to provide additional relevant details that strengthen their proposal, demonstrating their strategic approach, financial sustainability, and overall feasibility.

As set out in the Council’s Community Asset Support Scheme (CASS) support and guidance will be offered to organisations in this second stage to prepare their business cases.

Business case assessment and decision

The detailed business case will be assessed and evaluated by the Council in line with the scoring in Annex A and against the criteria set out in this policy.

Details of the assessment will be reported to the Council's Community Asset Advisory Group (CAAG) for consultation as to whether the asset should be declared surplus and a recommendation for disposal under CAT be taken forward. The organisation will be informed of the date of the CAAG meeting that will consider the proposal.

In light of the views of the CAAG the final decision will be taken by the Head of Service with responsibility for Property Services, in consultation with the Head of Service with responsibility for Community Partnerships, the Executive Members with responsibility for Assets and Community Development, the Chief Financial Officer, Procurement Manager and the Monitoring Officer, and in accordance with this policy (the Council's Community Asset Transfer Policy). The organisation will be informed of the final decision in writing either confirming that the organisation is being invited to commence the transfer process or with an explanation as to why it has been decided that the proposal should not proceed.

Each Community Asset Transfer will be subject to a proportionate Subsidy Control Act 2022 assessment and the conditions of each transfer shall include the satisfactory compliance with the Subsidy Control Act 2022. Organisations are encouraged to seek their own independent legal advice in relation to the subsidy control regime to their specific circumstances.

Transfer process

If approved, following the process set out above, Heads of Terms will be drafted and provided to the applicant organisation for review and agreement. Once these Heads of Terms are agreed, the Council and the organisation will each instruct their solicitors to progress the transfer. Please note that no commitment to the timescale for transfer can be made, the timescale will reflect the circumstances and capacity of both the Council and the organisation, including any emerging implications through Local Government Reorganisation.

Legal costs associated with the process will be reviewed on a case-by-case basis.

Annex A – Detailed business case (second stage) requested contents and scoring

About your organisation (10%)

Expanding on the information in your Expression of Interest submission, please provide the following information about your organisation:

- Key contact details (including contact name, email address and telephone details)
- Name of organisation
- Legal form/entity
- Organisational structure (please consider providing an organisation chart)
- Aims and objectives
- Activities and services you provide and beneficiaries
- Partnerships that the organisation is part of
- Key organisations that you will work with
- Experience & track record (evidenced-based examples):
    - running community facilities
    - building and/or land management and maintenance
    - working in partnerships
    - health & safety
    - safeguarding and welfare of children, young people and vulnerable adults
    - managing contractors and sub-contractors' business & service continuity.

Summary of the proposal (10%)

Please provide a summary of your proposal for the asset you are seeking for transfer, including:

- Aims and objectives
- Activities, services, events and uses to be provided
- Operating hours (if applicable)
- Time available for hire by the community (if applicable)
- The benefits and how these would be measured
- Governance management structure
- How the asset will be staffed (as appropriate, may include volunteers)
- Quality assurance standards to be applied.

Community needs (20%)

Expanding on the information in your Expression of Interest, please demonstrate how you will respond to the needs of the community:

- Community needs evidence
- Community facilities / gaps in provision
- Any evidence of local consultation undertaken
- The proposed community benefits and creating a positive impact for the community (including potential projects, usage etc and how will these be measured)
- How you will address equality, diversity and inclusion considerations
- How you will address environmental sustainability considerations; and if necessary mitigate any possible negative impacts
- How the community would be involved and consulted
- The rationale for any pricing (for services, renting space etc).

Promotion (10%)

Expanding on the information in your Expression of Interest, please provide information on how you will promote the offerings of the asset and communicate with local residents and stakeholders:

- Methods to be used (online, direct to customer etc) and target audience
- Who will be responsible for communications (in-house or external)
- Please explain how you will monitor success

Finance and budget (20%)

Expanding on the information in your Expression of Interest submission, please outline your organisations financial position, financial goals for operating the asset and detailed funding requirements:

- Cash flow for first year
- Detailed Income & Expenditure forecasts for each of the five years of the plan

Ensure that you include supporting narrative around:

- Methodology used
- Approach to achieving financial sustainability
- Rationale for projections and assumptions made

- Any external financial support required from the Council and or others and back-up plan if the funding is not forthcoming (see section on support in the CASS and guidance, please make clear if you are seeking this support)
- Local authority support (e.g. financial, volunteers, equipment), with clear assumptions and demonstration of needs
- Identification of set up costs and estimated costs of acquisitions associated with set up.

Risk analysis (10%)

Expanding on the information in your Expression of Interest submission, please identify and summarise the main risks you foresee and what action would be undertaken to manage and mitigate the identified risks:

- Clearly outline potential risks and how these will be mitigated
- Describe how risks are assessed
- Outline how often risk assessments will be conducted and who will be responsible for monitoring and managing risk

Key Performance Indicators (10%)

Expanding on the information in your Expression of Interest submission, please demonstrate how you will establish and meet KPI's (key performance indicators) for the asset, to include

- Please propose up to 8 KPIs[3]
- Outline how you will track and measure success against the KPIs
- Detail the tools you will use to collect the data
- How often you will collect and review data
- Who will be responsible for monitoring and implementing KPIs

Project plan (10%)

Please provide a timeline with key tasks and activities.

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[3] You may wish to consider KPIs around areas such as: usage of space and facilities (%); engagement and outreach (newsletters, social media, consultations); financial sustainability; customer satisfaction; number, types, diversity and frequency of activities; environmental KPIs e.g. energy use; carbon footprint; water consumption; waste reduction

Annex to business case - Supporting narrative on building condition

Where your view, based on the information pack provided and the accompanied site visit, is that further capital improvements may need to be made to the asset before transfer please list what these are and your rationale for this. No cost estimates are required. The Council will make its own assessment and liaise with you on the potential for any works.

Supporting Documentation

Before entering into a transfer the organisation must ensure that the following documents and statements are in place, depending on the scale of the organisation. If an interested organisation already has these documents prepared, we request that the potential operator issues them to the Council alongside submitting the business case:

- copy of Constitution/governing document/Trust Deed/memorandum and articles (if applicable)
- copy of last two years annual audited accounts (if applicable)
- equalities policy/statement
- safeguarding policy/statement
- evidence of health and safety policy/statement
- environmental sustainability statement or policy (if applicable)