

# BURY COUNCIL COMMUNITY ASSET TRANSFER POLICY 2022

### 1.0 BACKGROUND

- 1.1 This policy provides a transparent, positive and engaging framework to objectively consider transfers of Council-owned land and property assets (hereafter referred to as property assets) to the community to support continued delivery of services and where in the case of the Accelerated Land and Property Disposals Programme (ALPDP), the Council has had approval to declare them surplus to its requirements.
- 1.2 Bury Council is committed to providing its property assets where the opportunity presents itself to form long-term partnerships with community groups that meet the Council's criteria where they will bring benefits to local communities and services within each of its six towns. It must be noted that not all property assets or community groups will lend themselves to CAT, but the Council will continue to work with such groups to support them in other ways.
- 1.3 This policy forms an important part of the Let's Do It Community strategy, the Let's Do It Flexibly programme and the Council's approved ALPDP.
- 1.4 Using the LETS principles of Local, Enterprise, Together and Strength, one such opportunity is to provide a base for which to develop a Community Wealth Building Framework to give certain property assets a new lease of life as community managed assets. This helps support the borough's community groups to grow and develop as they take on responsibility for a property asset, as well as contributing to social, environmental and community regeneration.
- 1.5 CAT has the potential to give communities greater control, influence and input into their areas. It can help to build a sense of belonging, raise aspirations, increase skills and expertise whilst facilitating the delivery of services.
- 1.6 A CAT is at the discretion of the Council. It is not the same as a community group's right to nominate property assets such as local schools, churches, pubs and sporting venues to be kept in community use. The Community Right to Bid is a separate process for a separate purpose.
- 1.7 The key aims of this policy are to:
  - Support voluntary and community organisations contribution to Bury neighbourhoods.
  - Provide a fair and transparent framework to consider requests for transfer of Council owned property assets.
  - Help the Council to achieve savings.
  - Support continued delivery of services through transfer to voluntary and community organisations, where this is appropriate.
- 1.8 This CAT policy is intended as a guide for objectively considering applications, case by case, according to their own merits.

### 2.0 THE LOCAL CONTEXT

- 2.1 Bury Council recognises the positive contributions that voluntary and community groups make to their neighbourhoods. The purpose of this policy is to therefore facilitate and support communities to access Councilowned property assets (where appropriate) for this purpose while protecting the Council's financial integrity, fiduciary duty and wider accountabilities, such as health and safety.
- 2.2 CAT provides an option for property assets and services that are at risk and/or challenged as a result of cuts to funding. It creates the opportunity for investment in a property asset that may no longer be possible by the Council, and it can provide a catalyst for inward investment.
- 2.3 A CAT is a valued method of disposal and is very much recognised through the Council's ALPDP. This is contributing towards the Council's objective of rationalising its estate, whilst facilitating an efficient use of its property asset base. A CAT proposal could provide a much-needed service or community outcome through a neighbourhood approach and deliver social, economic and environmental benefits.
- 2.4 Bury Council has committed itself to engage with communities through neighbourhood working to improve the environment, promote early intervention and prevention and promote self-care. Putting in place a CAT policy is an active management step by the Council to support local people reduce their reliance on public funding, as well as stimulate partnership working to provide additional services for local residents which in turn, helps the Council achieve its corporate priorities and outcomes in the Let's Do It Strategy.
- 2.5 CAT can range from unrestricted freehold sale at full market value, where the community group may be offered first refusal, rather than to offer for sale on the open market; through to short term leases where the Council retains ownership and some level of responsibility.

### 3.0 COMMUNITY ASSET TRANSFER PRINCIPLES

- 3.1 This policy will be provided to interested community groups when community interest is to be considered as an alternative option to service closure or another form of disposal e.g. open market sale. The application process and consideration of the business case and period allowed for completion will be time bound.
- 3.2 An option to consider transfer of a property asset to a community group can be prompted either by the community group:
  - Identifying a property asset that has approval for disposal through the ALPDP.
  - Independently approaching the Council with an identified Councilowned property asset.
- 3.2 The Council is under no obligation to transfer property assets to community groups. Whilst fully supporting the principles of CAT, this policy recognises

that property assets that have not had approval for disposal under the ALPDP or otherwise must remain under Council control where its required, in order to support delivery of essential services or strategic corporate objectives, or up until such a time that a property asset can be considered for a CAT.

- 3.3 A community group will follow the application process as outlined in the CAT toolkit and will have to ensure a credible Expression of Interest (EOI) and robust Business Case, and clearly demonstrate that it has the skills, capacity and financial and legal ability to sustain a CAT. The Council will not be able to provide financial support.
- 3.4 The fundamental questions that will be considered when an EOI is received from a community group include:
  - Council priority should an alternative disposal method take priority over a CAT request e.g. is the need to generate a capital receipt greater than the provision of a service that would result in social value benefits?
  - Does the Council need the property asset to support delivery of its own requirements or would delivery of services by a third party be of greater benefit to the local community and the Council?
  - Is there a reason why the property asset should not be made available for CAT e.g. if a building is not in a good state of repair and funding is not available to carry out any identified backlog maintenance?
- 3.5 The Council will make the final decision as to whether or not a property asset is to be made available for a CAT.

### 4.0 SUPPORT TO COMMUNITY GROUPS

- 4.1 Pre-support and support for the preparation of the EOI will be available from the Partnerships Team (Community Hubs) contact details are contained within the toolkit. This will include support to link interest groups to wider community networks for joint EOIs/bids to add benefit and make the application more viable for the group(s) involved. It will also help with alignment with local priorities/Let's Do It Strategy.
- 4.2 In general terms, the Partnerships Team (Community Hubs) will support a community group(s) with the work pre-EOI stage as explained above, and the Council's Land & Property team will progress the CAT application process once the EOI has been approved. However, both teams will be available for contact throughout the application process to help the community group.
- 4.3 The CAT toolkit provides full details of the CAT application process and contact details for advice and support.
- 4.4 The Council reserves the right to not consider a CAT on a property asset if it determines that another disposal option is preferred and takes priority as outlined in paragraph 3.3. The Executive Director of Place in consultation with the Leader of the Council and relevant Members will consider such cases and decide on priority. Whilst the Council is in full support of CATs and

supporting local community groups develop, each case has to be taken on its own merits as the Council still has to consider best value. There are also expected capital receipt and revenue savings targets through the ALPDP and Estates Rationalisation programme.

4.5 The Council may enter into dialogue with the community group to seek clarification and additional information/evidence in support of the application and aspiration to acquire the property asset.

# 5.0 ASSESSING APPLICATIONS FOR COMMUNITY ASSET TRANSFER

- 5.1 The EOI and subsequent Business Case will initially be received by Land and Property Services, Business Growth and Infrastructure department. At the time that the Council invites interest or on receipt of an approach by a community organisation the time periods for considering the application will be agreed.
- 5.2 Further to the acceptance of the EOI, the submitted Business Case will be reviewed by a panel of officers before recommending approval to the Executive Director of Place and Leader of the Council. This consistency of approach will be used for all applications and also used to record the recommendation.
- 5.3 The normal route for final decision will be through a Delegated Powers decision notice to be agreed and signed by the Leader of the Council, the relevant portfolio holder, the Executive Director of Place and Head of Property and Asset Management. In some cases, Cabinet approval may also be required.
- 5.4 The CAT will be recorded as a property transaction along with any agreed responsibilities for long-term monitoring.
- 5.5 The long-term viability and benefits of each proposal for CAT will be evaluated against options available for the Council, e.g. disposal by open market sale, commercial lease or alternative Council use.
- 5.6 The business case will be assessed for its monetary and sustainability terms. A business case template is contained within the CAT toolkit.
- 5.7 Objective tests of the community group, the property asset and value for money will be used to assess a CAT application.

### 6.0 OBJECTIVE TESTS

- 6.1 CAT is at the discretion of the Council. To help it to consider an application, objective tests have been agreed and are summarised as follows:
- 6.2 **The Organisation Test:** (to be demonstrated by the applicant)
  - i. It is a legally constituted community group, charity, or not for profit organisation, with articles of association that define roles and responsibilities of company directors, trustees etc.

- ii. It understands and is willing and able to take legal responsibility of the property asset transferred, e.g. health and safety, running costs, maintenance and improvement plans.
- iii. It has identified risks (including health and safety) and has agreed and put in place mitigating actions that will be monitored.
- iv. It understands costs, financial standing and an identified and adequate budget to meet its roles and responsibilities whilst in occupation as per the lease arrangements.
- v. There is sufficient alignment between the community group and the Council's objectives and plans.
- vi. It has defined and working governance arrangements.
- vii. Its funding sources are reliable and sustainable. It demonstrates a track record, where considered to be a prerequisite, or a satisfactorily strong case of competence where a track record does not already exist.
- viii. It has, or has access to, appropriate skills and capacity to safely deliver the services and to manage the property as per the agreed lease terms.
- ix. It has a service level agreement with the Council, where appropriate.

# 6.3 **The Property Test:**

- i. There is no foreseeable Council need for the property and it has been declared surplus as a result.
- ii. There are no legal or property title impediments to the transfer.
- iii. Property value determined by the Council's Land and Property Service for consideration in the Value for Money test.

### 6.4 The Value for Money Test:

- i. If the property and organisation tests are passed, the applicant will be requested to submit a business case setting out further details about its proposal. This should include a financial forecast and a risk register.
- ii. If the transfer of the property asset is to be at less than best consideration, the community organisation must demonstrate objectively the benefit or value of their proposals in monetary terms, e.g. achievement, promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area or direct savings such as protecting the value of Council property assets in the long term.
- iii. Under EU law, governments and public bodies may not distort competition through their provision of state aid that puts commercial enterprises at a disadvantage. An application for a CAT must be able to stand scrutiny of any State Aid matters/queries.
- iv. The Council is under no obligation to transfer property assets to the community and decision are taken with knowledge of alternative options.

### 7.0 BASIS OF THE COMMUNITY ASSET TRANSFER

7.1 This will be consistent with individual circumstances of the CAT application considering levels of transferred risk, cost retained or passed on and agreed outcomes. This will include:

# i. Property interest to be transferred, this can range from;

- a. Short term lease, e.g. 5 years (with or without security of tenure).
- b. Short term followed by a further or a series of short-term leases.
- c. Short term followed by longer term leases with mutual break clauses.
- d. Longer term lease, e.g. 6 to 99 years with mutual break clauses.
- e. Lease or leases followed by transfer of the freehold.
- f. Freehold.
- g. Self-management agreements may be considered but they do not constitute as a property asset transfer and are more aligned to a service contract.

# ii. <u>Subletting</u>

Subletting of a property asset to a community group may be acceptable if the income generated is key to long term sustainability of the CAT. However, use would be subject to prior approval from the Council under terms of the transfer by way of a lease.

### iii. Use restriction and claw back

Controls on use to be considered and determined based on the business case and any discount allowed at the time of the CAT. This is to ensure private 'profit' is not generated from the transfer.

### iv. Indemnities on transfer

Where rights and responsibilities are passed to the community group, risks are to be identified and mitigations put in place, including risks of organisations failing to fulfil responsibilities. Groups may be required to take out and maintain suitable indemnity insurance.

# v. Other material considerations for asset transfer

- Parties to the transaction.
- Price/consideration.
- Treatment of costs (legal and asset management, administration, consents and variations etc).
- Responsibilities for repair and maintenance (the transfer will ideally include a schedule of condition).
- Responsibilities for health and safety and insurance.
- Agreement and accountability for uses and outcomes (probably documented in a service level agreement).

### vi. Legal transfer and documentation

Occupation of and rights to the property asset will not be possible before the transfer by way of lease or sale has been completed.

## vii. Ongoing management

Where a CAT is agreed based on a business case that commits to agreed outcomes, monitoring and enforcement arrangements will be put in place.

### 8.0 TRANSPARENCY AND LEGAL

- 8.1 In certain circumstances where there is more than one community group interested in a property asset, the Council may recommend that these groups work together and explore a collaborative application for it.
- 8.2 If the recommendation is not to proceed with a CAT, then the community group will be immediately advised in writing following the Council's panel meeting where the application was considered.
- 8.3 Where an application is successful and signed approvals are in place, the community group will be informed in writing.
- 8.4 Respective Ward Members will be informed of all decisions.
- 8.5 The community group's occupation of a property-asset will be monitored as per the relevant leasing arrangements that are agreed between the Council and the community group. The lease will include the circumstances in which the property asset can be taken back should a community group find themselves in a situation where they are unable to continue occupation. The Council will have the right to terminate the agreement.
- 8.6 Legal issues may arise in the context of a CAT and whilst the community group are in occupation of the property asset. Whilst the Council can advise the group on their legal responsibilities associated with an asset transfer, they are advised to obtain their own independent professional advice.

# 9.0 POST COMMUNITY ASSET TRANSFER

9.1 As per paragraph 8.5, every CAT will be subject to review, generally annually, to measure success and to ensure that occupation is within the terms of the agreed leasing arrangements. A review of the sustainability of the CAT, including the service level agreement (where agreed as part of the transfer) will also be reviewed to check it is being fulfilled to the satisfaction of the Council.

# **10.0 CONTACT DETAILS**

10.1 The contacts below are also contained within the CAT toolkit:

### Partnerships Team (Community Hubs):

0161 253 6592 / corporate.core@bury.gov.uk

### The Land and Property Team:

0161 253 5995 / <u>property@bury.gov.uk</u>

# **Useful Websites:**

https://mycommunity.org.uk/understanding-community-asset-transfer

https://www.gov.uk/government/publications/community-ownership-fund-prospectus/community-ownership-fund-prospectus

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