



PEMBROKESHIRE COUNTY COUNCIL

COMMUNITY ASSET TRANSFER POLICY

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1. INTRODUCTION

The UK Government Report “Making Assets Work – the Quirk Review” (2007) identified many benefits of local groups owning or managing former public assets. Community ownership can make better use of public assets. It gives local people a bigger stake in the future of their community and local services.

The Welsh Government White Paper “Reforming Local Government: Power to Local People” published in 2015 contained specific proposals to facilitate greater community participation and asset transfer to communities. This, together with the financial pressures which public services across Wales are currently facing, leads to an expectation that the number of community asset transfers may well increase.

As part of its efficiency and cost savings agenda, Pembrokeshire County Council is looking at transformation opportunities in terms of service delivery, the commissioning of services, and working with the voluntary sector, and this will undoubtedly create opportunities for communities to take some control /management/ ownership of some public assets.

2. WHAT IS COMMUNITY ASSET TRANSFER

Asset transfer occurs when one organisation transfers an asset to another organisation. Community asset transfer (CAT) occurs when a public sector body, usually a Local Authority, passes the management and/or ownership of a property asset to a community organisation (town/community council or a local third sector/community group).

The ultimate aim of community asset transfer is community empowerment – ensuring that land, buildings and services are retained or transformed and then operated for public benefit through community asset ownership and management, for future generations.

Community asset transfer is not, however, a free “giveaway” of assets, and does not include all assets owned by a public body. Indeed, the Quirk Review referred to “former public assets” inferring that CAT relates primarily to surplus assets but, as set out within this Policy, it can, in relevant circumstances, include operational property particularly where there is a service delivery context. There will be, however, certain assets that are likely to be excluded as they are actively used for operational purposes by the Council, or held for economic development purposes, such as industrial estates, or held as property investments for the purpose of generating revenue.

The Local Authority’s financial position will also greatly impact on the potential for community asset transfer, particularly in relation to its need to generate significant capital receipts from the sale of surplus property towards its capital programme needs, and generate revenue income towards its corporate revenue

budgets. The financial aspects of any proposed CAT in terms of the Council's capital and revenue budgets will, therefore, always need careful consideration. This, in turn, is likely to lead to a significant degree of expectation management when dealing with expressions of interest from organisations, particularly given the "high expectation" information provided by some funding sources regarding nil consideration transfers.

Local Authorities are required, in accordance with section 123 of the Local Government Act 1972, to achieve the best consideration that can be reasonably obtained when disposing of property (including leases of more than 7 years duration). They can, however, dispose at less than market value, as long as the difference in value does not exceed £2m, where they consider that the purpose for which the land is disposed is likely to contribute to the achievement of one or more of the following: the promotion or improvement of economic, social or environmental wellbeing (under the General Disposal Consent 2003).

Government policy encourages Local Authorities to dispose of surplus assets where possible, with an expectation that they obtain the best consideration possible. It is recognised that there may be circumstances, as above, where an Authority considers it appropriate to dispose at an undervalue but Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.

When considering a disposal at less than best consideration a Local Authority must look to the level of undervalue to ensure that this complies with statute. The undervalue is the difference between the unrestricted value (generally the market value taking into account alternative uses, additional special purchaser bids, but disregarding reductions in value due to voluntarily imposed conditions) and the restricted value (market value reflecting the effect of any such conditions).

If a Local Authority believes that there is a case for a disposal at less than best consideration, the effects of State Aid still need to be taken into account. For further information on this: www.gov.uk/guidance/state-aid

3. STRATEGIC CONTEXT

Community asset transfer needs to be viewed in context with the Council's relevant policy documents, including:

- Pembrokeshire Single Integrated Plan and, from 2018, Well-being Plan
- Pembrokeshire County Council Improvement Plan and, from 2017, Corporate Plan
- PCC Medium Term Financial Plan and Capital Strategy
- PCC Local Development Plan
- PCC Strategic Asset Management Plan

The Single Integrated Plan is a partnership plan that reflects the aims of public services as a whole for Pembrokeshire – it is an overarching plan designed to improve the quality of life for everyone in Pembrokeshire, and contains the shared vision: **To ensure that Pembrokeshire is prosperous and that it remains vibrant and special.** The Well-being Plan will replace the Single Integrated Plan in 2018 and identify how local economic, social, environmental and cultural priority outcomes will align with the seven Welsh Government Well-being goals.

Annually, the Council sets Improvement Objectives which are focused on delivering longer term priorities for the Council. The Council's Corporate Plan includes strategic objectives that are aligned with Well-being goals.

The Medium Term Financial Plan 2016-2020 and the Capital Strategy set out our resource plan to ensure that the overall vision, objectives and outcomes sought for the local community are deliverable within the resources that are available or likely to be available in the medium term.

The Local Development Plan comprises the planning framework (to 2021) within which any proposed community usage of any Council land or building asset would have to sit.

The Strategic Asset Management Plan identifies the Council's aspirations and direction of travel in terms of its property assets. The Council is undertaking a review of its property assets through an on-going rationalisation programme, in close conjunction with its service transformation programme. As part of this process the Council will identify land and buildings which are no longer required for service delivery and these will then be declared surplus to requirements, and (generally) be added to the capital receipts programme list for potential disposal. Those assets identified as revenue opportunities will be offered for lease. The capital receipts programme is updated on a regular basis and is "published" by the Council as part of its Cabinet decision making process.

Once on the disposal lists (capital receipts and leasing out) organisations can apply to the Council for a potential CAT. This would be considered alongside the Council's Medium Term Financial Plan and Capital Strategy and the need to generate capital receipts and revenue income/savings. If the proposal is for transfer at less than full market value this would need to be assessed against the likely other uses if sold on the open market and would take into account the less tangible benefits the transfer might bring to the wider community.

These principles will also apply if the proposed CAT is of land or buildings which are still in use by the Council and where the proposal is for the community group to take over or complement the delivery of services, and the potential delivery of revenue savings to the Council will be of particular importance.

Under this policy Council property assets will rarely be transferred on a freehold basis, unless at full market value. It is considered more appropriate that CAT transfers, especially if at less than market value, are undertaken on a leasehold basis, which could range from a tenancy at will, licence, through occupational leases (of, say, up to 25 years duration) up to a ground lease of 125 (or occasionally 999) year duration at a peppercorn rent. This would protect the

future of these assets (and the council taxpayer) and ensure that the Council can, as principal stakeholder, influence future changes in use (if these are considered inappropriate or do not meet the criteria of the asset transfer as originally envisaged) and occupation of the facility. Particularly, if the proposed changes are so fundamentally different from the original purpose of the CAT, the Council may be obliged to terminate the agreement, in accordance with clauses therein.

4. THE AIMS OF COMMUNITY ASSET TRANSFER

The Council's assets include land, buildings and other structures used for a variety of different social, economic, environmental, community and public purposes. The Council's CAT policy enables community management and ownership with the aim of developing a number of benefits

- *Building confidence and capacity in local communities.* Taking control of local assets can raise local confidence, will get people more involved in community life, and underpins more cohesive and sustainable communities.
- *The creation of new partners with access to resources not open to the Council and other public sector services.* Better value will be gained from assets which can also be improved. Community groups also relate directly to service user communities and are able to invest in continuing the delivery of services which might otherwise reduce or, even, cease to be delivered by the Council, and in complementing existing public services.
- *Community organisations gain strength and capacity.* Taking ownership of an asset can result in financial security, access to loans and funding, increased recognition, a sense of identity for communities, the development of iconic places, greater leadership capacity and organisational development. Transfers can also provide a secure base for further opportunities to expand and diversify.

These benefits are aligned with the Well-being of Future Generations Act sustainable development principles.

5. PRINCIPLES BEHIND THE COUNCIL'S COMMUNITY ASSET TRANSFER POLICY

The Council's CAT policy is underpinned by the following principles:-

- CAT proposals must support the Council's key outcomes and improvement strategic objectives.

http://www.pembrokeshire.gov.uk/content.asp?nav=101,2096,1566,1710&parent_directory_id=646

- Proposals will be assessed against the Council's financial priorities, both Capital and Revenue.
- CAT is part of a long term programme of third sector partnership and support.
- Potential property disposals will be highlighted through the Council's three year rolling capital receipts programme.
- The community "need" must be robustly proven before any proposed CAT can be considered.
- CAT proposals will be favoured where they take over services currently delivered by the Council thereby delivering efficiencies and savings.
- The Council will adopt a method of assessing the benefit of transfers, linked to corporate priorities, and which allows consideration of market disposal values.
- Any disposal at less than full market value must be accompanied by an agreement identifying the community benefits, how these have been assessed (including any savings to the Council), and how they will be monitored and measured together with remedies available to both parties if the agreement is not met. State Aid implications will need to be considered with any such disposals.
- Freehold disposals will not normally be considered, given the Council's need to covenant in respect of service delivery, permitted use, repair and maintenance and other equally important issues, particularly with disposals at less than market value.

6. WHO CAN APPLY

Community Asset Transfer is available to a variety of organisations, subject to minimum due diligence requirements in terms of:-

- Governance structures
- Skills and capacity
- Mandatory documents required such as constitution, annual reports and accounts

Relevant organisations include:-

- i) Town, city and community Councils

- ii) Third sector organisations
- iii) Community based groups

Appendix 4 of this Policy comprises a community asset transfer briefing note for organisations to help them ascertain whether CAT is relevant to them. In addition, Appendix 1 comprises a simple flowchart showing the stages within Pembrokeshire County Council for the consideration of CAT proposals.

Interested organisations can also access support and guidance in respect of community asset transfers from a variety of other organisations. Indeed, it is strongly recommended that such support and guidance is accessed, particularly as some of these support groups will be able to assist in the drafting of applications. Initial guidance can be found through the Welsh Government National Assets Working Group publication “Community Asset Transfers in Wales – a best practice guide”. <http://gov.wales/topics/people-andcommunities/communities/community-asset-transfer/best-practiceguide/?lang=en>

This document also lists other organisations providing advice and support, together with potential funding sources.

7. COMMUNITY ASSET TRANSFER PROCESS

Pembrokeshire County Council will consider community asset transfer proposals under a three stage process. This is shown diagrammatically in Appendix 1.

7.1 Pre-application stage

It is strongly advised that organisations contact the Head of Property at Pembrokeshire County Council regarding any community asset transfer proposals, before committing themselves to a significant amount of effort and, potentially, expenditure. Providing basic or preliminary information at this stage of the process, relating to the group involved, purpose of the proposal, and high level financial proposals, is likely to generate an early indicative response from the Council.

This indicative response may confirm that the asset is not capable of being transferred (for financial, or other reasons) or not transferred for that particular purpose. It may also lead to a recommendation that the organisation instigates a Stage 1 Expression of Interest.

7.2 Stage 1: Expression of Interest

Appendix 2 of this policy comprises a template to assist organisations in submitting their initial expression of interest/outline business case. Whilst a

reasonable degree of information is required at this stage, this is not a full business case and therefore ensures that valuable resources are not spent on a proposal that may not be successful.

The expression of interest/outline business case should provide the Council with sufficient information to be able to make a decision as to whether the proposal should be taken any further. It will particularly enable the Council to consider the basis of the project proposal, the nature of the organisation involved, the impact of the proposed asset transfer (including any revenue savings and potential loss of capital receipt), particularly in terms of service and other benefits, and a summary of the financial plan in respect of the proposal.

The expression of interest will be considered by the Community Asset Transfer Steering Group (comprising the officers and Members who sit on the Strategic Asset Management Group) and, if successful at this stage, the organisation will be notified and a stage 2 full business case be requested. If, however, the application is not successful, the organisation will also be advised at this stage, and will be notified in writing with the reasons for this decision.

7.3 Stage 2: Full Business Case

Appendix 3 of this Policy comprises a template for a full business case, highlighting the areas of information required by the Council.

It is important, at this stage, to provide all of the information requested in order to ensure the proposal is as robust as possible. If the organisation has not used external advisers in respect of their Stage 1 application, it may well be appropriate to commission such advice at this stage in order to ensure as strong a business case as possible is submitted.

Also attached at Appendix 3 is a finance plan template which highlights a number of the areas that organisations considering a Stage 2 proposal will need to take into account. As proposals will be considered from a financial perspective, it is vital that both capital and revenue matters are taken into account and that the financial plan provides forecasts for the next five years (unless the CAT proposal is for a period shorter than this).

The full business plan will need to take into account greater levels of detail, particularly relating to legal matters, the actual property transfer, HR issues (such as TUPE) etc.

Upon receipt of a Stage 2 application, this will also be considered by the Community Asset Transfer Steering Group. If the application is successful, the applicant will be notified, and the Steering Group will make a formal recommendation to Cabinet for disposal on the terms agreed in principle.

If, however, the Stage 2 application is not successful then the organisation will be notified in writing by the Steering Group, with the reasons for the decision.

8. DECISION MAKING

Preliminary or pre-application proposals will be considered by the Head of Property, who is responsible for the Community Asset Transfer process. These will be dealt with on an informal basis, following discussion between the parties.

The expression of interest Stage 1 applications will be considered by the Community Asset Transfer Steering Group. This comprises the officers and Members who sit on the Strategic Asset Management Group (but may include officers from Finance, HR, Legal, and the relevant service areas, as required).

Stage 2 business plans will be considered by the same Steering Group, again with the support of officers from the relevant support services.

The Stage 3 final decision will be taken by Cabinet.

9. BUILDING A PROPOSAL

The preceding information shows that there is much more to Community Asset Transfer than just coming forwards with a suggestion. Any proposal must be sustainable – socially, financially and environmentally. Any current or proposed interested organisation needs to properly research its position, become properly constituted, and have a robust business case before it has any chance of success. Below are some pointers that may assist in achieving such success.

Community Evidence and Consultation - Much of this relates to the Stage One Proposal.

- Are the community needs identified and is there supporting evidence?
- Has the Town / Community Council, community partnership or other similar group been consulted and is it in support?
- Has the actual community been consulted – supporting evidence (eg details of questionnaires, door to door surveys, etc)?
- Is there sufficient evidence of community support?
- Is there a real gap in the needs of the community or is it a perceived gap – supporting evidence?
- Is the proposed organisation supported by Pembrokeshire County Council or another public body in respect of the community need?
- What section of the community is aimed at – all or specific sections?
- Geographically and socially what is the proposed catchment area?
- Is the 'service' already provided in some form, if so, where from and why the proposed alternative?

Property Asset – Organisations should make contact with the Property Team at the County Council in order to better understand the potential asset transfer aspects of their interest.

- Has the proposed asset been declared surplus to requirements by the Council and/or is it on the potential disposals list?
- If not on the disposals list, has an approach been made to the Property Team?
- What is the proposal and therefore what length of lease is required?
- Tenancy at Will; Licence; Occupational Lease; or Ground Lease? Are these understood?
- What are the current property costs (heating, lighting, rates, repairs, insurance, etc)?
- Are there any utility agreements in place?
- Specifically, who will be responsible for repair and maintenance?
- Does a condition survey exist?
- Are there any statutory compliance issues such as asbestos management, water hygiene, and fire regulations?
- Will the County Council have any on-going input into the property?
- What restrictions will be included within the lease?
- Are there any planning, licensing or building consent issues?
- Is there a capital contribution required? Will there be a discount from market value?
- When are negotiations to be entered into?
- Does organisation need professional advice (surveyor, solicitor, etc)?

Business Case – Most of what needs considering is covered within the Stage Two proposal section. In addition other issues to consider include:

- How is the organisation to be constituted?
- What is the background of the parties involved; what training have they had; do they need training?
- What additional support has been obtained (Wales Council for Voluntary Action, County Voluntary Councils, Communities First, etc)?
- Is professional advice required (eg accountant)?
- Is there a relationship with other organisations or other groups? If so, what?
- Can the organisation demonstrate an understanding of relevant legislation, particularly in respect of property statutory compliance issues? How will this be implemented?