



Community Asset Transfer Policy

Policy Position and
Guidance Document

Version 1 (September 2023)



Introduction

The purpose of the council's Community Asset Transfer Policy is to set out the principles and approach by which the council will dispose of property assets to community groups. This information is of relevance to Officers, Members, community groups and key stakeholders.

This guidance should be read in conjunction with the Council Plan and accompanying Delivery Plan and Performance Management Framework, the Council Constitution and the Scheme of Delegation. This Policy together with the Council Constitution: Contract Procedure Rules relating to land and property, and Property Disposal Policy are key documents in the overall management of the council's land and property portfolio.





Ullswater

Context

The Council Plan for the new Westmorland and Furness Council came into being on 1 April 2023.

It sets out the council's vision, values and priorities and guides the council through the transition from the four predecessor councils and a period of transformation over the next five years. The plan is about delivering the best for our residents, customers, and communities.

The plan presents a vision for Westmorland and Furness to be "a great place to live, work and thrive."

Priorities set out within the plan are as follows:

For people – Supporting active, healthy happy lives for young and old and supporting people in need and reducing inequality.

For the climate – Providing leadership in the drive to become carbon net zero.

For communities – Enabling confident, empowered, resilient communities.

For the economy and culture – Supporting sustainable, inclusive, economic growth

For our workforce – Leading and empowering a confident, innovative and inclusive workforce.

Values set out within the plan are for a **caring council** which will be:



Ambitious



Responsible



Collaborative



Inclusive



Needs-led



Outcomes focused



Ecologically aware

The council's Strategic Asset Management Strategy ('SAMS') (due to be published later in 2023-24) will support the commitment made in the Council Plan and Delivery Plan and Performance Management Framework to deliver a modern, effective and fit for purpose property portfolio and a healthy working environment.

The challenge for the council is to make the best use of its assets to enable the efficient delivery of services to our communities. This may mean improving buildings, changing their use, selling or leasing to partner organisations and community groups to achieve Council Plan objectives, or even selling them on the open market and reinvesting the money in our frontline services. On occasions the preferable option may be to demolish buildings to increase market value or facilitate an alternative use of a site.



Walney Island

Why we need a Community Asset Transfer Policy

The disposal of property needs to ensure the achievement of good practice and where appropriate, that the maximum benefit of the asset is realised. This can be through obtaining the highest sale value or meeting wider community wellbeing objectives supported by the council.

This policy and the SAMS recognise that Community Asset Transfer ('CAT') is one of the ways in which the corporate priorities can be achieved. The assets that the council owns in local communities may play an important part in enabling appropriately constituted groups to come together to offer communities a range of activities and services that benefit the social and economic wellbeing of an area. CAT's can provide an opportunity to enable communities to help themselves. The CAT process sits alongside the council's **Property Disposal Policy**.

The Property Disposal Policy sets out the process for ensuring that when considering disposal of any form, all factors are taken into account. This enables balanced judgements, as appropriate in each individual case. It will mean that all communities will have equality of opportunity.

Community Asset Transfers

It is important to note that local members and Locality Boards, in association with Locality Managers, have a key role in service reviews which may result in properties declared 'surplus'.

Locality Managers are likely to be aware of community groups that need land and / or property in particular areas and are therefore able to support them to develop outline business cases in advance of a property being declared surplus. For example, if a community needs a community centre, that should be known in advance of a council asset declared surplus.

Town and parish councils play a special role in our communities and will be informed when a property is about to be made available for CAT or where an expression of interest for CAT has been received from a community group.

Local members' views will also specifically be sought prior to progressing a CAT or when an expression of interest is received for a CAT. This consultation will take place prior to details of such matters being provided to Locality Boards.

A six-week period will be allowed for community groups to develop an expression of interest and supporting documentation and, if approved by the Assistant Director (Safe & Strong Communities) in conjunction with the Assistant Director (Corporate Assets, Fleet & Capital Programme) and Assistant Director (Community Infrastructure) a further six months to develop a detailed business case. The outcome of that business case assessment will be reported to Cabinet with a recommendation for decision (see 3.21 'If a transfer is sought what timescales will the council abide by' for further detail of timescales).

The three Assistant Directors may determine that a property is not suitable for use by the community. In those instances the property will proceed straight to sale on the open market (see Property Disposal Policy, paragraph 3.5).

The detailed process for CATs is set out below.

Community Asset Transfer Procedure

Date: 12.09.2023

Status: Final

1 Introduction

1.1 Community Asset Transfer (CAT) is where the management and / or ownership of public assets is transferred to community groups, including town and parish councils. For Westmorland & Furness Council this is one of the options available to help maximise community benefit from assets owned by the authority that become surplus to requirements. It can give local people and communities the opportunity to take greater control of assets in their local area. The Council's Predecessor Authorities have been transferring assets to communities for many years with local elected members being at the heart of this activity. This policy and guidance build on the knowledge, skills and benefits gained through those experiences.

1.2 A CAT usually relates to transferring a piece of land, property or other asset to a voluntary or community organisation, which in return commits to providing community benefits. The CAT will usually be by way of a long-term lease (25 – 99 years) at less than market value. Short tenancies may be considered (to ascertain the viability of a group), if viability is proven a full business case will be required to support the longer leasehold transfer going forward.

1.3 This document sets out the council's policy and guidance on CATs and the approach the council will take to ensure the consistent and transparent transfer of land and property assets to the voluntary and community sector. It will enable CATs to support the achievement of the council's values and priorities relating to 'enabling confident, empowered, resilient communities' and outcome focused values concerning 'identifying and leading the delivery of the changes that our communities want to see.' It also supports the delivery of the council's Strategic Asset Management Strategy (currently awaiting publication). This document does not cover the transfer of highway assets, such as streetlights, or the devolution of council services to parish councils.

1.4 This policy and guidance set out the rationale for considering CAT in the context of national, regional and local drivers and priorities. Consideration is given to the principles and processes the council will use in determining whether an asset is suitable for transfer.

1.5 This means that appropriately constituted groups can be confident that a fair and standardised process will be adopted for each application for CAT. This policy contains sufficient flexibility to enable adoption of an individual approach, as every transfer is different.

2 Underpinning Principles

2.1 In order to ensure that CATs are dealt with in a consistent, fair and transparent manner, this policy and guidance set out the principles upon which CATs will be progressed. However, as every transfer and group involved will be different there also needs to be flexibility built into the approach.

2.2 The principles set out below will allow for consideration on a case-by-case basis; ensure that the well-being benefits to the community are assessed; give consideration to value for money; and will also ensure that transfers facilitate the provision of high quality, customer-focused services for communities.

2.3 The council sees this policy and guidance documentation as the method of ensuring that all factors are considered, enabling value judgements as appropriate in each individual case. It will mean that all communities, and voluntary and community organisations, will have equality of opportunity.

2.4 The principles are:

- The process for CATs will be clear and transparent with indicative timescales from start to finish.
- The criteria used for determining whether an asset is suitable for community transfer will be made publicly available.
- Any known costs or liabilities involved e.g. ground rent, sitting tenants, maintenance, essential repairs etc. will be made available to the body the transfer will be made to.
- Requests for transfers from the community will be considered using the criteria and process set out when they are received.
- The council will work with appropriately constituted organisations to achieve asset transfers where appropriate that will enhance community empowerment and engagement and encourage development and sustainability of the sector.
- All requests for transfers must be to improve community, wellbeing, support or enhance the current services provided.
- All requests must include detail of how the asset will be managed sustainably in the context of principles set out within the Climate Act 2008 and the council's published decarbonisation agenda.
- All requests must make a clear contribution to the council's priorities and aspirations; as well as support the outcomes in the Sustainable Community Strategy.
- Each asset transfer will be considered on its own merits.
- The community benefit arising from a CAT must be shown to outweigh tangible benefits that could have been achieved through the reinvestment of capital receipt arising from open market sale.

3 Guidance for Community Asset Transfers

When will the Council consider an asset transfer?

3.1 Any asset an appropriately constituted group is seeking to acquire must be in the ownership of the council (freehold or long leasehold). Applications will be considered against the following framework.

3.2 The council will consider asset transfer applications from appropriately constituted organisations already using council assets in the furtherance of Council Priorities. Applications will also be considered from appropriately constituted organisations who wish to establish new services from assets declared surplus.

3.3 When considering transfer the council will usually include a condition that the organisation taking ownership of the asset can only use it for prescribed purposes that provide demonstrable benefits and improved wellbeing to the community. Continued access for appropriately constituted groups currently using the premises will usually also be a requirement.

3.4 Assets which have been identified by the council as surplus, as part of Service reviews, may be made available for applications for CAT, alongside opportunities for disposal.

3.5 For any CAT, the council will require a proposal from the group seeking the transfer outlining the community benefits, development plans and business case, covering financial viability, proposed utilisation, benefits to the organisation and community and evidence of wider support. Evidence of support should seek to include elected members.

3.6 The council's Cabinet will make all decisions, as it holds the authority to approve the transfer of an asset using the wellbeing provisions contained in the general consent ¹.

3.7 The council is **unlikely to consider applications** for transfer except in exceptional circumstance in respect of:

- Assets that accommodate fixed or core services.
- Assets that have a significant maintenance backlog representing a liability and posing a risk to future occupiers.
- Assets that first need to be offered to another entity to satisfy a legal or policy requirement – if that offer process does not yield a sale the asset could potentially then be made available for CAT.
- Assets that have been identified as capable of generating a significant capital receipt or income which is required for reinvestment in the provision of council service. Where an asset is identified for disposal, voluntary and community sector organisations could submit bids along with other individuals and organisations during the process.
- Where the level of required capital investment is disproportionate to the outcome sought.
- Where the proposal would result in the council incurring significant ongoing holding costs.
- Where the council/service need remains under review.
- Where the asset is incapable of achieving suitability/sufficiency of accommodation for the proposed end use.
- The transfer and subsequent use of the asset would detrimentally impact the financial viability of the appropriately constituted group.
- Where the proposal is likely to result in the council being asked to provide additional future funding to cover anticipated budget shortfalls.
- Where sale at an 'undervalue' is not possible (e.g. where an asset is held on 'trust' and sale proceeds must be ring-fenced in accordance with the charitable objectives of the trust).
- Assets which have to be retained by the council for legal, contractual or other reasons.

On what basis would an asset transfer take place?

3.8 Asset transfers will be generally via long-term lease (between 25 and 99 years). Specific terms will be agreed at the time of each individual transfer. In some cases the Council will consider a short-term lease to an organisation with a view to moving to a position where a long-term lease transfer would be sustainable. This may be the case where appropriately constituted organisations can demonstrate enhanced community benefits.

3.9 When considering short tenancies, this is an Assistant Director (Corporate Assets, Fleet & Capital Programme) decision in accordance with Section 123 of the LGA and the power delegated in the Constitution.

¹ Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained (ODPM / DCLG, June 2003): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7690/462483.pdf

3.10 The organisation taking custodianship ownership will be responsible for all issues associated with the use and operation of the property. For example:

- Upkeep, repair and maintenance of the asset.
- All running costs, including insurance.
- Compliance with statutory and legislative requirements, including inspections and health and safety requirements and the council's Safeguarding Policy.
- Sustainable management in the context of principles set out within the Climate Act 2008 and the council's published decarbonisation agenda.

3.11 In all cases involving transfer of ownership / occupation, appropriate mechanisms will be put in place to protect the financial and legal position of the council, such as restrictions on use, clawback provisions and break clauses. For example, in the case of a long-term lease the council will write into such leases an appropriate provision (forfeiture or break clause) under which the asset would revert back to the council, such as:

- In the case of bankruptcy/insolvency.
- In the case of corruption.
- In case of non-payment of rent (if applicable).
- In the case of non-performance of other terms such as breach of repairing obligations and unauthorised change of use (if applicable).
- If the transfer agreement is breached.
- If the organisation wishes to develop and move into bigger premises.

Who will the Council consider transferring assets to?

3.12 The council will consider asset transfer to any appropriately constituted organisation providing it meets the criteria outlined below. The council will ask the organisation to undertake a Financial Health Check, a fit and proper persons assessment to people who have the general control and management of the appropriately constituted applicant group, demonstrate it can fulfil these criteria through the provision of a business case; which will then be assessed from a range of disciplines.

3.13 A key consideration will be the sustainability of the organisation and its capacity to manage and develop the asset. The organisation shall:

- Be an appropriately constituted voluntary or community sector organisation which is a legal entity, or legally constituted through a consortia agreement (e.g. a registered charity, community interest company or charitable incorporated organisation, a not-for-profit company).
- Have a stable financial position and track record with a demonstrable financial plan (The council will wish to review copies of audited accounts and forward projections where appropriate).
- Exist for community / social / environmental / economic benefit.
- Be non-profit distributing – i.e. it must reinvest any surpluses to further its social aims / community benefits.
- Have stated community benefit objectives
- Demonstrate strong governance by operating through open and accountable co-operative processes, with strong monitoring evaluation, performance and financial management systems; or where this is a newly constituted organisation demonstrating a robust governance framework.

- Demonstrate it has the skills and capacity within, or available to, its managing body to effectively deliver services and manage the asset.
- Have a specific plan on health and safety issues and compliance with legislation and any statutory requirements arising from transfer of the asset.
- Have a clear purpose and understanding of the activities it wishes to deliver and demonstrate how the asset transfer will enable and support these activities.

Disposal at under market value to Partnership Organisations

3.15 In some circumstances the council may transfer an asset to an organisation other than stated above, for example a parish or town council. In such circumstances, a full application will not usually be required as the financial standing and governance of the partnering organisation will be known. Such entities are constituted elected bodies with tax raising powers and are required to publish accounts which are subject to external audit. Any such application would still be subject to appropriate assessment and a Cabinet decision would still be required to allow any transfer to take place (see Property Disposal Policy, paragraph 6.4), unless the asset is transferred on a short leasehold basis.

What should an asset be used for?

3.16 The council will expect each proposal from the organisation seeking the transfer to outline the current and proposed use of the building and how the asset transfer would enable and enhance the activities within the community that create economic, social or environmental wellbeing.

3.17 It is expected that the proposals will:

- Demonstrate that the asset will support community and voluntary activities within the area and protect the use of the facility by other voluntary organisations;
- Outline the future opportunities that transfer would bring for enhancing the use of the asset as a community facility;
- Identify opportunities for using the asset to develop and provide new and innovative services, which may be linked to current council service provision.

How will the Council decide whether or not a transfer will take place?

3.18 The council will decide on a case by case and property by property basis as to the suitability of transfer.

3.19 It is important to note that early in the process the council expects applicants to fully understand the implications of taking on the asset. Ongoing financial sustainability should be considered by community groups prior to the detailed business case stage.

3.20: Where historic CATs made on a leasehold basis require a variation in terms or length to further the aims or objectives of the CAT, or to access grant funding, any such decision shall be delegated to the Assistant Director (Corporate Assets, Fleet & Capital Programme) in consultation with the Cabinet Member for Highways & Assets.

If a transfer is sought what timescales will the council abide by?

3.21 The council will require the following timescales to be abided by to ensure a robust decision to relinquish prolonged holding costs.

- Following identification of a property as being 'surplus' to council service needs a six-week period is allowed to establish Expressions of Interest (EOI) from appropriately constituted groups. EOI submissions should be accompanied with sufficient viability information to enable a robust review of the outline proposal.
- Agreement by the Assistant Director (Safe & Strong Communities) in conjunction with the Assistant Director (Corporate Assets, Fleet & Capital Programme) and Assistant Director (Community Infrastructure) will establish a further six-month period for the community group to complete the detailed business case.
- Once received the detailed business case will be technically reviewed in detail and subject to final review by the Community Asset Transfer Review Group. This group includes three assistant directors (Corporate Assets, Fleet & Capital Programme; Safe & Strong Communities; Community Infrastructure) and relevant officers from across two directorates.
- If transfer is recommended a paper will be prepared for Cabinet consideration and accompanied by draft legal terms for the proposed transfer. **Cabinet will be the decision maker in all instances relating to CATs** (other than for the circumstances detailed in 3.20 above).
- Following approval by Cabinet, completion of the transfer will be subject to the relevant delegations and should be mobilised quickly to minimise ongoing holding costs, with a maximum period of three months to complete the transaction.
- Failure to transfer will result in the CAT Transfer being withdrawn via non-performance.

3.22 The council will have no obligation to complete transfers if the defined timescales are not met by parties, the default position is to proceed to open market disposal upon non-compliance.

CAT policy Version 1 (12/09/2023)

Westmorland & Furness Council

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