

Appendix 3

Manchester City Council

Community Asset Transfer Policy – January 2023

1.0 Background

Community Asset Transfer (CAT) presents community organisations with the opportunity to breathe new life into surplus public buildings, to preserve valuable community resources or develop exciting new services for local communities. It is not without risks however, and should be pursued in a legally safe, planned and supported way to ensure a successful transfer of responsibilities and long lasting benefits.

The purpose of this policy is to provide residents with a clear understanding of the Council's approach to CAT and demonstrate that it is an open, fair, transparent and consistent process.

Within the Localism Act 2011 CAT involves the transfer of ownership and/or the management of land or buildings from the Council to a community-based organisation or group (such as a charity or community interest organisation). CAT is not a legal requirement, but a voluntary process at the discretion of the Council.

CAT involves the transfer (usually by way of a lease) of Council land or buildings to a Voluntary and Community Sector Organisation (VCSO) or group, potentially at less than market value to reflect the local social, economic or environmental benefit that will be achieved through the CAT.

Groups wishing to undertake a CAT will need to demonstrate:

- how the community and local people will benefit from the transfer;
- that there is community support for the transfer, and
- that they can access sufficient funds to cover repairs, maintenance and on-going operational costs.

The Our Manchester Strategy 2016–2025 sets out the long-term vision for Manchester's future. It details the priorities that the whole city – our public, private, voluntary and community organisations and our residents – will work on together to put Manchester in the top-flight of world cities by 2025.

The priorities in the Our Manchester Strategy are creating: a thriving and sustainable city; a highly skilled city; a progressive and equitable city; a liveable and zero-carbon city and a connected city.

The Community Asset Transfer policy can directly contribute to the Our Manchester Strategy by supporting the delivery of services that:

- Maintain Manchester's vibrancy and ensure that all our communities are included in the life of the city, regardless of their age, ethnicity, gender, disability, sexuality, faith or socioeconomic background.
- Support all our residents to learn, progress, upskill and retrain so they can access the city's current and future employment opportunities
- Support an equal and inclusive city, where everyone can thrive at all stages of their life, and quickly and easily reach support to get back on track when needed.
- Improve physical and mental-health outcomes

- Create sustainable, safe, resilient and cohesive neighbourhoods, with good-quality green spaces, and accessible culture and sporting facilities
- Contribute to our zero-carbon ambition by 2038 at the latest, via green growth, sustainable design, low-carbon energy, retrofitting buildings, green infrastructure, and increasing climate resilience
- Improve access to digital technology and strong digital skills

Well managed CAT's can help support strong and resilient communities, create a thriving network of local enterprise, provide services that the Council may not be able or best placed to deliver and create opportunities for innovation and new approaches to service delivery.

The policy provides a framework within which transfers are considered rather than a prescriptive rule book as it is recognised that every community asset transfer proposal is different and will need to be considered on its own merits and particular circumstances. This policy sets out that framework for elected members, council officers and local communities to provide a consistent approach to dealing with both projects that can be supported and those applications which are unsuccessful.

2.0 Definitions

Community Asset - The Council defines a Community Asset as a building and/or land from which a community based activity or service is capable of being delivered

Community Asset Transfer (CAT) is the transfer of ownership and/or management of land or buildings from the Council to a community organisation or group under a CAT agreement (most often a Lease)

Community Asset Transfer Agreement (CATA) is the Agreement under which a CAT is made

Voluntary and Community Sector Organisation (VCSO) – an organisation that is independent of national or local government bodies, often with a majority of volunteer/unpaid staff. The VCSO will provide services of a public nature for the good of the community to promote social, environmental or cultural objectives. They are not run for financial gain. Examples include (but are not limited to) charities, community groups, community interest companies, friendly societies, social clubs, many sports clubs, churches and other faith groups, and voluntary organisations.

“Not-for-profit organisation” is a broad term for independent organisations whose purpose is something other than to make private profit for directors, members or shareholders, and who re-invest any surpluses to further the ‘good’ they create for the community.

An **incorporated group** is a legal entity in its own right, distinct from its members, and it can enter into contracts, buy or lease property, and employ people in its own right.

3.0 Legal Context

This policy and any CAT must comply with legislation that relates to the disposal of land or buildings by the Council.

For example, the issue of disposals at less than the best consideration reasonably obtainable; Secretary of State / statutory consents to disposals; Subsidy e.g. (assistance from public resources on a selective basis that can distort competition among organisations engaging in economic activity) and the implications applying will all need to be considered in regard to any potential disposal.

The Council will need to assess the full market value of any CAT asset, and which may involve the taking of independent advice in such regard, so that any decision about transfer at 'less than Best Consideration' for the asset is transparent and issues such as government consents and Subsidy can be considered.

Similarly, proposals to transfer Public Open Space/School Land and / or Playing Fields will also need to be considered in the light of statutory provisions applying and any objections must be considered by the Council in deciding whether or not to progress with the proposed transfer along with issues such as whether Secretary of State consent would be required for any disposal.

Land or buildings that are held by the 'Council in trust' will not be considered for a Community Asset Transfer unless the Council's Trustees are prepared to approve of the disposal. Such a disposal will need to follow statutory requirements regarding advertisement of the disposal and any objections considered by the Trustees. In certain circumstances, such as when land or buildings were gifted to the Council, or are held by the Council in trust for a specified purpose (for example for use as a public recreation ground), these proposed disposals may need to be referred to the Charity Commission for their approval under relevant statutory provisions applying.

In some circumstances the transfer of land or a building may have wider implications and result in the requirement for Council staff to transfer to the community organisation under Transfer of Undertakings (Protection of Employment) (TUPE) provisions. Usually this will not be the case, but if the land/ building is going to continue to be used for the same purpose it may apply. This is particularly likely to apply to premises which have a specific purpose such as recreation. In such circumstances Council staff may have rights under TUPE regulations. This will require the community organisation to employ any staff affected on the same terms and conditions as they currently have. This can be a burden on community organisations, particularly the requirement to provide pension protection that is the same as, or broadly comparable to, or better than the pension provision while employed by the Council. This issue requires careful consideration and staff in the Council's Human Resources service will be able to advise if TUPE applies and its implications.

4.0 The Community Asset Transfer Policy

4.1 Policy Purpose and Outcomes

We want to encourage communities to make the best use of assets and have the best chance of securing long term sustainability through sharing the occupation and use of buildings as well as ensuring that the assets continue to be used by, and benefit, the widest section of the local community as possible.

This policy provides community bodies with an opportunity to apply for a CAT of certain Council owned assets and which, depending on individual circumstances, could include a lease at a subsidised rate (for

example at a peppercorn rent) which would be subject to assessment as set out in this policy and compliance with relevant legislation etc. that relates to the disposal of the relevant asset.

This policy covers all CAT enquiries for any Council owned assets (land and/or buildings).

The Council will provide organisations interested in a CAT with guidance, to ensure they have a clear understanding of the Council's approach and a fair, transparent and consistent process for such transactions.

The intended outcomes of this policy are:

- Successful and sustainable transfer of assets to VCSO's to deliver community benefit in Manchester
- Supporting and strengthening the capacity of VCSO's
- Fair and transparent process
- Clear roles and responsibilities for all parties
- Reduced running costs and maintenance liabilities to MCC
- Raise awareness of the need to comply with relevant Legislation etc. to ensure a statutory compliant and legal CAT

4.2 Properties and Purposes Available for CAT

The Council holds property assets for a range of purposes. Not all property assets are appropriate for CAT. Some assets are required to support the delivery of Council services; others provide an income to the Council; some support Council priorities such as the delivery of affordable housing or economic regeneration. The Council must also balance the needs of the community and its commitment to CAT against its need to generate capital receipts in order to invest in essential capital projects or for other Council purposes. This CAT Policy is intended to support the provision of public services by VCSO's.

Property assets usually considered suitable for CAT are:

- Assets that the Council has identified as suitable for CAT through its Strategic Asset Management Plan (SAMP) - where a community organisation enquires about a specific asset which has yet to be assessed as part of the SAMP, it will be assessed at the soonest available opportunity
- Assets must be in the ownership of the Council and not subject to any existing agreements for occupation of the whole asset by third parties
- Under utilised parts of premises maybe considered for CAT

The Council will not consider applications for CAT in the following circumstances:

- Assets which are identified for a different purpose or disposal under the SAMP
- Assets that are part of the Operational Estate and that are required for delivery of Council Services (save where part of the asset maybe deemed suitable)
- Surplus assets where the Council is exploring an operational use for Council or partner services
- Assets which are held in the investment portfolio

- Transfers to organisations to be used purely as a vehicle for commercial ventures. This does not include, for example, charitable organisations with trading arms, where profits are reinvested in communities
- Transfers to individuals
- Transfers that contravene Subsidy or Procurement or any other statutory provisions or regulations or rules
- Assets which may be used solely for religious or political purposes/activities

There are also some assets that may be considered unsuitable for transfer because of restrictions applying to them (for example, assets gifted to the Council for educational purposes). Some restrictions can be varied or released but it can take time, cost and resource and such matters will be factored into any consideration given to the disposal of a property asset as a CAT.

All assets available for CAT will be recorded as such on the Council's property management system, and a register of CAT opportunities will be held on the Council's website.

4.3 Who can apply for a CAT

The Council will consider applications for CAT of qualifying assets from VCSO's that are:

- Based and operating within the City of Manchester
- Deliver services that generate social, economic or environmental benefits which directly benefit Manchester residents
- Incorporated, or are willing to become incorporated as part of the CAT process
- Not-for-profit organisations

There are various types of incorporated bodies which may complete a transfer. Examples include Community Interest Companies, Charitable Incorporated Organisations, and Co-operative societies. VCSO's must determine the best type of incorporation for them, as this may vary from organisation to organisation. The Council will review the form of incorporation and constitution of VCSO's during the CAT application process to determine their fit with this policy.

VCSO's will be expected to demonstrate, through the application process, that they:

- Generate social, economic or environmental benefits which directly benefit the people of Manchester
- Can evidence a clear community or social demand for the CAT
- Are willing to share information with the Council and participate in regular reviews to ensure the CAT remains aligned with the terms on which it was agreed
- Have a well-prepared and robust business case that demonstrates the ability to fund ongoing repairs, maintenance and other operational costs.
- Can access sufficient capital funding where a CAT involves development projects or the responsibilities for capital maintenance
- Have robust systems of governance and appropriate organisational policies
- Have the capacity to manage the asset and have directors or committee members who have the necessary experience and skills.

- Contribute towards the Council's corporate objectives, community priorities and the priorities of the Council's strategic partners.
- Do not duplicate or negatively impact on services or facilities already provided in the local community.
- Provide open access to all residents, regardless of age, disability, gender, race, religion or belief, and sexual orientation.

Before entering into any CAT the Council will need to satisfy itself that the financial standing of the organisation is satisfactory, this will include (but is not limited to) a review of financial statements, review of owned assets and bank accounts, audited accounts, review of current and intended business activities, review of the VCS proposals / offers to secure sufficient funds to cover repairs, maintenance and on-going operational costs and the review of any other CATs acquired by the organisation including linked organisations or its group.

4.4 Forms and Length of CAT Agreement

Community use of Council assets can take place under different forms of agreement. These include:

- Licence to occupy (right to use the property asset for defined uses but not a grant of exclusive rights).
- Short term lease (less than 7 years with no protected right to renew lease);
- Long term lease (usually 25 years, although could be up to a maximum of 39 years in specific circumstances, and with no protected right to renew the lease other than in exceptional circumstances).

The appropriate form of CAT agreement will be agreed during the application process. The length of the occupation / term however may vary from project to project. For assets that require substantial investment the Council may consider the grant of a longer lease than one, say, of a small area of land which is being leased to a local community where little or no capital investment is required. The length of any lease term will be based, amongst other things, on the needs that are clearly outlined within the business case and the capacity of the organisation to manage the asset.

Agreement / Length	Criteria
Licence to occupy	<p>This can be a useful intermediate stage for:</p> <ul style="list-style-type: none"> • A recently formed organisation • Where exclusive possession of an asset is not a requirement • An organisation that may not have the technical expertise to manage property and/or may not yet have the financial ability to invest in the premises. • An innovative service with an unproven business case • A meanwhile use for an asset where there are longer term proposals <p>This form of agreement is usually appropriate, for example, for a VCISO that wish to support the maintenance of land such as parks and open spaces.</p>

	The length of the agreement will usually be up to 1-3 years.
Short term lease	<p>A short term lease may be appropriate where:</p> <ul style="list-style-type: none"> • The business case is deemed viable but there are some concerns over the long term sustainability (e.g. time limited grant funding) • Where exclusive possession of an asset is a requirement • The business case does not demonstrate the ability to access suitable capital funding to secure the long term capital maintenance of the asset • There are issues around demonstrating a disposal at 'best consideration' and where a short term lease may allow a proposal to progress • It is for a meanwhile use for an asset where there are longer term proposals.
Long term lease	<p>Where the application process and business case meets all the required criteria a long term lease will be considered with a standard maximum lease length of 25 years (although this may vary from case to case).</p> <p>Longer leases will usually only be considered where the VCSO is making a significant capital contribution to the asset or is bidding for and is able to secure funding where the funder requires a longer lease period. Where this is the case, the Council may include break clauses in the lease where funding is not secured or works are not carried out within a reasonable time frame. A longer lease could be up to a maximum of 39 years.</p> <p>In exceptional circumstances, and subject to a risk and benefit analysis, a longer lease may be considered. Any VCSO requirement for a longer term lease will need to be balanced at all times with ensuring that the asset remains available for the benefit of the community or is required for the delivery of other Council objectives.</p>

4.5 Standard Terms of CAT Agreements

The Council has a standard lease template for use for CAT's. The Council will however adopt a flexible approach to the lease terms if the circumstances of a particular CAT so require, but will always aim to ensure that there is a balance between what the community organisation reasonably requires and what the Council requires in order to ensure that the property asset remains available for the benefit of the community as was intended (including, for example, the maintenance, repair and insurance of the property).

Typical lease terms are set out below.

- Standard lease provisions will include full repairing and insuring obligations.
- The lease to be contracted out of the Landlord and Tenant Act 1954, which means there is no automatic right to renew the lease.
- Mutual break clauses or a Council only break clause may be included as appropriate. This will be considered on a case by case basis and the drafting of any 'break clause' may need to address

funders concerns - for example a 'break clause' may not be triggered until project life of the funding has expired.

- Underletting of part will only be permitted with the Council's prior consent by way of short-term leases contracted out of the 1954 Landlord and Tenant Act, providing such underletting is mentioned in the supporting business plan and the user compliments that of the purpose of the CAT and will continue to do so. The granting of licences and room hire agreements that do not confer any security of tenure or property rights will usually be permitted.
- Assignment of part is not permitted. There will be a prohibition on assignment and underletting of the whole. In certain circumstances, though, assignment of the whole may be permitted but only with the Council's prior consent, which may be withheld and at the Council's absolute discretion, but any permitted assignment would only be permitted to a relevant successor body.
- A Legal Charge (mortgage) on the property asset is not permitted without the Council's prior consent and which will be at the Council's absolute discretion.
- Restriction on title on all leases registrable at the Land Registry to ensure that the Council is aware and consents to any proposed mortgages, assignments or under-lettings.
- User provisions will be restrictive and clearly defined to ensure the property asset is used for the particular community use it was intended. A right to review the rent payable at appropriate intervals (for example on a 5 yearly review basis). However, user provisions may also permit ancillary commercial uses in recognition of the fact that community assets cost money to run and commercial activity is often required to subsidise premises running costs to make premises sustainable for community use. Such commercial activity will only be permitted though where it is ancillary to and clearly defined in the lease with any surpluses from commercial activity or rental paid by a third party reinvested in the asset and services delivered within.
- Where assets sit in a wider public facility, such as a park, or is part of a larger building, lease terms may place certain restrictions on access and activities.
- Standard forfeiture provisions to enable to the Council to terminate the lease (for example for non-payment of rent, breach of covenants and insolvency). Forfeiture for insolvency will need to be considered in each case and may need to be tailored, for example, by providing funders with 'step in' rights to accommodate particular funding requirements.

Any lease or occupation granted under the CAT Policy will be subject to regular review to confirm that the tenant is complying with the terms of the lease and that the asset continues to be used for community benefit on a not-for-profit basis.

4.6 Maintenance and Operating Obligations

On completion of the CAT Agreement, the VCSO will usually take on responsibility for managing and repairing and maintaining, insuring the property asset and other on going operational costs. The VCSO should demonstrate through the application process that they can access sufficient funds to cover repairs, maintenance, insurance and on-going operational costs. Some responsibilities, for example compliance with Health and safety legislations, may require additional technical advice, and VCSO should demonstrate through the application process how they will address such issues.

By way of example only and not by limitation:

- maintenance liabilities may include maintaining in good order: Electrical, mechanical and plumbing installations, such as lighting and heating/cooling systems; lifts; building safety systems including fire detection and alarm systems and emergency lighting; structural and fabric elements including the roof, windows, doors and cladding; kitchens and bathroom; decoration and floor coverings; external areas such as hard and soft landscaping; security systems including CCTV, alarms or roller shutters.
- Operational costs may include: planned and preventative maintenance contracts; repairs; cleaning and waste management; utilities; business rates; insurance; grounds maintenance, window cleaning and pest control; office costs such as telephony, ICT and printing.
- Other responsibilities may include complying with regulations for health and safety, and management of fire risk, asbestos, legionella, and electrical and gas safety.

4.7 Rent

Subject to compliance with legal requirements and assessments, including land and property valuations, CAT properties may be leased at less than market rental. Although some projects may make financial surpluses this may not result in a rental being payable as long as there are robust and clear provisions in place to the effect that any surpluses are reinvested into the project and/or for community benefit, and lease provisions will be tailored for the particular circumstances;

The amount of rental (if any) payable under leases granted through the CAT process will be assessed on the business case.

Criteria used will, by way of example, include:

- Any rent payable by the Council under an existing lease of leasehold premises – only in exceptional circumstances will the rent payable under the CAT be less than the current rental payable or a pro rata proportion thereof in the case of a CAT of part of an asset.
- Any capital or revenue investment the VCSO is making into the asset
- The extent / level of services provided and the social, economic or environmental benefit of the same.
- The extent to which the transfer supports the Our Manchester strategy and the Council's corporate objectives
- The extent to which the use of the asset benefits the wider community.
- The extent to which the asset is made available for other groups to use.
- How well the asset is managed and maintained.
- If the use of the asset varies, with the Council's prior approval and in which respect the Council will have an absolute discretion whether to give that approval or not, from the original business case to include commercial uses (other than commercial uses which are strictly ancillary to the main CAT use) and where any profit is reinvested in community uses, the Council shall have the discretion to review the rent up to the market rental asset depending upon the degree of commerciality.

Any rent at the commencement of the Lease and any rent payable where the use of the asset is varied as detailed above, it shall be subject to 5 yearly reviews.

4.8 Use of MCC Funding

The starting point of any CAT will be that the property is transferred in its current condition. Where the condition of a property identified as available for CAT is considered to be a barrier to a successful transfer, the Council may, but at its absolute discretion, propose funding works to improve the condition of the property. However, if the cost of works is substantial, this will trigger a re-evaluation of the asset through the Strategic Asset Management Plan to compare the cost and benefit of transferring the asset (with works costs) compared to other options. Any funding proposed in this way will follow the usual governance routes for approval – for example the Capital Gateway Process for stand alone projects or the Estates and Asset Board for provision within the Councils Annual Capital Maintenance Programme (AMP).

The Council may, in the same way, consider a grant or loan to the VCSO for the purposes of funding works to the property and also investing funds to reduce energy use and carbon emissions from a property prior to or during the transfer process.

All funding proposals will need to be considered in the light of the Council's constitution and any statutory and other provisions applying. Depending on the particular circumstances, and how the funding is to be provided, and the terms and conditions applying, the Council may require the VCSO to enter into a formal agreements/deeds to record and detail those terms and conditions.

The Council will work with each VCSO through the application process to be clear about the condition of the property asset in question and will share historic information about running costs where these are available.

The VCSO will be expected to cover their own legal fees associated with completing a CAT.

5.0 The Application Process

The purpose of the application process is to:

- ensure an open, consistent and transparent process;
- ensure robust assessment of the suitability of CAT proposals; and
- ensure appropriate governance around the use of Council assets.

The application process is attached at Appendix A and which may, from time to time and at the Council's discretion, be varied without notice.

Each application will be considered for eligible transfer on a case-by-case basis against the criteria outlined in this Policy.

All applications for new CAT's will be considered following the application process.

If an asset is already run by a community group, and the group is seeking to amend or renew their CAT agreement, the Council may negotiate with that group directly outside of the open application process.

In this situation, the Head of Estates and Facilities, or another appropriate officer, will agree this approach with the Executive Member with responsibility for the operational Estate.

Resources are available on the Council webpages to assist groups intending to make an application.

6.0 Decision Making

The following decision making protocols will apply to this policy.

Decisions regarding which assets are available for a CAT will be made in line with the arrangements set out in the Council's SAMP.

Decisions regarding when to open applications for CATs and the administration of the application process will be made by the Head of Estates and Facilities, in consultation with the Executive Member with responsibility for the Operational Estate.

Decisions within the application process, such as the viability of business cases, will be made as set out in the CAT Application Process.

Any disposal of a property asset will be made in line with the Constitution of the Council and relevant statutory provisions and regulations applying from time to time.

Any decisions on capital investment into assets subject to a CAT will follow the usual governance routes for approval – for example the Capital Gateway Process for stand-alone projects or the Estates and Asset Board for provision within the Councils Annual Capital Maintenance Programme (AMP).

All funding proposals will need to be considered in the light of the Council's constitution and any statutory and other provisions applying.

7.0 Further Information and Support

Further information and support on Community Asset Transfers is available from the following sources:

Manchester City Council Estates Team - <create contact address>

Manchester City Council Website – <create link>

Our Manchester - our_manchester_strategy_forward_to_2025.pdf (mcc.local)

Manchester Community Central - Community Asset Transfer – are you sure? | Manchester Community Central

MyCommunity - Community assets and ownership - MyCommunity

National CLT Network: <http://www.communitylandtrusts.org.uk/>

Locality: locality.org.uk - Powerful Communities, Strong Economies report - Locality

Sport England - www.sportengland.org/guidance-and-support/facilities-and-planning/community-assets-and-rights