



Important Considerations for Groups Considering CAT

1. FAQs

Experience from other local authorities and agencies shows that the potential risks of CAT generally arise when a sufficient or realistic assessment has not been undertaken of the ability of a Group to meet ongoing liabilities associated with the asset. This could occur if an asset has high renovation or running costs or if it does not have the potential to generate sufficient revenue for the Group. The Group should also be aware that any repair and maintenance liabilities could hinder the progress of their initial aims and ambitions for the asset. From the outset, it is important that each Group is aware of such key risks and considerations. The following FAQs are intended to provide some key points for closer deliberation.

- *Will ECC cover any fees incurred in the CAT application process?*

ECC will provide a dedicated member of staff to answer queries and problems with the process, but no financial assistance will be provided. At the outset, it is important that the Group considers a long-term expenditure projection for the asset to ensure it is clear about, and able to deal with, liabilities moving forward. ECC will be available for discussion and advice on such matters. It is expected that the Group will cover ECC's reasonable surveyors and legal fees and the cost of obtaining an EPC where required.

- *Will ECC undertake a Schedule of Condition (SOC) before the CAT, and/or provide long-term assistance with renovation and maintenance of the Group's asset?*

ECC will not undertake an SOC nor provide any financial support for repair, maintenance or refurbishment. It is ECC's intention to undertake transfers under a Full Repairing and Insuring (FRI) lease except in certain circumstances where a freehold transfer will be considered. The Group will take on all liabilities and sole responsibility for the appropriate upkeep and maintenance of the asset, to include compliance with the terms set out in the lease, and is strongly advised to take appropriate professional advice on this matter. ECC reserves the right to transfer back the asset should any breach of terms arise.

- *For how long will assets be made available for CAT?*

ECC will make its list of assets available on the Council's website for a minimum of six months. Placing an asset on the list of potential transfers is deemed as providing notice of ECC's decision to dispose of the asset. ECC is committed to CAT as a first resort for disposal of its non-operational assets as it believes that community groups are best placed to manage and deliver these assets of community value. However, if no CAT proposals are received by an eligible Group within this period, ECC will look to alternative disposal methods. In this case, the provisions and timescales relevant to the Localism Act will apply (see Section 2).

- *How long will the CAT process take?*

No one CAT application or process will be the same, and both the Group and ECC will need to exercise patience and work in partnership. ECC recognises that applicants may have specific areas of difficulty in meeting tight timescales, particularly where new organisations are being formed. ECC has therefore set a standard policy on process and timescales. This is for guidance only and may be varied by officers to suit the particular circumstances of each case if there is no detrimental effect on the overall CAT programme. In the event that a conflict arises, the specific approval of the Deputy Leader and Cabinet Member for Finance and Transformation is required to vary the timescale.

- *Once managing an asset through CAT, will the Group still be eligible to apply for ECC funding or commissioning?*

Yes. The terms of agreement in any CAT will not exclude the Group from applying for Council-led (or external) funding or commissioning opportunities that may emerge. Wider experience shows that additional support is often required particularly in relation to technical expertise around asbestos, health and safety, Equalities Act compliance, fire risk, legionella and related risks. The Group should consider in advance how such issues will be addressed.



- *What bearing does the Localism Act have on ECC's CAT policy*

See section 2, below, for details of the Localism Act's provisions and timescales bearing relevance to ECC's CAT policy.

- *Where can we find further information?*

ECC will provide further information and actively update its website, but there a number of useful sources for further information and advice on both the CAT process and on asset management itself, including, but not limited to:

- The Asset Transfer Unit (ATU) - <http://atu.org.uk/>

The Government funds the Unit to provide a national information, advice and resource hub for community groups, as well as Councils and other public bodies.

- To Have and To Hold – <http://www.atu.org.uk/Document.ashx?ID=266>

A comprehensive guide to community asset development, produced by the Development Trusts Association/the Asset Transfer Unit.

- 'My Community Rights' website - <http://mycommunityrights.org.uk/>

Practical help and guidance on the community rights provisions of the Localism Act 2011, run by Locality.

- Community Matters' *VISIBLE* standards - <http://www.visiblecommunities.org.uk/>

Aimed at small and medium sized multi-purpose community organisations, these standards act as a framework to allow Groups to demonstrate their development against a range of benchmarks including asset and organisational management indicators, to ensure certain minimum standards are met.

In the event that a Group has further queries please contact simon.hughes@essex.gov.uk

2. The Localism Act 2011

The Localism Act was enacted in November 2011. In the event of no community group expressing an interest for CAT of a listed asset, ECC may look to 'dispose' of the asset by alternative methods including to private parties. In such alternative cases of disposal, the following relevant provisions of the Localism Act will apply.

- The *General Power of Competence* provides local authorities with the legal capacity to do anything that an individual can do, within the Law. The Local Government Act 1972 (General Disposal Consent 2003) still provides for local authorities to dispose of an asset at an undervalue of up to £2 million.
- The '*Community Right to Bid*' is not an explicit provision of the Localism Act, though the term is applied by the Department for Communities and Local Government and others in reference to the requirement on local authorities to maintain a '*list of assets of community value*' which have been nominated by the local community or council. When listed assets come up for sale or long lease (in excess of 25 years unexpired term), a *six-month moratorium* will give the community group(s) time to develop a bid and raise the money to buy or lease the asset. This mechanism allows community groups the chance to register an interest in an asset and to assemble the required technical skills, capabilities and documentation to bid to take on its long term control. The Act does not place provisions on asset owners on whether, when or to whom they may sell and at what price; and nor is there any requirement for owners to confer rights of first refusal to community groups - the community group simply has the right to *bid* for the asset. These provisions are expected to come



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into force by Regulations in Autumn 2012, though no date has yet been set. Placing an asset on the list of potential transfers is deemed as providing notice of ECC's decision to dispose of the asset.

- The *Community Right to Challenge* requires local authorities to consider expressions of interest from community groups to run local *services*, and where the authority accepts an expression of interest, to carry out a procurement exercise for the service. If a community group were to bid to run a service that utilised an ECC-owned asset, ECC may grant leases at a peppercorn rate if it wished to retain the asset for future delivery.

ECC's decision on whether to charge an open market consideration for the benefit of an interest in an asset will follow the provisions of the Localism Act in the event that ECC's CAT Policy cannot be pursued due to a lack of interest by community groups. This may be determined on a case by case basis. Factors influencing such a decision may also include proposed uses, extent of revenue-producing opportunities, and benefits to the community. In all cases involving transfer of ownership/occupation appropriate legal mechanisms will be put in place to protect the Council's financial position. Any proposed asset transfer at less than best consideration will be subject to formal valuation in accordance with the Royal Institution of Chartered Surveyors Valuation Standards.