

# Communities Scrutiny Commission

26 April 2022



**Report of:** Patricia Barry, Interim Director of Property

**Title:** Community assets

**Ward:** All

**Officer Presenting Report:** John Bos

**Contact Telephone Number:** 0117 903 6440

## **Recommendations:**

That the Communities Scrutiny Commission notes the report and comments on any aspects of how current practices can be used to better align with the needs of Bristol's communities and the One City Plan.

## **The significant issues in the report are:**

The purpose of this report is to provide an overview of the use of Council-owned property assets to support voluntary, community and social enterprise (VCSE) organisations. It contains details of current policies, practices, the types of assets, and the role that community infrastructure can play in creating a fair, inclusive, and resilient city.

The appendices contain a list of Council-owned community assets, their value and how they are used, as well as some case studies and examples.



## 1. Summary

Council-owned community assets form an important part of the overall support of and investment in the many local communities that make up Bristol. Some of these assets are very visible and recognisable, and others are not at all obvious yet provide an important part of the infrastructure of Bristol. This report sets out the various types of community assets, the processes used to allocate and administer them, the organisations using them, the social outcomes that they provide, and how they differ from other asset-based initiatives. The report also outlines the current policy framework and looks at the effectiveness of the Council's current approach.

## 2. Context

- 2.1 **Types of community assets:** A wide range of different assets is available to VCSE organisations, including plots of land for allotments, grazing land, sports, and a wide range of buildings used for community-based activities. Appendix D contains a summary of the various types of community assets and Appendix E shows a detailed list of the assets, the occupants, the use, and the size of the concession (difference between the estimated market rent and the actual rent paid). The types of assets have been categorised as:
- community centre / social club
  - children / young people / scouting
  - community sports & leisure
  - community arts
  - community parks / allotments / grazing
  - community offices
  - community housing / homelessness
  - other concessionary facilities & uses
- 2.2 **Rent:** The terms 'concessionary lettings' and 'community assets' are not synonymous. Not all lettings to VCSE organisations are at nil rent and not all concessionary lettings are for typical community assets. Some community assets are let at full market rent, others are let at a concessionary rent, or on other non-commercial terms. The total concessionary value of community assets is currently approximately £1,942,000 per year. In addition to these lettings, BCC also lets properties at a reduced rent for other reasons, eg because the tenant has paid a one-off sum upfront (a 'premium') or has agreed to carry out substantial repairs or alterations to the property. In some cases, a lease is granted at nil rent as part of a contract with BCC, eg to some care providers, to the operators of BCC's leisure centres, and for some residential dwellings managed by registered social landlords, where BCC is entitled to nomination rights.
- 2.3 **Community Asset Transfer:** This is the transfer of land or buildings from the Council's freehold ownership into the stewardship of VCSE organisations. BCC's [CAT Policy](#) was adopted by Cabinet in 2010. The policy was developed after the Quirk Review, which formed part of the Government's drive to empower communities and which was reported in ['Making Assets Work'](#) in 2007.
- 2.4 **Leases:** All CAT transactions in Bristol are in the form of a lease or tenancy. Leases are typically granted for a 2–10-year period, but longer leases for up to 35 years can be granted in cases where significant investment is likely to require a longer lease term. In exceptional cases, a lease longer than 35 years may be appropriate, if supported by a business case that demonstrates special circumstances or requirements from funders or lenders. CAT leases longer than 35 years

can only be approved by Cabinet and follow a different decision pathway. All CAT leases are created outside of the Statutory Protection of the Landlord & Tenant Act, so there is no right for the tenant to remain in occupation beyond the contractual lease term and no obligation on BCC to pay compensation in order to regain possession of the asset once the lease expires.

- 2.5 **Sale of freehold:** BCC does not transfer the freehold ownership of community assets to VCSE organisations. The lease provides a suitable mechanism for BCC to retain an element of control over the use of the asset, to ensure that it delivers social value and continues to deliver social outcomes for local communities in the long term. If the ownership of a property asset is sold to a VCSE organisation, this will always be at market value. BCC has previously offered some properties for sale by restricting the eligibility to VCSE organisations, who could then bid without having to compete with commercial bidders or property developers. Examples of this include 6 York Court, the St Agnes Park Lodge, and 6 West Street Old Market. This process is often suitable for properties that have been registered as an ‘Asset of Community Value’ (see 2.15 below) where a more level playing field enabled VCSE organisations to acquire the ownership of a strategic asset.
- 2.6 **Eligibility criteria:** The [CAT Policy](#) lists the types of organisations that can apply for CAT, the minimum criteria that applicants need to meet, and the details that should be included in the application. CAT is a discretionary process (there is no statutory right to CAT) and not all Council-owned assets are suitable or eligible. The core principles for each CAT lease are set out in the Policy (pages 3-5) and include:
- needs to generate social, economic, or environmental benefits
  - should directly benefit the people of Bristol; not for regional/national uses
  - must benefit as wide and diverse a range of local people as possible
  - community anchor organisations and community hubs will be prioritised
  - applicants must be properly constituted, governed, and managed
  - need to meet a recognised quality standard
  - should not duplicate existing services/facilities
  - must contribute to the One City Plan and BCC Corporate Plan
  - leases normally up to 10 or up to 35 years
  - length of lease term needs to be supported by the business plan
  - lease is 'contracted out' from the security of tenure provisions and linked to a Service Agreement
- 2.7 **pre-Visible:** CAT applicants are also asked to confirm how they meet a recognised, national quality standard that measures how well the organisation is set up, governed, managed and resources. BCC prefers the [pre-Visible standard](#), which was originally developed by Community Matters, but is also able to accept equivalent quality standards. The standard uses a checklist of 30 criteria that are essential for any well-managed charitable organisation. The applicant also needs to meet BCC’s [Baseline Standards](#).
- 2.8 **Application process:** BCC currently uses a two-stage process for CAT - Stage 1: expression of interest; Stage 2: evaluation of full business case and final decision. All requests for a community asset, including those from existing tenants who wish to renew their lease, will be considered under CAT and will follow the same decision pathway. A template for expressions of interest and a business plan checklist is available for applicants to use. For Stage 2, a site visit and/or meeting with the applicant is usually arranged prior to the submission of their business plan.

- 2.9 **Decision making process:** All decisions are made by the Council’s CAT Group, which consists of senior BCC officers and two Cabinet Members. The Group usually meets four times per year and the entire application and decision process can take from 4-6 months. Once a new CAT lease has been approved, the completion of the legal documents typically takes between 2-6 months. If the Stage 2 decision is to be taken by Cabinet, additional time is required.
- 2.10 **Historic lettings:** Prior to the CAT policy, BCC already had more than 120 concessionary lettings, all granted on different terms, some in excess of 100 years and some going back to the 1950s and 60s, but with very little control over their use. When existing concessionary leases come to an end, renewal will only be considered under CAT and all new lettings will be subject to the eligibility criteria and a Service Agreement. There are still a number of leases of community assets that were granted prior to 2010 and which fall within the statutory protection of the Landlord & Tenant Act 1954 Pt II. These may or may not meet current CAT criteria, but it is not possible for BCC to end or update these unilaterally. If the tenant wishes to surrender an old-style lease, an application for CAT can be made at any time. Some of these historic leases have expired and the tenants are ‘holding over’ – the provisions of the expired lease will continue to apply until either BCC or the tenant takes action to create a new lease. BCC currently does not have the resources to actively monitor this and the tenants’ compliance status.
- 2.11 **Service agreement:** Community asset leases granted before 2010 were freestanding, but all CAT leases are linked to a ‘service agreement’. A concessionary rent is only granted if the lease is linked to a service agreement. This provides a formally negotiated and enforceable contract, which enables BCC to specify social outcomes, and which seeks to increase utilisation and local accountability. The agreements contain a provision for annual monitoring and typically last for between 2-5 years. At the end of that period, if neither party takes steps to vary the agreed outcomes, the agreement will automatically renew for a similar period. In practice, the Property Team lacks the capacity to undertake annual monitoring of all service agreements; most monitoring is reactive and in response to specific concerns or allegations. Appendix A contains an example of a CAT service agreement.
- 2.12 **Social value:** In accordance with the [BCC Social Value Policy](#), decisions about property assets are subject to the Social Value principles. These should be applied in a way that enables the council to maximise economic, social, and environmental benefits for Bristol and its citizens. By linking a service agreement to a CAT lease, the Council can secure specific social value outcomes when it grants leases to VCSE organisations on concessionary terms. Measuring social value and taking this into consideration when making decisions on community assets is not yet an integral part of the CAT process. The alignment between the Social Value Toolkit and the CAT Policy is being reviewed; the Toolkit is under development and a [spreadsheet with BCC’s Social Value Measures](#) is regularly updated.
- 2.13 **Surplus properties:** When assets are no longer required for service delivery they will be declared surplus to the Council’s requirements and disposed of or redeveloped for alternative uses. Details of this process are set out in 'The Surplus Property Procedure', which is included on pages 31-32 of the [BCC Corporate Property Strategy](#) and is currently under review. A surplus asset is first considered for housing or homelessness purposes. If it is not requested for these uses, the asset’s availability for re-use is circulated to all Executive and Service Directors. Expressions of interest need to include a fully funded business case. If the asset is not required, it will be prepared for disposal on the open market. The circulation of surplus assets will be copied to the relevant ward councillors and the Executive Member. All decisions on disposals are made by the Estate Strategy Board, which meets monthly and is chaired by BCC’s Chief Executive.

- 2.14 **Meanwhile use:** Temporary use of vacant assets on a meanwhile basis can help property owners, VCSE organisations, and local communities. Properties awaiting redevelopment or sale can sometimes be used for a short period of time to help stimulate local economic activity, eg in high streets, or can create affordable workspace or creative/cultural spaces. Meanwhile use can improve security through onsite presence to prevent squatting and vandalism and can help prevent blight & flight. In spite of the general perception, very few Council-owned assets are actually void and available at any time, and even fewer of them are suitable for meanwhile use. Managing meanwhile uses and tenancy arrangements is labour intensive and not always successful. In the past, some VCSE organisations using BCC assets on a meanwhile basis have campaigned and lobbied heavily to be allowed to continue in occupation at the end of their agreement. In these circumstances, meanwhile uses that present a risk of delay to a sale or redevelopment, are often shunned by asset managers in favour of boarding-up. BCC would need to identify a dedicated resource to negotiate and manage if it wanted to encourage meanwhile use of vacant assets.
- 2.15 **Assets of Community Value:** The CAT process should not be confused with the separate process named 'Assets of Community Value', also known as the Community Right to Bid (CRtB), which is administered by the Estates Information Team. It is one of the 'community rights' introduced by the Localism Act 2011. The process seeks to give the local community an opportunity to bid to buy an asset that is being sold. The CRtB can apply to any eligible community asset, not just BCC-owned ones. It considers the "social wellbeing or cultural, recreational or sporting interests of the local community" and is triggered by the nomination of an asset by an eligible community group. Full details of the CRtB and the Register of Assets of Community Value can be found on [the BCC website](#). The Localism Act prescribes the criteria and process for nominations and listings that local authorities must follow, and BCC has no discretion in this. The inclusion of an asset on the Register can also be a material planning consideration. Although the CRtB is different from CAT, it can sometimes compliment it.
- 2.16 **Non-Council-owned community assets:** The majority of community assets in Bristol are owned by, or privately rented by VCSE organisations, including many places of worship and community-sports facilities. Only less than a third of community assets are under BCC control or ownership. Most of Bristol's multi-purpose community centres are Council-owned, which helps to ensure they remain affordable and open to all. There is currently no city-wide VCSE-led organisation that advocates for community assets, but [Voscur](#) provides general support and can signpost to specialist sources of advice and expertise. [Locality](#) also supports a network of community anchor organisations and through its 'Keep it Local' campaign.
- 2.17 **One-stop point for all BCC property enquiries:** The adoption of the BCC Corporate Property Strategy also introduced the Corporate Landlord model. This will ensure that all property transactions and decisions are centralised, together with resources, specialist expertise and budgets. Currently, all community asset issues are managed by a small team (2 FTE) within the Asset Strategy Team. A dedicated telephone number and email address for this are publicised on the website.
- 2.18 **MEES:** [Energy efficiency legislation](#) applies to most community assets in the same way to other non-domestic properties. The Minimum Energy Efficiency Standards (MEES) currently require an Energy Performance Certificate of Band E or better before a new lease can be granted. From April 2023, this requirement will also apply to existing leases, including community assets. More work needs to be done to determine what the impact and the cost of these regulations on BCC and on VCSE partners will be.

- 2.19 Learning:** A review of the CAT Policy and better alignment with the Social Value Policy is required, with the expectation that this will create a more strategic approach to balancing the needs of local communities and the Council’s finances and priorities, as;
- i. Some tenants have negotiated an early surrender of their lease with BCC, either because the organisation had decided to disband, or because it discovered that it could no longer meet its obligations, eg following a condition survey of the property that highlighted the need for urgent repair work.
  - ii. Others have gone into administration, or have suddenly stopped the active use of their community asset, or have neglected to repair and maintain it, resulting in closure. Reasons for this have included an unconventional management style, poor financial planning, weak governance, sudden loss of key personnel, lack of expertise, failure to designate adequate reserves, etc.
  - iii. Concessionary leases granted prior to CAT have very few control measures and are not capable of being terminated when the tenant’s use of the property changes or diminishes. New leases have changed significantly since the adoption of the CAT Policy in 2010, with greater emphasis placed on social/community value and monitoring these outcomes. The concept of linking a Service Agreement to a lease has had a big impact on the landlord/tenant relationship. It has created a simple to understand and administer accountability: social value outcomes are agreed for up to five years and then renegotiated periodically by both parties. Repeated breaches or non-compliance with the Service Agreement gives BCC the right to either charge the full market rent, or to end the lease early.
  - iv. The CAT process itself consists of two stages and takes time to complete. The minimum quality standards expected of a CAT tenant are sometimes perceived as too detailed or onerous, but most applicants discover that this is a valuable part of their due diligence work. It is very rare for projects not to proceed because they cannot develop a robust business plan or can’t achieve the pre-VISIBLE standard. The support that Voscur provides to organisations applying for CAT has been very useful. More support to VCSE organisations on specific topics, or areas of weakness, is necessary to help raise the competency of the sector and to secure better outcomes from CAT leases.
  - v. New, private sector led developments also have an important role to play in ensuring that community infrastructure keeps pace with Bristol’s growing population. This is particularly relevant for large, residential developments, where new community facilities should be provided as a condition of development. Local communities can influence this process and BCC should seek to ensure that all new development contributes.
  - vi. A VCSE Strategy Group was established in June 2020 to support the recovery of the sector but also realise the significant learning from the cross-sector teamwork and build a better future. [Designing A New Social Reality](#), a report by [Black South West Network](#) working with Locality and Voscur on behalf of the community and voluntary sector, forms the basis of a strategic plan for the city. It makes the case to:
    - keep increasing community access to community asset-ownership and facilitate the processes for community-led housing initiatives
    - prioritise community wealth building strategies, particularly for communities that face socio-economic disadvantage

A review will explore the potential for shared ambition with the sector and how we collaborate to build more resilient communities in the face of unprecedented challenge.

- vii. Trinity’s 100 Beacons report makes the case for a one city approach in support of the network of community buildings providing vital community infrastructure particularly in communities experiencing the greatest inequity.

### 3. Policy

The Council adopted a Community Asset Transfer Policy in 2010. The principles of the current Policy still apply, but the administrative and decision-making process has evolved gradually in recent years.

A review of the Policy is expected to be carried out during 2022-23. The areas that have been listed for review include:

- Community-led housing initiatives
- Relevance of CAT to large-scale infrastructure projects
- Condition surveys of all community assets and rationalisation of those in poor condition
- Can CAT have a positive impact on ‘cold spots’ and over-saturation?
- Sustained investment in and support of the competency of CAT tenants
- Periodic monitoring of lease conditions and service agreements to ensure obligations of the lease are being upheld, eg in relation to maintenance of the building or continuing delivery of the original service that was intended
- Models of community ownership and how they contribute to community building and resilience.

A copy of the current CAT Policy can be downloaded from the website at <https://www.bristol.gov.uk/cat>

### 4. Consultation

#### a) Internal

No formal consultation has taken place as part of producing this report, but it contains input from the Council’s Neighbourhoods & Communities Team.

#### b) External

Not applicable.

### 5. Public Sector Equality Duties

- 5a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
  - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - ii) Advance equality of opportunity between persons who share a relevant protected

characteristic and those who do not share it. This involves having due regard, in particular, to the need to --

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
- tackle prejudice; and
  - promote understanding.

5b) This report is for information only.

**Appendices:**

- Appendix A: example of CAT Service Agreement
- Appendix B: list of CAT transactions completed between April 2017 - March 2022
- Appendix C: examples of successful CATs
- Appendix D: summary of community asset uses, types of assets, rental concessions

**Exempt appendices:**

- Appendix E: list of concessionary tenancies
- Appendix F: list of CAT applications currently in progress
- Appendix G: examples of unsuccessful CAT applications
- Appendix H: examples of failed CATs and suggested reasons for failure

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

None