asset transfer:
a can-do guide

by Lorraine Hart

DEVELOPMENT TRUSTS ASSOCIATION
the community-based regeneration network

in association with the Local Government Association
November 2001

contents

the time is right

Suddenly, not-for-profit organisations are in the news. In much the same way that the de-mutualisation of building societies created an intense debate, the Government's announcement on Railtrack's future has created another flurry of media interest. This time however, the terms of the discussion are potentially very positive, especially for the Development Trusts Association and others in the community and social enterprise fields.

The upsurge of interest in the not-for-profit model brings into sharp focus the underpinning principles and mechanisms. It will be necessary to prove that the model is up to the task of an alternative vehicle for delivering public interest objectives. Part of that process will involve a close scrutiny of the nuts and bolts of existing organisations, which is what makes this report so timely. It is designed to explain how one part of the matrix - establishing an asset base - can best be secured. As Lorraine Hart points out in her introduction, this can be quite a complex task. Fortunately it is one an increasing number of people and organisations have already undertaken.

As the report also points out, the idea of large scale transfers of property has already been accepted by governments of left and right persuasions. This has been primarily in the housing field, but there is no reason why this cannot be extended in pursuit of other policy objectives. Indeed we would argue that for the current neighbourhood renewal strategy to succeed, the transfer of assets has to be a central concern. Some of the obstacles raised are more about attitude than legality. The same act of parliament that allowed first the acquisition by the Greater London Council, and then the transfer to a development trust, of the Coin Street sites in London in 1984, is still on the statute book. In my view more such transfers should be encouraged. But as the report points out, there is also a downside to the transfer of any potential asset that needs careful consideration.

Last year the DTA published a Manifesto calling for the transfer of £1 billion of income generating assets from public to community ownership over the next five years. This report is an important step in gaining a greater understanding of the necessary steps to achieving the successful transfer of assets. If it also succeeds in generating a greater awareness of the true potential of the not-for-profit sector it will have doubly served its purpose.

I would like to thank Lorraine Hart for producing such a clear exposition of the intricacies involved in asset transfer.

George Nicholson, Chair, Development Trusts Assocaition
November 2001

1 Introduction

There is currently considerable interest in the transfer of land and building assets from statutory and other public agencies to independent, community based, not for profit organisations. This is focused on the contribution asset transfer can make to a wide range of social and economic policy objectives - at national, regional and local level.

This guide is based on examining existing research and practice. It draws on relevant published guidance and information on identified good practice related to asset transfer. This is combined with the experience of asset development and transfer projects by members of the Development Trusts Association.

Each asset transfer project will have its own special circumstances. Further guidance and professional advice will always be needed, particularly in relation to financial and legal requirements, which differ in every case. But a key characteristic of each successful project is a positive approach from the people involved.

Most projects will involve complex partnership and financial arrangements between the stakeholders. Some projects will also be more heavily regulated than others depending on the nature of the asset to be transferred.

This guide is intended to provide practical information. It will help all stakeholders interested in asset transfer projects in England to consider the fundamental policy and practical issues involved with confidence. It also provides further sources of information and guidance. There is however no substitute for contacting one of the organisations featured in the case studies supporting 'Developing an Asset Base - an introduction'.[1] These involve a wide range of statutory agencies and other partners who have already had success in dealing with the issues involved.

If the information in this guide seems complex and intimidating, do not despair. The aim is to help you assess and prepare for transfer of an asset. You can find technical help along the way. The vital ingredients are a good idea, a genuine asset and a willing partnership. With these, advice from those who have done it, and this guide you are well equipped.

2 What is asset transfer?

In this context asset transfer relates to land and building assets that have been created for the benefit of, or transferred to the ownership of independent, not for private profit community-based organisations.

No systematic 'mapping' of asset transfers of this type exists, although the benefits of asset transfer to individual organisations and their neighbourhoods have been demonstrated by the DTA in their annual series of Asset Based Development Case Studies.[2]

To date these transfers have mainly consisted of:

- Transfer of freeholds or long leaseholds for land or buildings
- Capital funds in the form of grants

Asset transfer projects vary enormously in their complexity and origins and the range of stakeholders involved. Practice across all kinds of asset transfer projects is however uneven. Transfers of housing stock for example (either through Large Scale Voluntary Transfer or under a designated Housing Action Trust) are well documented and heavily regulated by government through legislation (see page 5). In these cases the financial and legal requirements cover not only the transfer of the assets but also the protection of the statutory rights of tenants and their involvement and agreement to the transfer.

The focus of this guide is on asset transfer projects that fall at the other end of the scale where practice is less well documented and regulated. In particular, it covers proposed transfer of land or buildings as a result of local stakeholders' demands. This may aim to provide a focus for a community-based initiative, or to sustain independent community and economic development activities beyond the life of an area based spending programme (eg Single Regeneration Budget, New Deal for Communities).

In these cases, before an asset is transferred it will often require a process of physical improvement or redevelopment and may require specific attention to be given to the development of, and support available for the organisation proposed to benefit from the transfer. They are both 'people' and 'bricks and mortar' projects.

1. (DTA 2001) see appendix for summary list. 2. DTA 2000, 2001

3 Why are people doing it?

The interest from all sectors (community/voluntary, public and private) in asset development and transfer to independent, not for profit community based organisations has grown in response to policy agendas at national and local level and experience on the ground.[3]

The Development Trusts Association has previously outlined the national policy objectives which transfers potentially help to achieve. These are related to sustainable development, regeneration and neighbourhood renewal.

Asset Transfer Projects can:

- Deal with vacant land, dereliction or deteriorating property infrastructure in disadvantaged areas.
- Create foci for economic and community enterprise development supported by government special area based spending programmes.
- Support strategies to build community capacity to manage assets and deliver services locally with the benefit of an income that the asset provides.
- Provide opportunities for long term joint working and dialogue between statutory agencies, the private sector and people who live and work in disadvantaged areas.
- Contribute to community governance and decision making at local level.

Source: Developing an Asset Base - An Introduction to Asset Transfer (DTA 2001)

For many public and statutory agencies, interest in asset transfer projects is related to these national policy objectives as well as their own policy and planning for local service delivery. Local government officers and councillors have a particular interest in asset transfer in the light of their new responsibilities to deliver Best Value and develop Local Strategic Partnerships (LSPs) and Community Strategies in their areas.

In contrast, local communities' interest in asset transfer projects may relate to a threat to local service provision - for example the closure of a local public building or development of a local site - or may arise as a result of opportunities provided by a government spending programme in their neighbourhood.

Local community interest in asset transfer will also arise in relation to the problem of sustaining community and economic development infrastructure and activity in areas of disadvantage. Community-based organisations have seen the potential for asset transfers to provide services developed to a community-based agenda. Where assets are valuable enough they can create an income stream which is not mediated or driven by the priorities or requirements of a government spending programme.

The current operational context (roles and responsibilities, spending programmes available from government etc) for all potential stakeholders in asset transfer projects are changing as new legal requirements start to take shape. It is too early to see what effect this will have on future asset transfer projects - their nature, frequency and sustainability - but it is clear that in some places this will mean looking at asset transfer as an option to help deliver local stakeholders' aspirations.

Local Government Act 2000: Community Strategies and Asset Development

Section 2 of the Local Government Act now gives local authorities the power to promote the economic, social or environmental well being of their area. Section 4 of the Act requires that local authorities must prepare a 'Community Strategy' to do this and detailed guidance has been issued by DTLR on these. This guidance suggests that the establishment of local strategic partnerships is the most effective way to engage with all agencies in a local authority area and detailed guidance on their establishment has been issued. Government offices have been identified as having an accreditation role for LSPs, underlining the importance placed on their development. LSPs will be accredited against criteria that they should be:

- Strategic
- Inclusive
- Action Focused
- Performance managed
- Efficient
- Learning and Developmental

The establishment of LSPs and the effects of the planning and consultation processes associated with preparation of Community Strategies have yet to become fully operational.

These new planning processes do however provide an opportunity to consider the contribution that asset development and transfer projects can make in a strategic context, with the active collaboration of a wide range of local stakeholders.

3. IPPR 2000

4 Who is involved in asset transfer projects

The DTA has compiled a number of case studies demonstrating the wide range of agencies involved in asset transfer projects.[4]

The primary stakeholders in any asset transfer are the owners of the asset and the proposed new owner or beneficiary. To get to the stage where the asset can be transferred, however, a range of organisations may be involved in a variety of ways. Based on a review of asset development and transfer projects by DTA members, these have included:

Organisation	Possible Roles
tenants and residents associations	may establish an organisation to become a beneficiary of the transfer, or may indirectly benefit from transfer (eg new community space which is accessible and affordable)
development trusts	may assist with development of the asset with expertise or may be a beneficiary of the transfer.
Registered Social Landlords	may assist with development of the asset as funder or may be the current owner
Regional Development Agencies	may assist with development of the asset
Health Authorities	may assist with development of the asset by committing to a leasehold interest
community/social enterprises	may be a beneficiary or may support the development of the asset
community/voluntary organisations/charities	may be a beneficiary of transfer, support the development of the asset with expertise or may be the current owner. larger charities may make transfers or add resources to assets being transferred
private companies	may be the current owner or may assist with the development of the asset with funds or expertise.
regeneration agencies *(eg Single Regeneration Budget Partnerships, New Deal for Communities partnerships)*	may assist with development of the asset with funds or the provision of expertise.
Government Offices	may regulate some funds used to develop the asset and assist with central government department approval processes for transfer of the asset if they are not delegated.
local authorities	may be the current owner or may support asset development with expertise, funds or by committing to a leasehold interest in the asset

4. See DTA Case Studies 1999-2000

The roles of these agencies in the process of transferring an asset will be largely determined by their relationship to the asset in each case as either owner, provider of funds, regulator or potential beneficiary from the transfer.

Housing Action Trusts, Large Scale Voluntary Transfers

Six Housing Action Trusts were designated in England under part III of the Housing Act 1988. Each HAT was established as a Non Departmental Government Body managed by a Board appointed by the Secretary of State. HATs have extensive powers under sections 63 & 71 of the Act to dispose of land and buildings and give financial assistance in any form after approval by the Secretary of State and agreement by the Treasury. As part of their activities HATs have carried out extensive programmes of area based regeneration delivering a range of services and projects for the benefit of their residents and adjoining communities.

Section 135 (3) and (4) of the Leasehold Reform Housing and Urban Development Act 1993 allows the Secretary of State to agree to transfers of housing (Large Scale Voluntary Transfer) by local authorities in England to registered social landlords. Local authorities make applications to be on the disposal programme.

The focus of asset transfer in HAT and LSVT initiatives is on the housing, although the transfer of other assets created as part of their overall regeneration plans are also possible. The aim is to improve community governance and control over the assets and secure continuing revenue support for economic and community development activities through their transfer.

A variety of agencies have been set up or proposed as part of the implementation process and 'forward strategy' development to achieve this:

- Local Housing Companies
- Community Based Housing Associations
- Development Trusts
- Community Land Trusts

As with other smaller asset transfer projects the issue of viability has proved difficult in some of these projects - in particular whether the assets available for transfer can generate surpluses for use by beneficiaries to support community and economic development activity in their locality.

Some recent experience in HATs and New Deal for Community (NDC) programmes in England suggest that it is only possible to achieve this with an endowment, because facilities often needed in neighbourhoods - community centres, leisure provision, shops etc - are not viable assets. Endowments are defined by the Department of Transport, Local Government and the Regions (DTLR) as 'a transfer in the form of cash or other assets in advance of expenditure, to another party for a defined purpose, with the intention that no further payments should be necessary'.[5] Some HATs and LSVTs are still considering these issues with DTLR and government offices and some have secured an endowment for their successor organisation.

In relation to NDCs, where there is a proposed large-scale housing transfer DTLR guidance does not prohibit consideration of endowments. It acknowledges that there have been obstacles to obtaining approval for them and has set out detailed financial and legal guidance to NDC partnerships (see page 14 Financial and Legal Requirements)

5. DTLR 2000

5 How it is done

Identifying Potential Assets: Introduction

Most asset transfer projects result from detailed collaborative planning by local stakeholders. The strategic identification of viable assets that could be transferred to community based organisations in pursuit of commonly held objectives is not widespread amongst public or private agencies. This is partly due to the lack of active and strategic management of land and building assets by some public agencies. Recent work for DTLR and the Audit Commission has identified this as a major challenge for Best Value authorities in particular.[6]

To date, land and building assets transferred to community based organisations have been identified via a number of routes:

- Consultation by partnerships responsible for area based spending on physical improvements to housing, the environment or transport - European (ERDF, Objective 1 and 2) and national government spending programmes (SRB, NDC, Housing Action Trusts).
- Community campaigns related to building closures by public or private agencies
- Community campaigns related to physical redevelopment by the public or private sector
- Voluntary/community organisations actively seeking a viable land or building asset generating a revenue stream they could use to pursue their objectives.
- Developers may identify assets for transfer as a way of securing local authority co-operation or planning consent.

The lack of strategic identification of publicly owned assets that could be transferred to community based organisations means that some opportunities for asset transfer will inevitably be lost. This can be addressed, however, by using the experience of asset transfer projects on the ground to inform new strategic planning processes being driven by changes to central government policy.

Identifying Potential Assets: Strategic Approaches

Community Strategies and Local Strategic Partnerships

In preparing community strategies local authorities will have the opportunity to develop, with their local partners, a strategic view of the potential for asset transfers to independent not for profit community based organisations. This can identify assets considered by any local stakeholder as marginal in their performance of policy, financial and service objectives. Local stakeholders can consider whether there is an opportunity to improve the viability of an under-performing asset and transfer it for the benefit of a local organisation in pursuit of agreed objectives as part of their asset management processes.

Capital Strategies and Asset Management Plans

Changes to local government finance guidance recently issued by DTLR are concerned to address problems in relation to the management of land and buildings by local authorities in England and Wales, as identified by the Audit Commission. Guidance sets out the requirements for preparation of a Capital Strategy and Asset Management Plan (AMP) relating to property. DTLR good practice guidelines on asset management state that the main objectives of an AMP are:

- co-ordinated local decisions on spending priorities
- to be an integral part of the local authority business process and ensure national and local aims, objectives and policies are linked to implementation
- commitment to action programmes
- a useful management document on property asset strategy
- assurance to stakeholders that assets are being managed in accordance with service needs
- regular review of property assets to identify areas where improvements can be made
- identify specific opportunities for innovation
- provide a framework for prioritising capital projects assist in the development of partnership projects/ private sector partnerships
- identify assets suitable for investment or disinvestment
- identify opportunities to increase income or decrease expenditure

To underline their importance government has developed national property performance indicators to gauge local authorities' management of land and buildings. The indicators cover management costs, capital project management performance, revenue-running costs, financial return, and energy efficiency.

The process of developing AMPs offers opportunities to identify underperforming assets that could be developed for transfer.

6. DTLR 2000, Audit Commission 2000

Through their work with Local Strategic Partnerships preparing and implementing Community Strategies local authorities could take a strategic approach to the identification and development of asset transfer projects by:

- Asking private sector LSP partners to identify, as part of their own asset management processes, opportunities to develop viable asset transfer projects.
- Consulting with LSP partners on the potential for specific organisations to benefit from asset transfer projects.
- Consulting with LSP partners on development of their Asset Management Plan, identifying the potential for asset transfer projects.
- Using neighbourhood planning processes to identify potential asset transfer projects.

Best Value and Asset Transfer

The Local Government Act 1999 Part I sets out government requirements for a number of public agencies including local authorities In England and Wales, National Park, police, fire and waste disposal authorities.

Best Value authorities are required to secure continuous improvement in the way they exercise their functions 'having regard to a combination of economy, efficiency and effectiveness'. The chief requirements to demonstrate this are Best Value reviews and performance plans.

Detailed guidance on the Best Value review and performance planning process are set out in DTLR circular 10/99. The service must be examined with local stakeholders to challenge how and why services are provided, compare performance with others, consult on the setting of performance targets and wherever possible use open competition to secure efficient and effective services.

Best Value processes are mainly related to the delivery of a service. Land and property assets may be considered as part of these reviews and may provide an opportunity for asset development and transfer projects - whether related or unrelated to the service provision.

Currently there is little documented experience of Best Value reviews being used to identify and develop asset transfer projects. This is likely to change as reviews are undertaken of property management functions and recent guidance to local authorities on the preparation of Capital Strategies and Asset Management Plans is developed.

Land Use Planning

It is likely that changes in land use planning, combined with the Best Value process and performance indicators, will accelerate the process of identifying publicly owned assets available for transfer to support community and economic development.

As this source is exhausted, local planning authorities will need to look at developing asset transfer projects with private sector landowners, as part of their planning powers to control development. Local planning authorities can identify potential asset transfer projects from a proposed redevelopment.

Planning Obligations

Section 106 of the Planning Act 1990 allows people with an interest in land to enter into obligations with a local planning authority whereby they bind their land or its development until the obligation is discharged. Local Planning Authorities are expected to use planning obligations to address the affects of development and to require the owner or developer to undertake measures to make the application for planning permission acceptable to the local planning authority. Section 106(1)(d) specifically permits payments to be made to a local authority as part of planning obligations by an owner or developer.

The relevant government guidance (DOE Circular 1/97) sets out that planning obligations should be:

- *Necessary*
- *Relevant to planning*
- *Directly related to the proposed development*
- *Fairly and reasonably related in scale and kind to the development*
- *Reasonable in all other respects.*

In practice planning obligations have been used to secure capital funding or through the transfer of a freehold or grant of lease in the development and transfer of assets.

The potential for asset development projects in the future using these powers is set to change. There has been considerable disquiet about the fair and transparent application of planning obligations on developers and owners. As a result central government has made clear its intention to reform this guidance to address the current disadvantages of the system.

These kinds of asset transfer projects already exist and many are in development as a result of consultations on major physical redevelopment schemes - particularly where property prices and levels of economic activity are set to improve as a result of public and private sector investment.

Identifying Assets: Viability

Not all land and buildings are assets. Land and buildings cost money even if they are unused or unusable. They cost even more if they are used. If the people using a building cannot pay the costs of doing so then the building is not an asset. Similarly if a piece of land cannot be used or developed by anyone because the costs of doing so are more than the likely income they could generate it is not an asset.

This is the basic issue of viability in property development and it is the place where all potential asset transfer projects must start. Land and buildings that are not viable will require development or improvement before they can be transferred. The capital costs of this will have to be estimated and raised (from private or public sources) and the income from either sales of part of the asset, or rental income, will have to be projected to determine whether the asset is viable and can be transferred.

The process of investigating and establishing the viability of an asset should be done in partnership with all those with a potential stake in its future - local residents, statutory agencies and service providers, community members/representatives, voluntary/community organisations.

The financial viability of an asset transfer project can be established with the relevant professional advice. A further issue of viability however will be the role defined for the proposed beneficiary. For example, are they to oversee the redevelopment or improvement of the asset and/or manage the asset after transfer?

Most asset transfer projects require considerable resources and expertise in project management and contract administration to manage their redevelopment and improvement. Grants available to the projects will often require specific administration and accounting arrangements. These can stretch the financial and management capacity and competence of a local organisation. New agencies proposed as beneficiaries of asset transfer projects are particularly vulnerable.

It is critical to the long-term viability of the transfer that these organisational issues are addressed through the process of business planning and development appraisal. Arrangements need to be made to manage financial risks and build organisational capacity where it is required (see box opposite). Considering the potential legal and financial requirements of the transfer as well as its financial viability should form part of the initial assessment with the proposed beneficiary. This will allow for the early identification of potential problems and planning to overcome them.

In assessing the viability considerable care needs to be taken when looking at the legal restrictions affecting the asset.

These are likely to particularly affect assets transferred on a leasehold basis where there may be a very long list of restrictions on mode of use, transfer or other sale, mortgage. In addition the lease will be affected by any restrictions on the freehold of the landlord which themselves will have to be examined. Freeholds will generally be less constrained however the terms of the transfer agreement may well impose substantial obligations. Typically these will include

- Claw back provisions if the asset ceases to be used for community purposes
- Restrictions on use
- Restrictions on transfer
- Rights of pre-emption on sale

In addition to restrictions actually imposed or attached to the land, funding provided may, itself, carry a range of restrictions and these are quite likely to be secured by a mortgage. While the organisation may well be complying with all these restrictions, they will, nevertheless, have important effects, for example reducing the value of the asset as security for future borrowing.

Supporting the Beneficiary of the Transfer

The DTA case studies of asset transfer projects identify a number of factors important for a beneficiary organisation. These indicate some of the training and capacity building support that may be needed:

- Resources for independent technical and legal advice or training on development of the asset and its transfer
- A strong board of trustees
- A clear view and agreement on the organisation's role in the development and transfer of the asset
- Demonstrable community support for the development of the asset
- Evidence of ability to manage and run the asset effectively and use any revenue to support local community objectives

A feasibility assessment and development appraisal[7] should form the starting point of any asset transfer project and should consider:

- The nature of the asset
- Proposed/potential and current uses
- The potential for capital subsidy to meet some of the costs of improving or developing the asset
- The potential for sales of end uses
- The potential for contracts to meet running costs for buildings after they have been created or improved (sub leases/licences)
- The impact of legal restrictions already affecting land transferred
- The impact of the project of new legal restrictions imposed by funding agreement or the property transfer or lease mortgage

The Nature of the Asset

This is perhaps the most important initial evaluation that needs to be made since it determines the current and potential value of the asset. It identifies the cost of developing and acquiring the asset and uncovering any potential problems or barriers to the transfer of the asset from its current owner.

If all the information about the nature of the asset is readily available, an experienced property professional who knows the locality and is advised by other local stakeholders, can construct an initial development appraisal. At this stage it will be possible to use more broad-brush assumptions about the kinds of uses that can be accommodated, and their likely cost and potential value.

This initial appraisal can be used to determine whether the uses proposed are likely to make the asset viable, and if so, inform decisions about the commissioning of detailed design and business planning work. All local stakeholders in planning and delivery of the project should be involved in this.

The Nature of the Asset:

Information	Impact on Viability
Type - land or buildings, current use	■ Current value/image
Location - size, accessibility, whether appropriate location for proposed uses	■ Cost of redevelopment or improvement - the larger the project the longer the timescale with potential financing costs. ■ Markets for different uses at the location ■ Influences possible or appropriate potential uses
Condition - vacant/unused, contaminated, buildings in poor state of repair, lack of services	■ Costs of redevelopment/improvement/ links to services ■ Complex and costly processes to deal with contamination
Land Use Planning Status - relevant statutory planning policies towards change of use of the land/buildings or their redevelopment.	■ Affects potential uses and possible development costs
Ownership obligations set out in Land Register search - to assess any obligations that may come with ownership (see box overleaf)	■ Costs of improvement, redevelopment or conditions of transfer. Delays to allow legal issues to be resolved.
Current ownership - is it for sale currently?	■ Whether it is possible to negotiate a peppercorn transfer, or a favourable price or leasehold rental terms. ■ The intentions of the owner may drive timescale for the project.

7. See section 7 for detailed guides to the development process for land and buildings

Ownership Obligations

The title documents to the land or buildings may set out obligations for owners that will need to be addressed with legal advice. The potential remedies to these restrictions vary in their applicability and most will have consequences either for the timescales for the development of the asset or on its viability.

Restrictions on Disposal - Some public authorities may have acquired their property using compulsory purchase powers, or may hold the property in trust for a specific use. This may require special rules to be followed in pursuing the transfer or may affect whom it may be transferred to.

Restrictions on Use - The terms of leasehold and any restrictive covenants on the land or buildings may restrict the uses to which the property may be put. These range from rights of way to specific prohibitions of some uses. These may be addressed by negotiation or may be discharged on application to the Lands Tribunal - a time consuming and complex process.

Claw back capital repayment requirements - The terms of the transfer lease or funding agreement may well include provisions for a repayment of the original funding or return to the property provider of the original value of the property or possibly the whole of the value of the property on any sale, cessation of use or other trigger.

These need to be clarified at an early stage as they will exercise a long-term impact on the viability of the project and may prevent flexibility where an original asset needs to be sold in exchange for some more suitable premises. Given the rigidity of these controls organisations need, if possible, to avoid them. Instead they can point out their charitable status and the restrictions that places on them are sufficient safeguard to prevent misuse of the proceeds of sale of an asset.

Interested third parties -the local land register may refer to previous planning permissions that relate to the property and stay as an obligation on any owner until they have been met.

Proposed/potential and current uses

A number of related assessments will need to be made. These include:

- The market for potential and current uses - levels of supply/demand, prices/rental levels possible
- Opportunities for maximising the availability of revenue to develop the asset by generating income from ‘meanwhile uses’[8]

The potential for sales of end uses

Proposed uses may involve sales of leaseholds to other parties to develop, or lease in exchange for income. Private housing freeholds may also be sold and set against the costs of development.

The potential for contracts to meet running costs for buildings after they have been created or improved

If potential assets are in areas with low property values and poor demand for property, it is important to look at opportunities for use of the property by statutory service providers. They may require space to deliver their services, which could enable them to commit to supporting an asset transfer by taking a sub lease (see case study below). This will improve the viability of an asset by providing guaranteed income against costs.

Great care needs to be taken in looking at the length of such contracts and their termination provision since funders frequently include provision for early termination on short notice

case study

St Lukes, Custom House
and Canning Town Renewal Project

The Custom House and Canning Town Renewal Project secured the viability of their converted church building by covering all the costs of improvement work with grant aid and entering into a 25 year lease with the health authority. This provides a core income stream towards the cost of running their programmes in the building, which houses the health centre, workspace, and community facilities.

contact John McNeil 020 7366 6400

8. Meanwhile uses are those which can be established and generate income towards projects costs while the future of a site or building is undetermined or programmed for implementation in the long term. Typical uses are markets, car parks, temporary sports and leisure facilities

The potential for capital subsidy to meet some of the costs

Where possible, identify capital subsidy from central government and European programmes, the private sector or charitable trusts to meet development costs and transfer the asset.

The results of these assessments will inform a development appraisal and detailed business plan. This should include projected rental levels and sales income, set against estimates of the costs of developing, transferring and using the asset for its proposed purpose.

Development Appraisal

This is the financial expression of information in the feasibility assessment. Based on experience to date, asset development projects have sought to minimise any commercial or other borrowing necessary to bring them to fruition. Partly this is due to the need to minimise risks and obligations for any beneficiary of a transfer. It also protects the asset and ensures that it can be used for the purposes for which it was transferred, since this is often a requirement for asset development funded from public sources. Nevertheless, it is likely that loan finance for these purposes will become available on a greater scale through the growing community development financial intermediary (CDFI) sector; where loan finance is used the viability equation will need to take account of loan repayments.

Development appraisal

Estimated Costs	**Estimated Income**
Land/building acquisition	Projected rental levels or sales income
Professional fees (architects, QS, legal, engineers etc)	Capital grants
Building/refurbishment works	
Finance costs	
Developers costs and profits	
VAT (on assets requiring refurbishment)	
	LESS:
	Projected voids (empty)
	Management costs (sales/lettings, legal, marketing, collecting rents or income, finance costs)
	Maintenance costs (repairs, cyclical maintenance, insurance, utilities, business rates/council tax, health and safety compliance)
TOTAL = X	TOTAL = Y
Viability = if X is more than Y the asset is not viable	

Development of the appraisal and business plan will be an important part of developing the project. Exploring all avenues with local stakeholders is the way to achieve long-term viability and build a strong partnership to implement the project. The documents will also be needed to secure funding and meet a number of the legal and financial requirements of asset transfer.

6 How it is done - financial and legal requirements

Experience to date suggests that if key stakeholders address each requirement with a 'Can Do' approach, legal and financial requirements of asset transfer are much more easily met. The ease or difficulty of projects depends largely on this willingness of make it happen. The varied ways in which assets have been developed and transferred underlines the need to consider creatively how each project can achieve its objectives.

Many of the agencies involved in asset transfer have different financial and legal regulatory frameworks. The processes required for a transfer will differ; depending on the role the agency takes in the project. They will have to satisfy themselves, as well as their regulators, that they have acted within their powers by taking professional advice.

The range and complexity of the legal and financial processes that arise are particularly driven by the following characteristics of the current owner and the beneficiary organisation to which the asset is being transferred.

- Governance structure - how the members of the organisation make decisions and who they are accountable to, whether they are registered charities, privately owned etc
- What powers and responsibilities the organisation has in relation to the development and transfer of the asset
- Policies - aims and objectives in relation to the asset transfer
- Regulatory framework - local government, charity and company legislation
- Competence and capability - experience, skills, knowledge, financial strength and track record
- Resources - time, staff and funds available to assist in the development and transfer of the asset

A comprehensive guide to the requirements in all circumstances is not possible, but based on practice to date there are several factors that have been important in determining the financial and legal requirements of asset transfer projects.

- The current use of the asset and any obligations that come with it[9]
- How the current owners acquired it and what resources were used to acquire it
- The beneficiary of the transfer - whether the organisation to whom the asset is transferred can fulfil the requirements of the current owners and other agencies supporting and funding the transfer
- The agencies that are funding and supporting the transfer of the asset - any resource used may have its own conditions

A range of legal powers and financial requirements has been relevant to asset transfer projects to date. These relate principally to the disposal of land and the requirements of funding agencies.

Disposal of Land

Most land and building assets transferred to community based organisations have required investment in their physical development. To establish a viable asset costs have to be reduced and associated financial obligations minimised.

As a result most transfer projects have resulted from the transfer of land at 'less than best consideration'[10] or for leaseholds at a 'peppercorn rent' either prior to or after their development or improvement. The current owner must have the legal power to do this.

Legal powers to dispose of property at less than best consideration must be checked in all asset development projects, but some guidance can be offered based on practice:

- **Local Authorities in England**

Section 123 and 127 of the Local Government Act 1972 regulates sale of land by councils in England and Wales. This makes disposal of an asset by way of a lease for less than seven years at less than market value lawful.

Disposal of land or buildings for a 'consideration less than the best that can be reasonably achieved' under the same act requires Secretary of State consent.

Some general consents to dispose at less than best consideration have been made under the Housing Acts 1988 and Local Government Act 1988. These enable disposals of housing of varying kinds, to specific purchasers such as registered social landlords. If no general consent is applicable to the disposal however, it will require specific consent from the Secretary of State. DOE Circular 6/93 sets out the detailed process for applying for approval. This is by way of a letter and supporting documentation that sets out the details of the asset, its current and proposed use and a summary of the key terms of the proposed transaction. This must be supported by a valuation report that is less than six months old.

It is worth noting that during this process the authority may have had to discharge obligations that relate to how they acquired the land and for what purposes they are holding it. Land in certain uses such as open space for example or

9. See Section 5 on viability. 10. At less than the value that could be achieved on the open market

land acquired by compulsory purchase requires specific statutory formalities to be undertaken. This will vary from the application of the Crichel Down Rules[11] to publicly advertising any proposed change of use of the land or its disposal.

In response to practitioners' experience of difficulties encountered in earlier asset transfers, government is being lobbied to alter current regulations. These changes are needed to allow local authorities to transfer land and property at less than market value to local stakeholders where this is in line with the authority's broader regeneration or community strategy. The Local Government Association is also recommending the removal of the requirement that the Secretary of State approve such transfers.

- **Registered Social Landlords**

Most do have power to transfer assets although the terms on which they may do so are very dependent on the governing instrument of the organisation. Many registered social landlords are charities, companies limited by guarantee or Industrial and Provident Societies so may be subject to a range of legal frameworks.

- **Charities**

The governing instrument of a charity will define much of their ability to undertake an asset transfer. This may be a Trust deed, Constitution, Memorandum and Articles of Association, will, conveyance or scheme of the Charity Commissioners.

Sections 36 - 40 of the Charities Act 1993 sets out the duties of charity trustees in relation to the disposal of land and buildings. Charity Commission consent is only needed where the charity is unable to meet the obligations set out in the 1993 Act which govern the process of a disposal. Charities have to ensure that they have the power to dispose of the land or buildings, publicly advertise the disposal of the asset and get written professional advice from a qualified surveyor. They must then satisfy themselves that the disposal is on the best terms reasonably obtainable for the charity.

Charities do not have to meet the requirements of sections 36 - 40 relating to best consideration disposal of land if they are transferring the asset to another charity and have the power to do so.

- **Private Companies**

As with other organisations the power of disposal of land depends on the governing Memorandum and Articles of Association of a company. Most have the power to do so, subject to regulation by Company law.

Requirements of Funding Agencies

In practice most asset transfer projects to date have needed to fulfil the requirements of a range of public spending programmes (European Structural Funds, Heritage Lottery, area based regeneration funds and charitable trust donations) the details of which vary in every case.

For example, asset transfer projects funded by government area-based spending programmes often require the approval of the government office and guidance stresses the importance of their early involvement.

In addition a number of funding programmes require 'clawback' arrangements if the financial performance of the asset is better than had been predicted at the time they invested public funds.

Protection of public investment in the asset is often a key factor for the existing owner and any funding programme that is supporting the transfer. Although funding programmes will assist asset transfer projects that can demonstrate their viability, they may still require that the asset will 'revert' to its original owner via the terms of the transfer (in a leasehold or freehold document or as a legal charge on the property) if the beneficiary organisation gets into any difficulties.

Protection of the asset into the future is also specifically addressed in relation to the characteristics of the beneficiary. In addition to the business plan and development appraisal for a project, funding requirements also mean that organisations proposed to benefit from transfer are asked to demonstrate that they are fit to do so. The most recent guidance to NDC partnerships from DTLR on beneficiary organisations sets out the factors that have been considered in most asset transfer projects and which local stakeholders will need to address.

The varied ways in which assets have been developed and transferred underlines the need to consider creatively how each project can achieve its objectives

11. The Crichel Down Rules set out the requirements to offer back to the original owner or their successors, land that was compulsorily purchased.

Issues to be considered in asset transfer and endowment projects

- Is the task (running the asset) no longer capable of being carried out by the donor?
- Is the task unsuitable for the public sector?
- Would the task be carried out more effectively by another body?
- Would a once and for all endowment instil better financial discipline?
- Would a once and for all endowment allow better financial planning?
- Would there be administrative savings from a once and for all endowment?
- Are there adequate financial projections for the task including costs to be incurred, other sources of income, economic factors and value of assets to be transferred?
- Will it be possible to make a clean break if the recipient runs into difficulties or defaults on performance?
- Does the recipient have adequate management and financial expertise?
- Is the viability and probity of the recipient reasonably certain?

(Based on NDC Finance Guidance)[12]

As with all projects, addressing the relevant legal and financial issues will be a challenge for all those involved. Local stakeholders without access to advice and information within their own organisation about some of the issues may feel particularly disadvantaged as a result.

There is no way around this - it is inevitable that asset transfer projects will involve imbalances in resources and expertise. The best way to prevent the deterioration of partnership work is to openly address these imbalances and any potential problems they may cause as the project progresses. This will help to set expectations, agree processes for obtaining advice and information and deal with disputes and disagreements as the project develops.

12. See section 7

7 Further sources of information

Useful Publications

- Audit Commission (2000) 'Seeing is Believing: How the Audit Commission will carry out Best Value Inspections in England'
- Audit Commission (2000) 'Hot Property: Getting the Best from Local Authority Assets', Audit Commission, London
- Charity Commission (2000) 'Disposing of Charity Land', Guidance Notes
- Community Development Foundation (1997) 'Regeneration and the Community' , CDF London
- Cunliffe, M, (2001) 'Planning Obligations where are we now?' in Joint Planning Law Conference Papers September, 2001, The Law Society, the General Council of the Bar and the RICS
- DETR (1997) 'Involving Communities in Urban and Rural Regeneration: A Guide for Practitioners', DETR, London
- DETR (1998) 'Bidding Guidance: A Guide for Partnerships' DETR, London
- DETR (2001) 'A Review of the Evidence Base for Regeneration Policy and Practice', DETR, London
- DETR Circulars 10/99 'Local Government Act 1999 Part 1 Best Value'
- DETR Circular 6/93
- DETR (2000) 'Asset management of Local Authority land and Buildings - Good Practice Guidelines', DTLR, London
- DETR (2000) 'Preparing Community Strategies: Government Guidance to Local Authorities' DTLR, London
- DETR (2000) 'New Deal for Communities Forward Strategies', DTLR, London
- DTLR (2001) 'New Deal for Communities Finance Guidance' DTLR, London
- DETR (2001) 'Local Strategic Partnerships - Government Guidance', DTLR
- DETR (2001) 'Accreditation Guidance for Local Strategic Partnerships' DTLR
- NHS Estates (2001) 'Estatecode'
- DTA (2000) 'Asset Base Development for community based regeneration organisations', DTA, London
- DTA (2001) 'Developing an Asset Base: An Introduction', DTA London
- English Partnerships (Undated) 'Brick by Brick: How to develop a Community Building', English Partnerships
- IPPR (2001) 'Building Better Partnerships - the Final Report of the Commission on Public Private Partnerships', IPPR, London
- Social Exclusion Unit (2001) A New Commitment to Neighbourhood Renewal National Strategy Action Plan', HMSO, London

Useful Sources of Further Information and Guidance

Most of the referenced documents in the guide can be found at the sites below, which in turn refer to related published research.

- **www.audit-commission.gov.uk**

This site provides extensive information on the detailed requirements of Best Value and the financial regulation of local authorities in England and Wales.

- **www.charity-commission.gov.uk**

This site provides guidance on all aspects of the operation and regulation of registered charities. It provides detailed guidance on specific issues of concern to charity trustees.

- **www.dta.org**

Provides information about the objectives and work of the Development Trusts Association and its members.

- **www.dtlr.gov.uk**

This site provides links to most information and guidance related to asset transfer in housing and regeneration. It also covers the implementation of Neighbourhood Renewal policy and Best Value requirements for local authorities.

Relevant contacts in all Government Offices and Regional Development Agencies and outlines of all related policy guidance and research can be found via the links at this site.

- **www.housingcorp.gov.uk**

This site provides information related to Registered Social Landlords regulated and funded by the Corporation.

- **www.nhsestates.gov.uk**

This site provides links to most information and guidance relevant to land and building assets owned by health agencies at local regional and national level.

- **www.legislation.hmso.gov.uk**

This site provides the full text of many public and local acts of parliament as well as signposts to guidance related to implementation of the acts and related policy developments.

8 Appendix 1

Asset base development
case studies conducted by the DTA in 2001[13]

- **North Pennines Heritage Trust**
The trust, incorporated in 1987, owns and manages listed buildings as heritage attractions.

- **Community Action Furness**
Working in a de-industrialised area of Cumbria to support young people towards employment, CAF runs 17 projects, many based in its own managed workspace.

- **St Werburghs Community Centre**
A community association leasing a former school building from Bristol council to provide vital local facilities

- **Heeley Development Trust**
Growing out of community involvement in the development of an inner-city park in Sheffield, the Trust is also refurbishing buildings and acquiring land.

- **Lairdside Community Trust**
Supported by SRB funding in a former shipbuilding area on the Wirral, the Trust bought land to build workspaces and facilities to support developing businesses.

- **High Trees Community Development Trust**
Residents on a former council estate in inner London have taken over a closed former library which how houses estate-based projects.

- **Bootstrap Enterprises**
A grassroots organisation in inner London has converted former warehouse and factory space to provide managed workspace which accommodates and helps finance its work with unemployed residents.

- **The Environment Trust**
Renovating a derelict warehouse and railway arches on a long lease, and other managed workspace, supports emerging businesses and helps pay for other projects to improve the environment for young people in East London

- **Ashleyvale Action Group Ltd**
Out of a campaign against commercial housing development, residents in Bristol bought the site for mixed work and residential development controlled by them.

- **Everton Development Trust**
Using City Challenge funding premises on a ten-year lease were converted into a business centre in North Liverpool. Now the trust has its first capital asset, a former pub bought in 1999.

- **Southmead Development Trust**
The trust has a long-term lease on a disused school, used to provide training and facilities for residents on this Bristol estate.

These case studies provide a glimpse of the wide range of activities supported by asset transfer projects, and just some of the practicalities involved. Each gives a detailed summary and contact information.

Further case studies also available include:[14]

2000
- Burslem Community Development Trust, Stoke on Trent
- Carn Brea, Cornwall
- Cwmni Tref Caernarfon, Wales
- LSE Consortium, Leicester
- Manningham Mills Development Trust, Bristol
- Manor & Castle Development Trust, Sheffield
- O-Regen, London
- Renewal Trust, Nottingham
- Royds Community Association, Bradford

1999
- Amble Development Trust, Northumberland
- Arts Factory Ltd, Wales
- Bentham Development Trust, North Yorks
- Colne Valley Trust, West Yorks
- Eldonian Development Trust, Liverpool
- Environment Trust, London
- Great Torrington & District Community Development Trust, Devon
- Hastings Trust, Hastings
- Ibstock Community Enterprises Ltd, Leicestershire
- Loftus Development Trust, Cleveland
- Manor Training & Resource Centre, Sheffield
- Wolseley Community Economic Development Trust, Plymouth

13. DTA 2001. 14.Single copies or complete sets available from DTA

With thanks to the Calouste Gulbenkian Foundation for their support in producing this publication.

We are very grateful to James Sinclair Taylor (Sinclair Taylor & Martin) and Tony Rich (Local Government Association) for their assistance in preparing this guide.

DTA also thanks NatWest, DTLR special grants programme, English Partnerships and the Joseph Rowntree Foundation for earlier generous support of our wider programme of work on asset base development.

Price: £10.00 (£5.00 to DTA members)

Development Trusts Association
2-8 Scrutton Street, London EC2A 4RT
Tel 0845 458 8336 Fax 0845 458 8337
Email: info@dta.org.uk
Website: www.dta.org.uk

DEVELOPMENT TRUSTS ASSOCIATION
the community-based regeneration network

Local Government Association