Assets and Big Local

What is this guidance and who is it for?

Many Big Local areas have, or have planned to buy, build or manage assets such as land and buildings to help make a positive change to their local area.

This might be through providing a hub for the community to meet and connect, creating spaces in which to deliver activities or meeting an identified need such as community-led housing or play areas.

We have produced this guidance for anyone working on Big Local who is interested in asset-related projects. It is essential reading for partnerships, Locally Trusted Organisations (LTOs), reps, workers or any third parties involved in related projects funded through Big Local.

It is not designed to be comprehensive guidance on how to develop and deliver asset-based projects, but it does set out everything that Local Trust will ask and expect of you in order to make sure you have the best chance of a successful and sustainable project that has a long-term benefit to your community.

What is an asset?

For the purposes of this guidance an asset is defined as any land, building or other significant physical feature that would be funded or acquired for £50,000 or more.

However, depending on the nature of the project, Local Trust may ask for some or all of the points below to be met where an asset is going to be acquired for less than £50,000. If we do, we will discuss this with you.

Items such as computer equipment and vehicles are not classed as assets in this guidance. Big Local partnerships should establish the approach to buying and managing these with the LTO in order to ensure good value for money and community benefit.

If you are unsure whether your project meets the definition of an asset, please do talk with your rep or a member of Local Trust staff.

Requirements for asset projects

Based on our learning of how Big Locals have successfully delivered projects, and drawing on other community-led funding initiatives, we will ask you to complete the following steps before releasing funding for your project.

Sometimes, depending on the nature and pace of a project, we might release funding before some of these things are complete but include them as conditions of funding to be completed at an agreed later date. If that is the case, we will discuss this with you.

Entity: Big Local funds for the acquisition of an asset are only transferred to a legal entity that is already registered with the relevant regulator (such as the Charity Commission) as a registered charitable company limited by guarantee, charitable incorporated organisation, community interest company or a community benefit society.

In exceptional circumstances, Big Local funds may be transferred to non-charitable companies limited by guarantee and co-operatives where there are good reasons why a charity, community interest company or community benefit society cannot be used and long-term community benefit of the asset is assured.

In such a case, the non-charitable company limited by guarantee or co-operative will also need to provide evidence that a voluntary asset lock is in place and at least a 75% majority of members is needed to approve any amendments to this.

Agreement: We will ask to see an appropriate written agreement such as a memorandum of understanding (MoU) between the Big Local partnership and the legal entity acquiring the asset before the funding takes place.

LTOs should provide evidence of an appropriate funding agreement that meets Local Trust's terms and conditions of grant when awarding funding to any third-party organisation.

Asset lock: All assets that are newly acquired with Big Local funding must be protected by an asset lock for the benefit of the local community. This can be 'automatic' or may be written into governing documents. (See Appendix II for more information on asset locks.)

We will ask for evidence that an appropriate asset lock is in place. Where the asset is being part funded by Big Local but not owned, we will consider whether this is required on a case-by-case basis.

We will ask whether you have considered placing a restriction on the title deeds and/or having this written into the lease. Restrictions may help protect the asset for the benefit of the community in the event that the legal entity becomes insolvent by helping to make third parties aware of any restrictions on use which already exist over the asset. (See Appendix II for more information on restrictions.)

Lease length: If the asset is leased, we will ask you to tell us how long a lease you are planning to hold and how this is in proportion to the benefit, opportunity and interest that the community will have by acquiring the asset.

Whilst Local Trust does not specify a minimum lease length, major investment (in asset acquisition or improvement) would usually require a minimum 25-year lease.

We will ask you to demonstrate that a) the length of lease is in proportion to the benefit, opportunity and interest that the community acquires; b) that the Big Local partnership understands the implications of different lengths of lease; and c) that the Big Local partnership has weighed the benefit to the community and understands the implications of a short lease if the lease is less than 25 years.

Big Local plan and assessment: Local Trust releases funding based on a Big Local plan, which draws on the needs and opportunities in an area and consults with the community on them.

We will check to make sure that the project is in line with the activities and priorities in your endorsed plan.

For asset-related projects we will also ask for additional information on the planning you have done. We will ask for an up-to-date business plan that shows you have considered how the asset/s will be managed and be financially sustainable in the future.

We will ask a specialist assessor to review this and provide feedback to you and Local Trust, including highlighting where further support might be useful.

Local Trust also undertakes due diligence on all LTOs before endorsing plans. Where the funding for an asset is to be transferred from an LTO to a third-party organisation, we will ask the LTO to demonstrate it has undertaken its own due diligence on the recipient of funds as is their responsibility as the legal grantee.

We may decide to complete our own or ask for further due diligence to be undertaken depending on the circumstances of a particular project.

Asset register: In our role administering the Big Local programme we collect information on aspects of the plans we fund. This is to help us support Big Local partnerships more effectively and monitor and report on the projects we are funding.

As part of funding asset projects, we will ask you to provide information on the ownership and management of the asset, which we will include in a register of assets.

Appendix I: Further support and guidance

There are a variety of freely accessible online resources and guidance around community ownership of assets, some of which we outline below:

myCommunity have a range of resources and guidance which cover:

- Community Right to Bid
- Community Right to Reclaim Land
- Assets of Community Value
- Community Asset Transfer
- Community Buyouts
- Community-led housing
- Localism Act

Locality have a range of resources and guidance which cover:

- Business planning
- Good governance
- Community Asset Transfer
- Community ownership and development of assets
- Financial management

Power to Change have a range of toolkits and how-to guides.

Shared Assets have a range of tools and guidance on community land assets.

For information on Local Trust support on asset acquisition and management, please see the support partner page on our website. We are currently developing this offer and will announce more support in due course.

Often, taking on an asset involves setting up a new legal body. If you are planning to set up an organisation to acquire and manage the asset, please read our guidance on setting up a legal body and the duties and liabilities of charity trustees and company directors.

Appendix II: Information on asset locks

An asset lock is intended to protect the assets of an organisation for its community or public purpose, rather than for any private or personal gain of the members of the organisation. The strength of the asset lock differs depending on the legal structure used and some are easier to break than others.

Consideration should be given to the value of the assets held by the organisation; how important it is to protect those assets and what measures a particular structure permits to protect those assets from distribution among the members.

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Unincorporated association	No separate legal entity. Assets (and liabilities) belong to the members.	Members agree their own constitution or rules.	Rules may include requirement to protect the asset for community benefit. This would be a **voluntary** asset lock.	If the members can make the rules, they can amend the rules. However, it can also be written into the rules that a large majority of members must agree such a change.	Member decision. Insolvency or liquidation.	The members own the assets (and liabilities) and would be personally liable to creditors if the trust were unable to pay its debts.
Trust	No separate legal entity. Assets (and liabilities) belong to the trustees.	Trust Deed.	The Trust Deed specifies that assets must be used in the interest of beneficiaries. This would be a **voluntary** asset lock.		Insolvency or liquidation.	The trustees own the assets (and liabilities) and would be personally liable to creditors if the trust were unable to pay its debts.

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Company Limited by Guarantee	Company. Members' liability limited to small amount, as defined in the Articles of Association.	Memorandum and Articles of Association (Mem&Arts).	A requirement can be written into the Mem&Arts, stating that assets must be used for specific community benefit and if the company is dissolved, assets must be transferred to another organisation that has a similar asset lock. This would be a **voluntary** asset lock.	If the members can make the rules, they can amend the rules. However, it can also be written into the rules that a large majority of members must agree such a change.	Insolvency or liquidation.	

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Community Interest Company (CIC)	Company with limited liability, with additional regulation to ensure community benefit.	Constitution. CICs can be companies limited by guarantee or by shares.	An asset transfer out of the CIC can only be made if it is for full market value; it is made to another asset-locked body specified in the Articles of Association; it is made to another asset-locked body with the consent of the Regulator or it is made for the benefit of the community. This would be a **statutory** asset lock, regulated by the Community Interest Companies Registrar.	Land, buildings or other physical assets can be sold at full market value if the CIC board reasonably decides that it is the best way to ensure community benefit.	CIC assets can be returned to members who are themselves asset locked bodies. Assets may be used as collateral, which could mean that the assets must be sold to repay debts.	Partial asset lock in that CICs limited by shares can pay limited dividends to shareholders.

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Industrial & Provident Society (Co-operative Society)	Corporate society with limited liability.	Rules, accepted by and registered with the Financial Conduct Authority.	Most co-operative societies adopt a **voluntary** asset lock in their rules.	There is scope to specify that these rules are fundamental to the society by requiring a higher voting threshold to change these rules.	There is no legal mechanism to entrench these rules to prevent them from being changed under any circumstance.	
Community Benefit Society (CBS)	Corporate society with limited liability.	Rules, accepted by and registered with the Financial Conduct Authority. CBSs with an asset lock are called 'prescribed community benefit societies'.	CBSs may choose to adopt an asset lock, known as a 'restriction on use' of the society's assets. This prevents the CBS from transferring its assets to any other person or company apart from one with a similar asset lock. This would be a **voluntary** asset lock.	There is scope to specify that these rules are fundamental to the society by requiring a higher voting threshold to change these rules. Land, buildings or other physical assets can be sold at full market value if the CBS board reasonably decides that it is the best way to ensure community benefit.	There is no legal mechanism to entrench these rules to prevent them from being changed under any circumstance. A CBS facing insolvency may be wound up and its assets disposed of to repay creditors.	Unlike CICs limited by shares, CBSs cannot receive dividends or a share of the profits, which must be retained to further the objects of the society.

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Charity 'Wrapper' round different legal entities	There are four main legal forms that a charity may take: - Trust - Unincorporated association - Company Limited by Guarantee - Charitable Incorporated Organisation.	Trust deed Constitution or rules. Memorandum & articles of association. Constitution.	**Statutory** asset lock, regulated by the Charity Commission.	Some governing documents contain a clause that expressly prohibits the trustees from disposing of land or buildings. Some charities hold land that is designated for particular uses, such as a recreation ground, almshouse, church or school.	Trustees can sell or lease property if the sale is in the charity's best interests and the property is not designated for a particular purpose that would not be served if the sale or lease goes ahead. The value of the asset must return to the charity.	

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Community Land Trust (CLT) 'Wrapper'	A CLT must be a corporate body, such as a community benefit society, Community Interest Company limited by guarantee or Company Limited by Guarantee.	Depends on the legal structure (details above).	**Statutory** asset lock, defined by section 79 of the Housing and Regeneration Act, 2008.	It must be established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order to provide a benefit to the local community. It must ensure that its assets are not sold or developed except in a manner which the members think benefits the local community.	CLT members can decide to sell or lease property if it furthers the social, economic and environmental interests of the local community. The value of the asset must return to the CLT.	A CLT must be set up so that individuals who live or work in the specified area have the opportunity to become members (in addition to those people who benefit directly from the CLT's housing assets).

A covenant records what has been agreed between two or more parties: what can and cannot be done on land (or a building) affected by the covenant.

Positive covenants are obligations to do something, such as to contribute to a maintenance fund. **Restrictive covenants** show that something must not be done. Covenants are usually contained on the title deeds or in a separate deed of covenant, entered as a notice on the register of title. The type of covenant used affects their enforceability so legal and professional advice should be taken in any scenario using covenants.

Placing a restriction on the title deeds and/or having this written into the lease may help protect the asset for the benefit of the community in the event that the legal entity becomes insolvent by helping to make third parties aware of any restrictions on use which already exist over the assets.

These protections usually need to be put in place on acquisition and so professional legal and commercial advice should be sought.

Appendix III: Lease lengths

The length of a lease can range from 1 day to 999 years, although typically commercial leases are for a period between 1 to 25 years.

Big Local partnerships need to decide whether the costs (initial premium, yearly rent and operating costs) and length of lease are in proportion to the benefits that would be gained from taking that lease. It's an important decision to make that will involve understanding and weighing up the pros and cons.

Considering the implications of different lease lengths can be quite complicated and there are nuances to lease lengths that need to be understood.

For example, a long lease (25 years plus) with no break clauses may be problematic for a tenant that knows they want to relocate or expand in the near future. However, a long lease could be helpful for raising funding. Whilst a short lease (one to two years) may not be appropriate where a tenant is making substantial investments into the property or requires a specific location.

In addition, the length of lease and amount of rent will have tax consequences which need to be considered.

Big Local partnerships are advised to seek professional legal and commercial advice about the implications, both positive and negative, of different lease lengths (and the premium/rents and other costs involved) before coming to an agreement.

This guide, available on the Locality website, includes an overview of leases but should be used alongside seeking such advice.