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1. Background

This document aims to provide a clear starting point for you on this journey and, whilst there is a real enthusiasm for obtaining a venue, we encourage a planned and pragmatic approach as assets can also present a liability. Unfortunately, we have seen cases where community organisations have secured facilities that are not fit for purpose and as such, we aim to provide some background to support you on this journey including the pitfalls and the opportunities to explore, along with common terminology used.

Disclaimer: Please remember that our resources reflect core governance principles and good practice but do not constitute legal advice.

Over the past 20 years there has been a growing number of opportunities for community organisations to secure a community asset. This accelerated from 2006, partly due to local authorities having to reshape their services, in some instances closing facilities or downscaling to make efficiency savings. This then led to a large number of facilities that were regarded as redundant.

Many such facilities have a restrictive covenant placed upon them which prevent them from being disposed of or used for certain things, say for housing or commercial usage. As such there has been a growing movement towards asset transfer.

1. Empty buildings can attract antisocial behaviour. The costs associated with a building suffering from arson and having to be made safe can far outweigh the financial costs of gifting the building.
2. Empty buildings often suffer break-ins which require remedial actions.
3. Community organisations can secure capital investment to renovate buildings.
4. Empty buildings can still attract business rates.
5. Community organisations often provide a valuable resource and allow services to continue to be accessed.
6. Having well looked after and maintained buildings can enhance the aesthetics of a community, particularly where this community may be under serviced.

Because of the mutually beneficial situation, community groups can often negotiate a preferential arrangement to occupy a building. The **term for this is 'asset transfer'.**

In reality the freehold is not necessarily transferred but it's an opportunity to secure a long-term lease on preferential terms on a 'peppercorn lease'. This is essentially a nominal value traditionally £1 per year or referred to as a 'Token of Nominal rent' i.e. not at full market value.

2. Starting out

You may be seeking a new venue for a variety of reasons. This is particularly important for some sports such as boxing where a venue is a criteria to become registered with the NGB. Renting facilities may also be a significant financial burden.

Lease terms tend to be between 10 and 25 years but on occasions can be as long as 100 years. This is often is the case with recreational facilities such as the coalfield communities.

It is important to note that you will be entering into a legally binding contract and you will usually have full repair and maintenance responsibility for the building. It is important to recognise this, and we cover this further in Section 4 where we look to limit those liabilities.

It is always useful to explore locally, especially if you know a building is empty or due to be empty.

Public sector Assets

Each Local Authority has a different policy but you can check if they have a 'Asset Disposal list', which identifies Local Authority buildings that may be open to negotiation.

Once you have identified a potential asset, it may be useful to contact your local MP (or MSP/MS/MLA) or a local councillor to discuss your work, explain what you aim to achieve and explore if they may be able to help. It can be challenging to identify the most suitable department/team contact at your Local Authority and they may be able to help navigate this. There may be buildings which have a covenant on their sites which limit their use (e.g. educational or recreational purposes) which means that there are limitations as to what it can be used for.

As with any building that you would accommodate it is important to have an independent conditional report completed.

Typical pitfalls could include:

- Insufficient fire safety
- Accessibility issues
- The presence of asbestos
- The condition of heating and ventilation equipment
- Access to services
- Roofing/ leaks

Any of these could lead to significant costs and are not uncommon. It may even be the reason for their disposal due to uneconomical costs of repair.

There is sometimes the opportunity to negotiate terms with private sector landlords to secure a lease which can allow you to secure funding. We discuss leases in more detail in **Section 3.** In this instance there may be some leeway as business rates are chargeable on empty buildings once they are empty for three months and so this could be a win-win for you and the landlord if by you taking on the building this cost is no longer incurred. However, you should exercise some caution if thinking about securing a private sector lease as they may not be as flexible and accommodating as, say a council arrangement.

- Be careful about personal guarantors – This may mean for example if you take a lease for a specific period and for some unforeseen reason you cannot continue then the personal guarantee could be held responsible for the remaining term of the lease period.
- Ensure a conditional report is completed prior to entering and agreed by both parties.
- Be careful of review periods which could see costs increase.

3. Lease

A lease is essentially a contract by which the party that owns the land/ buildings allows another to use the land/buildings for a specific period of time providing a security of tenure, often in return for a periodic payment.

Key considerations

When seeking a lease with a local authority there are often preferential terms in recognition of the work that you deliver in the community and the responsibility of maintaining their building.

If you are seeking capital funding for a building, there are a number of fundamental principles:

- The term of the lease should be sufficient and proportionate to the level of funding you are seeking (this is explored further below)
- The funder will want sufficient safeguards to ensure that their funding will not be financially benefitting an individual/s

Typical things that funders won't support:

- leases with break clauses (these give one or more parties to the lease the right to end the lease in certain circumstances)
- Leases with forfeiture on insolvency clauses (these give the landlord the right to end the lease if the tenant becomes insolvent)

Whilst change of use through the planning authority may not be required for public buildings, it may be needed for private landlords where the building is classified to retail or industrial use. You should check this beforehand. This is often the case where, say an organisation is seeking to use an industrial unit for sport.

You will also need to check if the building would be subject to business rates. Business rates can be very expensive and there are ways in which community organisations can limit their exposure to these. We shall cover this further in **Section 4.**

Different funders adopt different policies towards the terms of lease. A good guide is as follows; please note that some funders stipulate the term of lease may need to be in place for a period after the funding is awarded - say 5 or 10 years.

Up to £100,000 - 10 years

100,000- 350,000 - 15 years

350,000- £1m – 20 years

**Note this is for guidance purposes only and each funder will have their own requirements. Remember to accommodate planning time i.e. if it takes 2 years for a significant development, then by the time the funding application is submitted you may now only have 8 years left and this may affect your ability to secure funding.*

4. Structure

A very important element of securing a facility as a community organisation is the legal structure. Many voluntary groups set out as a constituted club or an unincorporated charity and this means they are not a legal entity (i.e. they have unlimited liability). This essentially means in law there is no legal recognition of the organisation, therefore the only legal entity that can be pursued in law are its committee members or its Trustees.

What does it mean in terms of an asset?

If an organisation is not incorporated, it cannot enter in to a contract such as a lease or agreement with a contractor. This would mean that an individual or group of individuals would have to enter into the lease on behalf of the organisation. This would typically be the Trustees or the Committee members.

If anything goes wrong (e.g costs increase, unexpected payments) and the organisation cannot pay, it could mean that the committee members are personally pursued for unpaid depts and could even mean personal assets are used for the payment of debts. Whilst this is not very common, it can happen.

What if we aren't incorporated?

We highly recommend that if an organisation does not have a legal structure that this is considered prior to securing a lease. This provides a 'bubble' or body which will act as the legal representative and provides its own legal entity which can enter contracts. The liability will then sit with this legal entity, often providing what is termed unlimited liability. This means that if the directors have acted within the law and carried out their functions accordingly as directors, they will be given protection from liability. This is often called incorporation or becoming incorporated.

We consider the most common and appropriate options below:

- **Company Limited by Guarantee**

This is the basic legal entity required and involves registering a company at Companies House using a set of rules called Articles of Association. Its members, who are often also its directors, will agree to pay a guarantee if it has unpaid debts, usually £1. When forming you have the option of using template or bespoke articles and we strongly recommend using a bespoke version as this will ensure your social objectives are embedded and that certain clauses are enshrined to embed transparency and its non-profit distributing clauses. Further information can be found [here.]()

The company limited by guarantee is flexible and can change or evolve and often provides the most suitable way to get started.

This structure can also become a charity, often called a charitable company. The process is always to set up a company and then seek charitable status. You have to meet certain requirements; one is that your income is above or will be above the registration threshold. One of the key challenges with a charitable company is that you have reporting requirements to both Companies House and the Charity Commission. This is a very important thing to remember as it is common for organisations to fall behind on their company reporting which can lead to fines or even the threat of being struck off. It was common knowledge that this was often an issue, and a new structure called a Charitable Incorporated Company was introduced relatively recently.

- **CIO (Charitable Incorporated Company) SCIO in Scotland *(not yet available in Northern Ireland)***

If you know you want to become a charity and want to limit your liabilities, then this is perhaps the most suitable option. It is relatively flexible, provides the benefits of a traditional charity structure and offers limited liability. It is just one registration with and reporting to the charity commission. You do not require the income thresholds that are required to register a charity. This new structure essentially eliminates the need to register the company and then become a charity and many now opt for this option.

- Alternatively, the Company Limited by Guarantee can become a **Community Interest company (CICs).**

These are essentially a company Limited by Guarantee that also seeks CIC status from the CIC regulator. There would need to be a compliant article of association when forming and a document called a CIC 36.

One of the downsides of deciding to have the Company Limited by Guarantee regulated by the CIC regulator is that it can be relatively inflexible. Traditionally it could not change and could not remove certain clauses although things are evolving in this respect. A CIC cannot also become a charity, it will always be one or the other.

Note: Both the Company Limited by Guarantee and those that are then regulated by the CIC regulator are still subject to tax, neither gain automatic exemption from business rates. Only a charity can benefit from statutory business rate relief and tax benefits. Both are generally treated the same from a funding perspective and although some may like the fact you cannot change certain elements, there is a playoff between this and your ability to evolve.

Even you are set up as a legal entity, some landlords may ask for a personal guarantor. If you sign this then you essentially no longer limit your liability. For example, if you sign a 10-year lease and find you are no longer able to operate after 5 years then you could be liable for the payments outstanding for the rest of the term of the lease. Whilst this is less common when securing a venue from a Local Authority, it can be a common element in private leases and you should be fully satisfied if you decide to do this. It is likely that if you do look to exit a lease early it will be costly. For this reason, we strongly encourage the development of a robust business plan which includes financial forecasts. We cover this area in **Section 5.**

We have assumed that you would be incorporating from a small unincorporated organisation with limited assets and no employees. If there are employees, then the process becomes more complex and a formal process with employees will need to take place. It is recommended that you seek professional guidance in this situation in relation to TUPE- Transfer Of Undertakings, Protection of Employment.

Note 1: CICs can also be share companies. We haven't covered this because in most cases they are not the most appropriate model and often not accepted by funders due to their 'profit distributing nature'.

Note 2: How you operate internally is just as important as your legal structure. These are often tests that a funder will investigate before considering funding. They may also take in to consideration: its Board structure, its powers, if and how decisions are made and the involvement of the community of interest in the decisions. A common misconception is that the formation of a CIC or a company limited by guarantee in itself guarantees automatic eligibility.

5. Planning to succeed
"Failing to plan is planning to fail"

When looking at taking on a building, especially for the first time, it is important to develop a business plan. This is often the first thing that the Local Authority will ask for.

They may require this to submit to cabinet for approval so they need to be satisfied as to:

- What you will use the asset for
- Your plans for its future
- Your financial security
- Your ability to maintain the facility

A key element often excluded from a plan is a 12 month income and expenditure forecast accompanied with a 12-month cashflow. This is perhaps one of the most important elements as it enables you to plan for:

- Seasonal fluctuations and start up adjustments
- Periods where there are higher costs: eg. people often underestimate heating/ lighting costs for winter
- What resources are required: capital, equipment or revenue support for the 1st year
- Your ability to maintain a sinking fund – a fund put away for future repairs if, for example, you suddenly find you have a leaky roof

Manage overheads, often termed fixed costs. These are costs which can be difficult to control as they are independent of how many sessions you run or the income you generate. They are always there and must be paid and include things like power, water and heating.

Actual costs should then be compared with the forecasts and will form a basis for future forecasts.

Typically, a business plan will contain:

- An executive summary
- Organisational summary
- Background
- Key personnel
- Activities
- Future plans
- Market research
- SWOT Analysis
- Financial forecasts
- Funding requirements
- 2 year financial forecasts which is broken down into a 12 months cashflow (24 months in total)

It is useful to gain buy in from the directors/ everyone involved when developing your business plan.

Resources are available on the Sported Hub to support Business planning are here.
Cashflow forecasting templates are available here.

6. Funding

So, you have a lease, a plan and know what you will be delivering. You also know what resources you require or what remedial works need to take place.

Before applying:

As with all funding applications you need to know how much you need. For capital work it is useful to get a number of quotes and seek professional guidance to ensure that there are no underlying issues (e.g. the presence of asbestos in roofing or pipe cladding can cause significant cost increases). It is also worth considering energy efficient alternatives such as LED lighting, solar panels etc. Whilst these may be a higher initial outlay it can be cheaper in the long run.

Funding opportunities are often broken down into the following categories:

- **Revenue** –project funding
- **Capital and equipment** – Building works or equipment.

Revenue:

Typically funders will not support costs that have already been committed to such as overheads for example rent which is already been paid for or existing coaching costs. As such it may be useful to apply for these before moving in. A lot of funders that support revenue will also support smaller items of equipment, maybe to support the delivery of a project.

Typical funders for revenue are:

Lottery Awards for all
Sport England Small grants
Lloyds
Comic relief
Children in need

There are many more and you can access lots of ideas of where to look on the Sported Hub.

Key considerations are:
Be realistic.
Break down your costings.
Demonstrate a need.
Outline the impact or the difference the funding will make.

Capital

We recommend getting a number of quotations. A common query often arises with regards to VAT, and it is important that you include this in your budget unless you are absolutely certain that VAT does not apply. In the majority of cases, it will apply and unfortunately, can significantly increase the cost.

If you think that you should be VAT exempt, it is important that you seek robust guidance on this as you can be pursued afterwards. Most community organisations or sports clubs are unable to reclaim so in the majority of cases VAT will be paid and should be included.

If planning permission is required, it is recommended to obtain this before applying. A funder will unlikely be able to consider an application or commit unless planning has been secured as its viability would be questioned.

Typical capital funders include:

Sport England, Community Asset Fund
Lottery – Reaching Communities
Landfill operators – often if you are within a 10-mile radius of a site. *note there are multiple operators so you may need to search the one local to you.
Section 106: is there any development taking place locally, such as housing or industrial units? Often a payment is made as part of the planning process that can support community initiatives. Maybe have a look at the planning application online to see if this is noted or speak to a local councillor.
Renewables – often if there is a local windfarm for example, Community Foundations often manage these funds.

A useful resource for Northern Ireland based organisations
Sport Scotland for organisations based in Scotland
Capital Funding for Wales based organisations

Remember:

- Be realistic, the bigger the budget the longer it will take to secure funding. You may need to phase works so it can be completed in bite size chunks, with lower levels of funding
- Secure quotations

- Remember VAT - seek professional advice or guidance from HMRC if you have questions
- Consider timelines – especially if planning permission is required

Conclusion

Sported are here to support you on your journey and can provide support in all of the above areas throughout the Sported Hub.

Contact us if you're looking for support in a specific area. We also have volunteers with experience in asset transfer who may be able to support you throughout this process.