



Barriers to Asset Transfer

Rachel Elliott Mst., MA BSc (Hons)
Ibstock Community Enterprises Ltd

Rachel Elliott was the first employee of Ibstock Community Enterprises Ltd ("ICE"), joining them in 1997. She has been responsible for all aspects of its management and development since that time. She is a director of Leicester Shire Economic Partnership and Social Enterprise East Midlands, and works as East Midlands Regional Development Manager for the Development Trusts Association on a consultancy basis.



IBSTOCK COMMUNITY ENTERPRISE LTD (ICE)

ICE is a co-operative company limited by guarantee, with a membership of around 470 people who live and work in the Parish of Ibstock, North West Leicestershire. ICE came into being following a Civic Trust Regeneration Study and the closure of the TSB Bank in 1995. Its aim is "to make Ibstock a better place" and it is renowned in the sector for its cash machine. ICE currently owns two buildings, using one as an operational base for its One Stop Shop and is developing the second as an investment to provide managed workspace for local business and an income-stream for ICE's working the future.

SOCIAL ENTERPRISE EAST MIDLANDS (SEEM)

Social Enterprise East Midlands (SEEM) has been created to ensure that social enterprise in the East Midlands flourishes and grows. SEEM brings together, for the first time, the key stakeholders in the region's social enterprise sector with a collective mission 'to create an environment in the East Midlands where social enterprise is encouraged to develop and enabled to grow.'

SEEM was established in April 2002 following research commissioned by the East Midlands Development Agency, which concluded that social enterprises are a key player in reducing social exclusion and promoting the regeneration of disadvantaged and declining areas.

SEEM has catalytic, policy, lobbying, networking and mainstreaming responsibilities. Their future strength will be realised through these different functions and forms. At the same time as being a regional unit, SEEM provides a framework through which existing social enterprise support agencies and trade associations can unite.

SEEM will act as a 'department store' for social enterprises, providing them access to a wide range of services, some managed by SEEM but most delivered by our partners.

SEEM has identified 3 key areas for action:

- **Creating an enabling environment and entrepreneurial culture:** influencing and shaping policy, developing training programmes and creating markets for social enterprises,

- **Supporting social enterprises to become better businesses:** developing business support services, producing tools to assist organisations to harness their trading potential,
- **Establishing the value of social enterprise:** developing social audit measures, raising awareness of the sector, demonstrating the added value of social enterprises.

SEEM also seek to address the problems that social enterprises have in accessing finance to support their start-up and growth. SEEM manages the Social Enterprise Development Fund to provide grants for new and developing social enterprises and we are also a partner in the East Midlands Community Loan Fund.

For more information on SEEM visit our web site at www.seem.uk.net



Introduction

In parts of the community enterprise sector, the ability to acquire assets is held up as a significant factor in the success of an organisation. As George Nicholson, writing in the introduction to Hart (1997), acknowledges:

"The path from dependency to risk-taking is littered with obstacles ... But there is now a considerable body of knowledge and experience which suggests that the possession of a tangible asset – land, buildings or a dedicated income – is the key to achieving the goals of self-sufficiency, independence and sustainability which underpin the practice of community based regeneration organisations".

What is an asset?

There are several types of asset that a community enterprise might acquire. A framework to analyse these assets has been developed, based on the work of Frisbee (1930), it includes:

- Operational assets – buildings and equipment required to undertake the business
- Current assets – available to meet current expenses or for any other purpose (grants, income, contracts, stock, human resources, rental income, loan repayments)
- Endowment assets – physical or monetary assets held in a permanent way and used to produce income
- Trust assets – assets required to meet some future need which may or may not be defined (eg advance payment of grants, reserves) including assets held in 'trust' on behalf of the community.

Potential Barriers

Many of the barriers encountered in the transfers stem from imbalances in power, lack of trust and differences in culture between the two organisations involved, and they may manifest themselves at a strategic, operational or practitioner level, (Booth, 1983).

A framework has been developed to identify barriers: what follows is an illustrative list of the types of barriers but it is not exhaustive: the first two barriers encountered relate to the relationship between the parties, whilst the remainder are of a more technical or structural nature.

Accountability

Finance

State Aid Rules

Valuation

Capacity/Credibility

Claw back

Property market in disadvantaged areas

Powers to dispose of land at 'less than best consideration'

Community enterprises are often informal partnership arrangements set up to attract funding. Many proposals involving asset transfer come from these networks but they are only likely to be successful when there is real trust and some real element of reciprocity within the relationship between the parties to the transfer. To help manage this, conditions are imposed on the transfer and the community do not end up with full ownership rights. Furobotn and Pejovich (1974) suggest that ownership rights take three parts:

- the right to use the asset,
- the right to appropriate returns from the asset, and
- the right to change the form and/or substance of an asset.



The Palace Cinema, Ibstock

A 1912 cinema, currently owned by Ibstock Parish Council, leased to Palace Arts Centre, an IPS, with the intention of refurbishment to provide a community arts space. An example of a mixed type of asset: current, endowment and trust, as it will provide a base for activity, an income, and has a value to the community as part of their heritage that is held in 'trust' for the future.

Analysis of the barriers shows that often only part of the ownership rights are transferred, usually the right to use the asset. Arrangements such as claw back and conditions relating to disposal mean that the second and third part of the ownership rights are retained by the original owner and are not included in the transfer. This is an area that would benefit from further research.

This is particularly likely to be the case where the transfer involves operational assets, rather than as endowment or trust assets. This suggests that some form of arbitration may need to be developed to help to resolve issues that arise from asset transfers. Otherwise, the Government may find itself required to provide increasing amounts of funding simply to manage the legal costs associated with producing and agreeing appropriate forms of contract between the parties.

Tuckett (1999) acknowledges that such issues look different to different 'partners'. From a local perspective there will be a desire to have flexibility to address local priorities. From the funders' perspective, there is a need to prevent the leakage of public funds into private profit. From the Government's perspective, there is a need to manage annual budgets and ensure that investment is used effectively. From a European perspective there is a need to seek minimum standards. Trying to manage the different levels and types of risk associated with each perspective will lead to misunderstanding, if not actual breakdown in trust between the partners.

"The 'new approach' requires something ... where risk and failure are accepted as inevitable, and where success is rewarded, especially when it arises from the addressing of social needs. The traditional approach to regulation will not help us here. Is there another way?" (Tuckett, 1999)

Much of the earlier work on asset transfer concentrated on technical barriers rather than those of inter-organisational relationships. This work has been produced with a view to changing policy and in this context, asking the difficult question: "Do we trust each other enough to make this work?" may not have felt appropriate. However, in the policy arena, these types of questions can no longer be ignored if policy is to succeed in its objectives.

Research Results

When the research was analysed, it became clear that some of the barriers identified were a function of internal confidence or capacity within the organisation looking to receive the asset. In one interview concern about organisational capacity emerged very strongly. This led to a very complex arrangement involving head leases and another partner taking responsibility for the implementation of the construction phase.

Several community respondents identified different approaches within the same authority and this was also evident in the responses received from statutory partners.

A typical situation was encountered when a fairly senior manager, from an authority that employs staff to work with community groups to develop projects involving asset transfer, commented: 'the Council is taking a cautious approach to asset transfer'.



57 High Street, Ibstock

Currently being developed as managed workspace using Adventure Capital Fund, Leicester Shire Economic Partnership and Coalfields Regeneration Trust. This is intended as an operational and endowment asset as it helps ICE achieve its social goals and provides a long-term income stream to support other aspects of ICE's work.

Where 'trust' assets are involved the barriers encountered are technical rather than stemming from the relationship between the partners. The following is an example of an approach to managing the risk associated with such assets.

In a case involving a potential liability – contaminated land – the local authority had included in the contract an obligation that they would undertake any necessary negotiations with the original owner if the remediation works that had taken place were proved to be inadequate or ineffective.

It is unlikely that such an asset would be transferred to an organisation that was deemed to be untrustworthy or that did not have sufficient experience and expertise to manage the asset.

One of the interviewees took a robust approach to the issue of lack of trust: "if you are not worthy of the trust, then something needs to be done about it".

Most respondents wanted to acquire assets to achieve independence, particularly from grant funding. This creates a tension when the assets are transferred using public funds, which have strategic

objectives attached to them. As yet, there are very few funds whose objective is to achieve independence for community enterprises.

A regional development agency had agreed to lease a property on a peppercorn rent for use as managed workspace. When it was pointed out that the lease would not create an asset that could be used as security for a loan, the response was: "We would not let you borrow against it." After further discussion about how this would restrict the organisation's capacity to develop, the final response was: "Well, you would have to present a business case".

Other interviews highlighted the difficulty in achieving a consistent approach when dealing with partners. This makes it very difficult to develop a sense of confidence in the partners.

A developer offered land for community benefit at a peppercorn rent as part of a s106 planning agreement. This was offered to a local community organisation who began work on feasibility and funding for the project. After two years of negotiation a report was prepared for the local authority in favour of the project. When the report went to Committee, it was rejected on the basis that there had been no open bidding round. Eventually an open bidding round was held and the original organisation discovered that a competitor intended to offer £40,000. A commercial valuation of £300,000 was received and the organisation decided to make an offer at this level, which was far in excess of any other offers received. It was another two years before the Council finally agreed to release the land for the amount of the offer.

It seems reasonable to assume that where a partnership is involved, it might be possible to share the risk but this does not appear to be the case.

"The Council are nervous to move without the support of the local New Deal agency to whom we have presented the project twice ... Thus far they want to take it to their board for no apparent professional reason".

The following example shows how, even when an organisation has undertaken a full risk assessment, this is not always appreciated by their partners.

In one project, the community organisation had undertaken a risk assessment, identifying 24 potential areas of risk but had still decided to go ahead with project. At the last moment, an officer from a statutory sector partner queried whether the organisation concerned had the capacity to manage the project.

This particular organisation is one of the more established organisations interviewed, with a significant turnover and staff, and a long and distinguished track record.



The Community Shop, Ibstock

An example of an operational asset – its primary function is to help ICE deliver its social goals, although it does produce income that helps to sustain ICE's day to day activities. It is owned freehold and has no encumbrances on its future use or disposal.

Conclusions

The classification of assets by type provides a useful framework to understanding what types of barriers might be encountered when considering asset transfer projects. However, many of the assets being considered for transfer are intended to fulfil a variety of functions. This multi-purpose approach is designed to appeal to funders, but it also creates some of the barriers that organisations encounter. Conditions appropriate to a trust asset are attached to assets that intended to be an operational asset. Conditions are also attached to operational assets which prevent them from being used as an endowment asset.

Problems arising from lack of trust and need to manage risk were apparent in transfers involving all types of asset, but where assets are to be held in 'trust', the barriers tend to be technical and can be covered by contractual arrangements. This in turn leads to high transaction costs and these need to be built into any asset transfer projects where the asset functions as a 'trust' asset.

What has emerged strongly as a barrier is concern over organisational capacity on the part of the recipient organisations. This will only be addressed by investing in the sector in a way that allows them to grow as organisations at the same time as they grow their asset base.

The problem of asset transfer as a policy tool arises from a misunderstanding of the transfers that have taken place to date. Almost without exception, the community organisations that have undertaken asset transfer projects have done so because they wish to gain independence.

The community sector needs a clear understanding of the type of asset they wish to acquire in order to establish mechanisms and sources of funding that will allow them to achieve their goals. It will also provide a framework within which decisions can be made about whether a condition being imposed on a transfer is reasonable or inappropriate. Policy makers need rules to be clear and applied in a consistent manner. To ensure the development of a trusted arbitration system would be helpful in reducing transaction costs and overcoming problems of risk and uncertainty.

This may lead to a more professional and regulated environment for the sector. There will be those who welcome this and those for whom this is unacceptable. If the sector is not willing to accept greater levels of regulation, then it must also accept higher transaction costs.

The majority of barriers appear to arise from an incomplete transfer of ownership, ie only the rights to

use the asset are transferred, which leads to the imposition of conditions that prevent the asset being used to gain independence. It is important that a greater understanding of the concept of 'ownership' is developed. In particular, the owners of the asset must understand how much of their ownership they are willing to transfer and to develop appropriate control mechanisms for the elements of the ownership that they wish to retain.

Further research

The study suggests several areas for further research including:

- The need to develop a form of contracting for asset-transfer that includes arbitration to manage risk and uncertainty.
- What is the role of regulation within the sector?
- Issues arising from the transfer of other forms of asset
- The relationship of the parties involved in asset transfer projects against a background of large scale community protest about the future of that asset
- How consistent are statutory authorities in the approach they take to asset transfer projects ■



Sence Valley Country Park, Ibstock

A former open-cast coal pit, now owned and managed by Forest Enterprises as a Country Park, within the National Forest. An example of asset transfer from the private to the statutory sector. This is an example of a 'trust asset' held on behalf of the community. A team of local volunteers is involved in the day to day management of the Park.

Common Themes:

This research was undertaken to complete a thesis for the Master of Studies in Community Enterprise at the Judge Institute of Management Studies, Cambridge University. Three researchers from the East Midlands, Nizam Chowdhury, Rachel Elliott and Chris Wade, all received support from East Midlands Development Agency for their research and this Research Note is part of a linked series featuring their findings. The three topics covered are Barriers to Ethnic Minority Social Enterprise, Barriers to Asset Transfer and Unlocking the Potential of Rural Social Enterprise. Some common themes emerged from the three studies and these are set out below:

Most social enterprises are currently small scale but have potential to grow. There is a considerable policy imperative at this time to increase both the scope and size of the social enterprise sector. However, there is also concern within the sector over whether or not this is desirable and over issues of capacity.

All three studies identified barriers faced by social enterprises, many of which were common, including:

- Access to finance
- Access to advice and support
- Restricted networking opportunities
- Lack of skills and difficulties in recruiting skilled staff
- Lack of appropriate premises.

MASTERS OF STUDIES IN COMMUNITY ENTERPRISE JUDGE INSTITUTE OF MANAGEMENT UNIVERSITY OF CAMBRIDGE

The MSt in Community Enterprise is a two-year part-time postgraduate degree course for senior managers in community-based regeneration organisations. The course, which is the only one of its kind in the UK, has a number of aims:

- To enable senior staff in organisations involved in community enterprise, social business and community regeneration to develop leadership and management skills through participation in an intellectually rigorous and practically relevant course.
- To provide participants with a framework for critically evaluating the strategies and environments of their organisations.
- To foster a strong understanding of the community enterprise culture and its context.
- To develop an understanding of ways of achieving self-sufficiency and sustainable business practices in organisations with social aims.

Achievements

The course admitted its first cohort of students in 2001 and has already achieved significant milestones. These include:

- The development of an innovative academic programme involving Faculty from the Judge Institute of Management, including the Cambridge Entrepreneurship Centre, and the Department of Social and Political Sciences tailored specifically to the needs of community enterprises.
- A diverse intake of students many of whom have no formal academic qualifications, and 25 per cent of the first cohort from black and ethnic minority backgrounds.
- A research conference, organised in association with the Development Trusts Association, which allowed the students to disseminate their learning during the first year of the course to practitioners and academics involved in community enterprise.
- Very high academic standards achieved by the first cohort of students which compare favourably with other Masters courses at Cambridge and leading universities elsewhere.

For more information email:

Communityenterprise@jims.cam.ac.uk

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NB: In order to maintain the anonymity of respondents, the illustrations for this report are taken from the author's own work at Ibstock. None of the examples shown feature in the research that was included within the report.

Contact Details:

Rachel Elliot
Ibstock Community
Enterprise Ltd.
12 Chapel Street
Ibstock,
Leicestershire.
LE67 6HE

Tel.- 01530 262 882
Fax.- 01530 263 227
Email.- info@ibstock.org.uk