

Caldicot Town Centre:

Targeted Regeneration Investment Scheme

Urban Centre Property Enhancement Fund / Urban Centre Living Grant

Terms and Conditions of Grant

This form is available in Welsh/ Mae'r ffurflen hon ar gael yn Gymraeg



Gweithio mewn partneriaeth â
Llywodraeth Cymru
Y Gronfa Targedu Buddsoddi

Working in partnership with
Welsh Government
Targeted Regeneration
Investment Fund

The Grant offer is subject to all the terms and conditions detailed within this document and any special conditions identified in your Grant offer letter attached.

BEFORE AGREEING TO THESE TERMS AND CONDITIONS AND SIGNING THE GRANT ACCEPTANCE FORM YOU ARE ADVISED TO TAKE INDEPENDENT LEGAL & FINANCIAL ADVICE

In these terms and conditions, the following terms shall have the following meanings:-

- “Applicant”** means the recipient of the Grant.
- “Bill of Quantities”** means a detailed statement of work, prices, dimensions, and other details of the Works.
- “Completion Date”** means the date of practical completion as determined by the Applicants Agent and agreed by the Council
- “Council”** means Monmouthshire County Council, County Hall, The Rhadyr, Usk, NP15 1GA
- “Grant”** means the sum to be paid to the Applicant in accordance with these terms and conditions and the Grant Offer Letter.
- “Grant Acceptance Form”** means the form annexed to these terms and conditions.
- “Grant Offer Letter”** means the letter issued by the Council to the Applicant confirming the offer of a grant.
- “Property”** means the building or buildings and the land belonging to them subject to the Grant.
- “Works”** means the works detailed in the application form submitted by the Applicant and approved by the Council in the Grant Offer Letter.

1.0 Confirmation of Acceptance of Grant offer and terms and conditions and Commencement of Grant works

- 1.1 The Applicant must complete and return the Grant Acceptance Form to accept the offer of Grant and the terms and conditions within 14 days of the date of Grant Offer Letter. The Applicant must also state the date that works are expected to commence and state the date that works are expected to be completed.
- 1.2 Works must commence within 28 days of the date of the signed Grant Acceptance Form, unless otherwise agreed by the Council in writing. Failure to do so may result in the offer of Grant being withdrawn.
- 1.3 No expenditure or works should commence before Grant approval, unless otherwise agreed in writing, as the Grant towards Works cannot be awarded retrospectively.

1.4 The agreed Bill of Quantities, as per the application, must be adhered to, and failure to do so may result in withdrawal of the Grant offer.

2.0 Ownership of Property

2.1 Applicants must have a minimum 7 year unexpired lease or own the freehold on the Property. If a leaseholder, Applicants must provide a letter of consent in respect of the Works from the freeholder and a copy of the lease agreement.

2.2 Applicants who own the Freehold on the Property must ensure that all tenants (current and up to 5 years from Grant offer) situated within the Property are made aware of the conditions of the Grant and are compliant with these.

2.3 The Applicant must ensure the Property is covered by appropriate building insurance policy during Works, and for a 5 year period after the Grant is completed. In all cases you must insure and keep the Property insured against all comprehensive risks with a reputable insurance company to its full reinstatement value.

2.4 The Applicant is responsible for indemnifying the Council against any damages and liabilities, in relation of their project, and agrees to do so through acceptance of these terms and conditions.

2.5 You will be liable for, and hereby agree to indemnify the Council and keep the Council indemnified against all damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities whatsoever and howsoever arising as a consequence of and in connection with:

- i. Any works to be carried out to the Property; and/or
- ii. The use of the Property and activities undertaken therein which are aided in whole or in part by the Grant.

3.0 Statutory requirements and expectations

3.1 Approval of the Grant does not provide, or imply, confirmation of any other required consents, such as Planning Permission, Building Regulations or Change of Use. Applicants are responsible for seeking the appropriate consent(s) needed to carry out the Project and ensure that all works comply. Where such consent(s) are outstanding, the Council reserves the right to delay or withdraw payment of the Grant.

3.2 All works need to comply with Council Planning Policy & Guidance.

3.3 For tourism related projects Applicants must be part of an accredited scheme or be willing to work towards a relevant accredited scheme such as Visit Wales Quality Grading or AA scheme.

3.4 For projects which incorporate residential end use, the Applicant will need to provide evidence of accreditation with Rent Smart Wales and, if applicable, provide Houses in Multiple Occupation License/s.

3.5 Responsibility for compliance with up-to-date and relevant Construction (Design and Management) (CDM) Regulations rests with the Applicant.

3.6 For projects which incorporate the use of scaffolding and/or skips, the Applicant must ensure that the necessary licences and/or permits are in place.

3.7 Applicants must ensure, where applicable, full compliance with the Party Wall Act

4.0 Implementation of approved works

4.1 All works must be completed by the date set out in the Grant Offer Letter (unless otherwise agreed by the Council in writing).

4.2 Any proposed changes to the approved project or the contractor(s) must be agreed in writing with the Council.

4.3 Applicants are responsible for ensuring that all contractors are registered with a Competent Person Scheme. Certificate/s of Compliance provided by the registered contractors for relevant installations need to be submitted at project end to allow for final payment consideration. Examples of Competent Person Scheme related works are as follows:

- i. Any works to replace windows and/or external doors must be undertaken by a FENSA registered installer or equivalent registered contractor.
- ii. Any gas works must be undertaken by 'Gas Safe' registered contractors or equivalent registered contractor.
- iii. Any electrical works must be undertaken by a NIC or equivalent registered contractor.

4.4 Any necessary works to make-good any adjoining buildings/property shall be completed to the satisfaction of the Council.

4.5 The cost of additional works is the responsibility of the Applicant. A request for an increase in Grant as a result of unforeseen/ additional works can be made to the Council. However, the Applicant must notify the Council in writing before any unforeseen/ additional works are undertaken. Consideration of additional Grant must be agreed by the Council in writing and will be subject to availability of funds and the level of the original Grant award.

4.6 Ineligible expenditure includes:

- i. Repair and maintenance costs
- ii. Cost of works being carried out as a legal statutory requirement
- iii. Legal and accounting fees
- iv. Cash and credit card payment to agents/contractors
- v. Costs for applying for statutory consents
- vi. Works carried out prior to the Grant offer (unless approved by the Council in writing)
- vii. Any invoices paid for using cash/credit card

5.0 Payment of Grant / financial evidence

5.1 Payment of the Grant will not be made until **all** Works are completed to the satisfaction of the Council and subject to the following:

- i. Submission of original invoice(s) and Grant claim form.
- ii. Submission of bank statement evidencing payment of all paid invoice(s).
- iii. Satisfactory revenues check (confirmation that Applicant is not in arrears with the Council).
- iv. Confirmation that all necessary statutory consents have been complied with, including but not limited to *Planning Permission, Building Regulations, Change of Use and (where applicable) consents relating to Environmental Health and/or Public Protection*.
- v. Confirmation from an independent Quantity Survey and/or Construction Professional (as appointed by the Council) that the Works have been satisfactorily undertaken. Final Grant payment will be based on a fair and reasonable cost, as assessed by an independent Quantity Surveyor (as appointed by the Council)
- vi. If the independent Quantity Surveyor and/or Construction Professional deems the work to be unacceptable, the Applicant will have to rectify the work at their own cost, and may incur a further cost for the Quantity Surveyor and/or Construction Professional to reassess the work. If the work is not rectified to a satisfactory standard, the Council may have the work corrected and may withhold part, or all of the Grant.
- vii. Production of Interim/Final Certificates

5.2 Interim payments are at the discretion of the Council.

5.3 Applicants are required to provide evidence of the award of contract before any payment is released.

5.4 Invoices paid through credit card/debit card/hire purchase/extended credit agreements/finance leases/contra invoices and cash purchases **will not** be considered for grant funding; Payments must be in the form of BACS, Faster payments, CHAPS or cheque.

5.5 Amendments to payment schedules such as *Pay Less Notices* are not acceptable.

5.6 Agents must not make payments to any contractors on behalf of the Applicant.

5.7 When the Works are complete, original invoices must be submitted – photocopies/facsimiles are not acceptable. Where invoices are to be retained for tax purposes the Applicant should arrange duplicates for this purpose as invoices submitted for the Grant claim will not normally be returned. A valid invoice from a registered trading company must conform to the following:

- i. Be on headed company paper, indicating contractors name, address and registered office and must be an original document.
- ii. Be clearly headed as an 'Invoice' (not an estimate, pro forma invoice etc).
- iii. Indicate a unique reference number.
- iv. State the contractor's VAT registration number (if applicable).
- v. Show the net cost, VAT and total cost.
- vi. Show an invoice date.

5.8 Without prejudice to the Council's other rights and remedies, the Council may at its

discretion withhold or suspend a Grant payment and/or require repayment, either in whole or part, in the event that:

- i. The Works are not carried out in accordance with these terms and conditions.
- ii. Any expenditure has been incurred prior to the date of Grant approval. Costs incurred by Agents within a reasonable time prior to grant approval may be permitted; however, any costs incurred prior to Grant approval are at the risk of the Applicant.
- iii. The Works (except for site preparation) commence prior to the signed terms and conditions being returned to the Council.
- iv. There has been an overpayment of the Grant.
- v. The Grant is not used for the purpose of the Works as identified in the Grant application.
- vi. The Council considers that the Applicant has not made satisfactory progress with the delivery of works
- vii. The applicant is, in the reasonable opinion of the Council delivering the project in a negligent manner.
- viii. The applicant obtains funding from a third party which, in the reasonable opinion of the Council, undertakes works that are likely to bring the reputation of the Council into disrepute.
- ix. Any information provided in the Grant application or subsequent or supporting correspondence is found to be misleading, incorrect or incomplete.
- x. The Applicant has an interest in the contractor(s)/ supplier(s) used and has not declared to the Council their interest with the contractor(s)/ supplier(s).
- xi. The Applicant is in arrears of any payment due to the Council.
- xii. There is any evidence of fraud, bribery, corruption, collusion or any unlawful activity encountered within the realms of the Grant project and its associated procedures, which may also lead to prosecution.
- xiii. The applicant is the subject of a proposal for voluntary arrangement or has a petition for an administration order or a petition for a winding up order brought against it or passes a resolution to wind up or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors or purports to do so, or if a receiver or any other person is appointed in respect of its undertaking or any of its property.
- xiv. Any of these terms and conditions have not been complied with.

5.9 Should the applicant be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the works or compliance with the Terms and Conditions of Grant, it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council and grant monies.

5.10 The monitoring of contractors may take place by the Council, or another organisation appointed on its behalf, in order to demonstrate that payment in full has been made.

5.11 Grant payments will be no more than the Grant intervention rate and maximum Grant level as stipulated in the Grant Offer Letter, unless agreed otherwise by the Council in writing.

- 5.12 The Grant will usually be paid in agreed instalments on the production of invoices, interim certificates, defrayment evidence etc. following satisfactory completion of the Grant Works as declared by an independent Quantity Surveyor (as appointed by the Council)
- 5.13 All Grant payments are at the discretion of the Council. The amount of Grant specified in the Grant Offer Letter is the maximum contribution towards the project but in the event of there being any reduction in cost of the approved works, the Council will make a pro-rata reduction to the amount of Grant originally offered
- 5.14 Non-VAT registered Applicants are required to inform the Council should you become VAT registered.
- 5.15 The Applicants Agents will produce a final report detailing all work undertaken.
- 5.16 A minimum of 10% of the total Grant award will be withheld (Retention) until the Council is satisfied that all of the work has been completed to the required standard, as declared by an independent Quantity Surveyor and/or Construction professional and a copy of the practical completion certificate has been received.
- 5.17 You must not use any part of the Funding to facilitate, at any point during the terms period,; (1) party political purposes; (2) the promotion of particular secular, religious or political views; (3) gambling; (4) pornography; (5) offering of sexual services (6) any kind of illegal activities (7) any kind of activity which in our opinion could bring the Council into disrepute'

6.0 Project Monitoring

- 6.1 The Council must be permitted full access to the Business/Property (which may include the records of tenants situated in the Grant assisted property) in order for them to evaluate the effectiveness of the Grant aid and compliance with its terms and conditions. This includes all relevant paperwork evidencing outputs. Please note it is the responsibility of the Grant Applicant to make any tenants aware of this condition and give the required notice to any tenants prior to the Council accessing the Property.
- 6.2 It is the Applicant's responsibility to ensure that evidence to support any outputs is made available to the council, even if the Property is leased out to a third party.
- 6.3 The Welsh Government and any representatives acting on behalf of this organisation has the right to carry out audits at any time, and the Applicant must fully comply with the requests of these organisations and the Council.
- 6.4 Regular site meetings should be programmed at the outset of the project. Meetings should include the project agent, main contractor and relevant Council officer(s). All meetings will be minuted. (NB. Inability to comply with the terms and conditions of this Grant may affect any future applications for financial support).
- 6.5 Progress of work will be photographed.
- 6.6 Valuation sheets shall be submitted with grant claims including an electronic version.

6.7 A detailed Programme of Works must be produced by the main contractor prior to work beginning on site. The Programme must be updated accordingly.

7.0 Publicity

7.1 Projects must erect a sign on site during the construction phase, acknowledging funding sources. This will be supplied by the Council.

7.2 On completion of the scheme, projects must erect a funding plaque in a prominent place, acknowledging funding sources. This will be supplied by the Council.

7.3 The Council and Welsh Government reserve the right to publicise any project supported.

8.0 Post completion conditions / repayment of Grant

8.1 Approved works must be maintained to the satisfaction of the Council for a period of five years. Failure to maintain the Property to a reasonable standard may result in Grant aid being reclaimed.

8.2 The agent must produce a Maintenance Plan for the property.

8.3 Any future alterations to the building within a 5-year period of completion of the works must be agreed, in writing, with the Council. Failure to do so may result in Grant aid being reclaimed.

8.4 Should any information detailed within the Grant application change prior to, during, or for a five year period following final receipt of Grant; the Applicant must immediately notify the Council in writing. Where changes occur Applicants should be aware that any changes to the project may affect the level of Grant award offered or paid. Failure to notify the Council of any changes post Grant award may result in the full reclaiming of Grant.

8.5 Where 'Urban Centre Property Enhancement Funding' is awarded, the applicant agrees to ensure the immediate promotion and letting of the enhanced commercial unit. Should the unit not be let and trading within 6 months of the "Completion Date", the applicant agrees to let the property to the Council, at a peppercorn rent, for community benefit, until such time as a commercial let has been secured.

8.6 Grant recipients will have a legal charge and a restriction registered in favour of the Council against the Grant funded Property/registered estate. The legal charge and restriction must remain registered against the property for a period of 5 years from the date of the final payment of such part of the Funding.

The restriction recorded shall be in the following terms or such similar terms required by the Land Registry: -

'No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by Monmouthshire County Council, County Hall, The Rhadyr, Usk, NP15 1GA, or their Conveyancer.'

The Legal Charge shall be recorded in the following terms or such similar terms required by the Land Registry: -

'No disposition or charge of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge date in favour of the Council or their Conveyancer.'

- 8.7 If the property is not currently registered, the applicant will be required to apply for voluntary registration.
- 8.8 The Applicant will be responsible for any legal costs incurred by the Council to affect the restriction and charge. This will be to a maximum of £200 and be payable on return of signed Grant Award letter to the Council.
- 8.9 The applicant is advised that prior to executing the legal charge the applicant should seek independent legal advice from a solicitor or other legal representative concerning the consequences of doing so.
- 8.10 Should the Property title/estate have any existing charges or restrictions recorded against it then the Applicant is required to assist the Council, as it so requires, in order to agree and complete any deed of priority that may be required to be entered into with any other party.
- 8.11 The applicant shall give the Council prior notice of any intention to vacate, transfer or register a charge against the property (or part of) to which the grant relates within 5 years of the date of the final payment of grant. In this event the Council reserves the right to clawback the full level of grant funding that was provided. Should the building receive planning permission for change of use prior to disposal then 100% of grant will be reclaimed.
- 8.12 If a project receives Grant aid to bring a vacant floor in to use, should this floor be utilised for anything other than the previously agreed end use then up to 100% of the Grant will be reclaimed. This will apply for five years after the final Grant payment.
- 8.13 In the event of "disposal" of the property, through sale or long lease of the property, the applicant undertakes to provide up to 100% repayment of the Grant, as determined by the Council, immediately upon the completion of the sale or lease of the property.
- 8.14 A gift or transfer of the property for no consideration to a family member or the vesting of the property in any beneficiary under a will or intestacy without any consideration changing hands will be treated as an "Exempt Transfer" for the purposes of the Grant conditions and none of the grant will be repayable. However, the Council's consent to such an "Exempt Transfer" will be conditional upon the new owner(s) entering into a direct agreement or covenant with the Council to comply with the Grant conditions and to repay the Grant or a proportion thereof in the event of any further sale or non-exempt transfer of the property within the 5 year grant period. The legal charge and restriction will remain registered against the title for the remainder of the grant period.

- 8.15 Original documents relating to the project supported with this Grant aid must be retained until notified in writing that it is safe to destroy them. Documents will need to be retained until the date confirmed in writing by the Council.
- 8.16 If the project outputs are not attained the council has the right to reclaim the Grant in part or in full.
- 8.17 All prospective tenants or lessee(s) must be made aware of the above conditions

9.0 Confidentiality

- 9.1 Subject to Clause 10 (Freedom of Information), each party shall, during the term of this Grant and thereafter, keep secret and confidential business, technical or commercial information disclosed to it as a result of the Grant and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Grant or save as expressly authorised in writing by the other party.
- 9.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any business, technical or commercial information which:
- i. at the time of disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Grant by the receiving party;
 - ii. is already known to the receiving party as evidenced by written records at the time of its disclosing party and was not otherwise required by the receiving party from the disclosing party under any obligations or confidence; or
 - iii. is at any time after the date of this Grant acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

10.0 Freedom of Information

- 10.1 The Applicant acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIR').
- 10.2 The Applicant shall:
- i. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR;
 - ii. transfer to the Council all requests for information relating to the Grant that it receives as soon as practicable and in any event within 2 working days of receipt;
 - iii. provide the Council with a copy of all information belonging to the Council requested in the request for information which is its possession or control in the form that the Council requires within 5 working days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
 - iv. not respond directly to a request for information unless authorised in writing to do so by the Council.

10.3 The Applicant acknowledges that the Council may be required under the FOIA and EIR to disclose information without consulting or obtaining consent from the Applicant. The Council shall take reasonable steps to notify the Applicant of a request for information to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision of the Grant terms) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIR.

11.0 Data Protection

11.1 The Applicant shall (and shall procure that any of its staff involved in connection with the activities under the Grant shall) comply with any notification requirements under the General Data Protection Regulations (GDPR) and both parties will duly observe all their obligations under GDPR, which arise in connection with the Grant.

12.0 Anti-Discrimination

12.1 The Applicant shall not unlawfully discriminate with the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

12.2 The Applicant shall take all reasonable steps to secure the observance of clause 12.1 by all servants, employees or agents of the Applicant and all suppliers and sub-contractors engaged in the works

13.0 Limitation of Liability

13.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Applicant undertaking the Works, the use of the Grant or from withdrawal of the Grant.

13.2 The Applicant shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Applicant in relation to the Works, the non-fulfilment of obligations of the Applicant under the Grant or its obligations to third parties.

13.3 The Council's liability under the Grant is limited to the payment of the Grant.

14.0 Assignment

14.1 The Applicant may not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of the Grant.

15.0 Waiver

15.1 No failure or delay by either party to exercise any right or remedy under the Grant shall be construed as a waiver of any other right or remedy.

16.0 No Partnership or Agency

16.1 The Grant shall not create any partnership or joint venture between the Council and the Applicant, nor any relationship of principal and agent, nor authorise any party to make or enter any commitments for or on behalf of the other party.

17.0 Joint and Several Liabilities

17.1 Where the Applicant is not a company, nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign the Grant Acceptance Form on behalf of the Applicant shall be jointly and severally liable for the Applicant's obligations and liabilities arising under the Grant.

18.0 Contracts (Rights of Third Parties) Act 1999

18.1 The Grant does not and is not intended to confer any contractual benefit on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

19.0 Governing Law

19.1 The Grant shall be governed by and construed in accordance with the law of England and Wales as applied in Wales and the parties submit to the exclusive jurisdiction of the English and Welsh courts.

The Council reserves the right to withdraw or reclaim Grant monies should the above conditions not be met or works deemed unsatisfactory.

These terms and conditions should be read in conjunction with the Grant Acceptance Form and the Grant Offer Letter including any special conditions of Award of Grant. These documents together shall constitute the agreement between the Applicant and the Council.

GRANT ACCEPTANCE FORM

Confirmation of Acceptance of Grant Offer and Terms and Conditions

The Applicant should confirm acceptance of the Grant Offer and terms and conditions by signing and returning two **complete copies** to the Council.

Project and Project Reference:

Property:

Date of start of works:

Date of end of works:

Appointed contractor:

Grant Applicant:

I/we hereby accept the Grant Offer subject to the above terms and conditions

Signed: _____

Name: _____

Position: _____

Date: _____

I/we expect the work to start on the above project on the following date:/...../...../

Note: You are advised to keep a further copy of this document for your own records