

P-05-1112 Help Welsh Communities Buy Community Assets: Implement Part 5 Chapter 3 of the Localism Act 2011, Correspondence – Petitioner to Committee, 01.02.21

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31/01/2021

Janet Finch-Saunders MS
Chair, Petitions Committee.
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN.

Dear Janet,

Thank you for your response to my petition **P-05-1112: Help Welsh Communities Buy Assets of Community Value**, and also for giving me the chance to contribute my thoughts and research into this area before the petitions committee meets to discuss this topic on February the 9th, 2021. I have also submitted a briefing document on the issue of Assets of Community Value for the committee's consideration which I hope will be of use.

I also greatly appreciate the Deputy Minister's letter to the committee dated the 11th January. However, I do not feel that this letter adequately addresses the concerns raised by my petition. I would therefore like to briefly respond to some of the points raised by the Deputy Minister in her letter as a way of impressing upon the committee and Welsh Government the urgent need for concrete action over the issue of assets of community value.

The minister notes that "Welsh Ministers decided not to bring these measures into force in Wales at the time but to instead keep the matter under review".

While it is always important to get things right and to account for the distinctiveness of the Welsh political and social context, ten years have now passed since the localism act was written, and in that time there have been a multitude of reviews, reports, pilot studies and consultation documents, all of which have provided empirical evidence that has recommended strong, Welsh legislation be passed to help Welsh communities retain assets of community value. Indeed, in 2015, the former communities minister Lesley Griffiths belatedly accepted the findings of these various consultations and strongly intimated that legislation would finally be passed between 2016 and 2021, stating: "legislation in relation to this issue, including making a commencement Order to bring into force the relevant provisions of the Localism Act 2011 will take place after the National Assembly for Wales election next year... I believe there is cross-party support for action on this issue."

This commitment never materialized, although it is unclear why. Since 2015, communities across Wales have only gotten weaker as more assets have been lost.

Next, the minister notes: "A scheme was implemented in England in 2012 with very mixed results. Each local authority in England has implemented the scheme differently. There is no central source of information on outcomes such as whether assets transferred into community ownership as a result of listing and/or whether successful transfers delivered community benefit".

I agree that the legislation that was passed in England has had mixed results and is not perfect, yet surely this does not constitute a reason not to pass legislation in Wales? As the *Report of the Welsh Co-operative and Mutuals Commission* noted hopefully in 2012, the patchiness of the English experience presented the Welsh Government with an opportunity to do things differently and to pass legislation which was even better, rather than do nothing.

Despite the flaws of the English legislation, communities in England are undoubtedly on a stronger footing than communities in Wales when it comes to ACVs, because they have legislation backing them and giving them a statutory right to bid for threatened community assets, whereas in Wales we do not.

I would also note that it is not always necessary to compare ourselves to England. Scotland has had great success with its long standing land reform act, which also provides important lessons on the benefits of strong legislation and strong guidance to communities and local authorities. An evaluation of the Scottish model suggests that the legislation and funding provided by the Scottish Government has improved community awareness of their rights, led to more people being involved in community activities, increased skills within the community, made people feel more empowered, and had improved community cohesion. There is at this stage an extensive evidence base available to the Welsh Government to help it pass successful legislation.

The minister then states that “In Wales community asset transfers happen regularly although we do know that our local authorities also have differing processes”. Following this claim about the regularity of community asset transfers, I submitted an FOI to the Welsh Government requesting the amount of CATs that have taken place across Wales in the last Assembly Government, but was told that the Welsh Government does not hold or record this information. I would therefore be interested to know how many CATs have occurred and where the minister has got her figures from, and ask if these can be made public?

The lack of a central register of CATs and the patchy implementation across local authorities that the minister acknowledges is of course one of the main reasons we need strong legislation and guidance to make a register of ACV and CATs a statutory requirement of all local authorities.

The deputy minister notes that the political landscape in Wales has changed since 2011. The most important development since then regarding ACV and CAT is of course the Future Generations Act, whose pledges have been accepted by the Welsh Government and by every local authority in Wales.

The Future Generations Act establishes as one of its goals, ‘A Wales Of Cohesive Communities: Attractive, viable, safe and well-connected communities’. The Future Generation Commissioner’s strategy document *Journey to a Wales of Cohesive Communities* emphasises the central role that community assets and community anchor organizations play in creating cohesive, resilient and healthy communities. The report states for example that “residents in cohesive communities have a strong sense of pride in place - a feature of this is often places where there is ownership and management of community assets”.

Given the importance of community assets, the document recommends that the Welsh Government should therefore “support and empower communities to acquire assets that matter to local people. Have conversations about possibilities framed around ‘what matters’ to communities, and less about austerity and public sector funding cuts”, concluding that “community ownership of assets should be the normal and realistic option for communities to acquire land and assets. Learn from recommendations being made in Scotland. We need to learn how to move to this position in Wales.”

Sadly, Welsh communities continue to lose community assets such as sports grounds and clubs, heritage buildings and other community assets at a worrying rate. The National Assembly 's Health, Social Care and Sport Committee's 2019 report into the Physical Activity of Children and Young People noted grave concerns about the ongoing closures of sporting facilities on the physical health of young people across Wales. Between 2010 and 2017, 45 libraries closed down in Wales. Pubs are also important to community cohesion, particularly in rural areas where they can often act as unofficial community hubs, yet between 2010-2019, Wales saw the biggest fall in pubs per head of population across the whole of the UK.

In short, despite the implementation of the Future Generations Act, Wales is heading in the wrong direction when it comes to retaining assets of community value, and this is because the Welsh Government has not passed legislation that would protect these assets and help communities buy them.

The current hands off approach is not working, and the existing guidance on CATs is no replacement for legislation, funding and enforcement.

After ten years of deferrals and avoidance, is it not finally time for firm action and legislation, rather than continually kicking the can down the road and implementing half measure after half measure?

The issue of ACV is not going away. The only way to achieve the noble goals of the Future Generations Act and to help our communities is to finally fulfil what was promised in 2015 and pass legislation implementing, at a bare minimum, the measures contained in the 2011 localism act regarding ACV.

Thank you again for your time and work on this matter.

Yours sincerely,

Dr Daniel Evans

The role of Community Assets in creating healthy, connected communities

It is proven that community assets [help build social capital and therefore improve health and wellbeing in our society](#). They are therefore essential to Welsh communities.

The Future Generations act establishes as one of its goals, '[A Wales Of Cohesive Communities](#)' ("Attractive, viable, safe and well-connected communities"). The future generation commissioner's strategy document '[Journey to a Wales of cohesive communities](#)' emphasises the central role that community assets and community anchor organizations play to cohesive, resilient and healthy communities. The report states, for example that "Residents in cohesive communities have a strong sense of pride in place - a feature of this is often places where there is ownership and management of community assets".

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Losing community assets leads to weaker, more disconnected and disengaged communities. Sadly, Welsh communities continue to lose community assets such as sports grounds and clubs, heritage buildings and other community assets at a worrying rate. The National Assembly's Health, Social Care and Sport Committee's 2019 report into the '[Physical Activity of Children and Young People](#)' noted grave concerns about the ongoing closures of sporting facilities on the physical health of young people across Wales. Between 2010 and 2017, 45 libraries closed down in Wales. Pubs are also [important to community cohesion](#), particularly in rural areas where they can often act as unofficial community hubs, yet between 2010-2019, Wales [saw the biggest fall in pubs per head of population across the whole of the UK](#).

In short, despite the recommendations of the future generations commissioner, Wales is heading in the wrong direction when it comes to retaining assets of community value.

UK context and background to legislation

In 2011 The Westminster Government passed the Localism Act. [Chapter 3 \(Assets of Community Value\) of Part 5 \(Community Empowerment\) explicitly dealt with the issue of ACV](#). This legislation firstly provided a legal definition of ACV:

"a building or other land in a local authority's area is land of community value if in the opinion of the authority—

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community."

Moreover, this legislation required local authorities to keep and maintain open, free lists of community assets (including land) (section 87), that communities could contribute to by nominating assets (section 88) (section 95); it required a moratorium on all proposed sales of ACV during which time communities would be notified and given the chance to apply to bid to takeover these assets

(i.e., community asset transfer or CATs); allowed the secretary of state to intervene in community bids for ACV and to provide training, education and financial assistance to interested community groups as and when required (section 103).

In Scotland, the above legislation did not apply, as the then Scottish Labour government passed the [Land Reform Act](#) in 2003. The act gave “statutory access rights over most land for “everyone” (Part 1), and established the “community right to buy” (Part 2) which in practice gave communities first refusal over land of community value. To date, the Scottish Government and the Big Lottery Fund Scotland has provided over 60 million pounds of funding to enable communities to buy land and property of community value to date.

An [evaluation of the Scottish model](#) suggested that the legislation and funding had improved community awareness of their rights, led to more people being involved in community activities, increased skills within the community, made people feel more empowered, and had improved community cohesion.

The Welsh Context

The ACV Measures came into force in England in 2012. During the Bill’s passage through Parliament, the then Minister for Local Government and Communities agreed a consultation exercise would be carried out prior to any implementation of the Measures in Wales.

In 2012 The Report of the [Welsh Co-operative and Mutuals Commission](#) made a number of strong recommendations to the Welsh Government regarding ACV, including: 1) that specific legislation be passed, which would include making it compulsory for local authorities to list community assets; 2) that, like in Scotland, communities should have first refusal on ownership; 3) that when making legislation the Welsh Government strongly considers ‘asset locking’ , i.e., measures which would formally prevent community assets being lost or taken away from the communities; and 4), that new financial bodies and specific, ring fenced funding mechanisms be developed to achieve the above aims.

The commission was also hopeful that reflecting Wales’ communitarian traditions, the Welsh Government would pass stronger legislation than England and Scotland (46), and specifically include sports clubs as community assets in the forthcoming legislation.

Yet despite the clear and widely accepted benefits of community assets and the recommendations made by the commission, in [2014 the minister Lesley Griffiths declined to implement the localism act’s ACV measures in Wales, citing concerns about a lack of financial resources and the capacity of the Welsh Government to pass legislation](#).

However, in 2015 the minister [commissioned a consultation on Protecting Community Assets](#). This consultation found very strong support for passing bespoke Welsh legislation. Respondents recommended adopting the localism act’s definition of community assets and adopting the Scottish policy of providing communities with the option of first refusal, as well as the need to raise awareness of the possibility of transferring assets to the community. It also identified the need for greater mentoring and support for community groups to be able to understand the bidding process.

In light of these recommendations, the [minister accepted that the needs of communities could best be met by implementing the relevant parts of the localism act in Wales](#):

“In view of the consultation responses favouring local control of asset registers, the legislative framework for establishing a Welsh ACV Scheme could be put in place by commencing Chapter 3

part 5 of the Localism Act 2011 and in subsequent Welsh regulation made under the act. I consider continuing engagement with stakeholders in Wales, inline with Welsh Government's Principles for Working with Communities, will ensure the approach being taken is fully fit for the Welsh context."

She then strongly implied that action would be taken during the 2016-21 Welsh Government: "legislation in relation to this issue, including making a commencement Order to bring into force the relevant provisions of the Localism Act 2011 will take place after the National Assembly for Wales election next year... I believe there is cross-party support for action on this issue."

However, nothing has been done in this Assembly term, other than to publish [a non-statutory guidance document on community asset transfers for local authorities](#).

While this is welcome, guidance is no substitute for legislation.

The need for legislation

At present, because of a lack of legislation, local authorities are under no obligation to keep a list of community assets. As well as there being no centralized register of community assets, there is no mechanism in place (or 'lock') protecting community assets from being sold off and lost to the communities as recommended by the aforementioned report of the Co-operatives and Mutuals Commission.

Only legislation would guarantee a register of community assets. Only legislation would guarantee that local authorities introduce moratoria on assets which are up for sale. Only legislation can guarantee that communities get first refusal on community assets as per the recommendation of the future generations commissioner.

Only legislation can ensure that assets are protected and that communities are placed on the same legal footing as those in Scotland and England. Without legislation Welsh communities are fighting for their assets with one hand tied behind their back.

The need for funding

Legislation on its own will not be enough. The lessons from England and Scotland are that legislation must be accompanied by firm guidance to local authorities on implementing the provisions of the act, and there must be a funding pot) dedicated to providing capital funding to assist community purchases, and to provide mentoring and upskilling of communities to allow them to adequately run the assets they aim to run. The scheme must also be widely promoted to ensure uptake.

However, it is clear from the numerous responses by the previous minister, Lesley Griffiths, that the motivating factor behind the Welsh Government's reluctance to implement legislation comes down to worries about cost.

The context of austerity has driven the legal requirement for local authorities to achieve best market value for assets, (sometimes known as a 'best consideration' value) which in practice means local authorities routinely prioritize commercial business uses for community assets over the needs of the community. There is a fundamental tension in Wales between the need to protect community assets for the community on the one hand, and the need for squeezed local authorities to make as much money as possible from commercial land sales on the other.

This contradiction can only be resolved by legislation, but it also requires a new, specific funding stream dedicated to ACV/CATs. This currently does not exist and the new guidance on CAT explicitly states that it does not provide advice on funding mechanisms.

Undoubtedly austerity has put pressure on the Welsh Government and in turn squeezed local authorities. But the current practice of getting rid of community assets to the highest bidder is clearly a false economy and creates more disconnected communities in the long term, with higher rates of ill health and crime, problems which are extremely expensive. Once these assets are gone, they are gone. In contrast, investing in community anchor organizations and allowing communities to buy community assets will create stronger, healthier, more resilient communities, saving the Welsh Government money in the long term as well as improving societal wellbeing as a whole.

As the 2012 Co-operative and Mutual Commission argued, passing legislation and funding community asset transfers, as well as being morally right, makes sound economic sense.

Far from being a sticking plaster to deal with austerity, the commission stated that “They (CATs) have the potential to address many of the underlying structural difficulties in the Welsh economy, ending the cycle of investment/dis-investment which has characterised Wales economic past. Co-operatives and mutuals are ‘anchored’ in the locality, and retain profits for the benefit of consumers, workers or the wider community rather than being siphoned-off and distributed elsewhere. Publicly-owned assets can be ‘locked’ for public benefit rather than stripped for private gain, protecting and retaining long term investment.”