

Summary of Welsh Policy Context for Access to Land for Community Farms

This summary of the Welsh policy context should be read in conjunction with the broader policy summary, which can be found here. It examines policies on community access to land elsewhere in the United Kingdom, which provide a broader context for comparison of Welsh policy.

Devolved legislation & policy

Local government, environment and agriculture are all areas of policy which are devolved, meaning that legislation on these areas is decided by the Senedd in Cardiff rather than the Houses of Parliament in Westminster and it is implemented by Welsh Government and other bodies in Wales.

However, there are still Acts from the Westminster Parliament that apply to Wales either because they predated devolution or because they specifically empower Welsh Government to make legislation on particular areas.

Broad overarching Welsh legislation, which is relevant to community and new entrant access to land includes the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 and developments in food and agriculture policy may also have indirect effects on new entrants and community access to land.

What current and planned policies govern use of publicly owned land specifically and what do they say?

Welsh public authorities are covered by Section 123 of the Local Government Act 1972, which allows them to sell off land and assets. Initially they were required to sell at best value, unless they had the consent of the Secretary of State, which later transferred to the Welsh Government after devolution. However, the General Disposal Consent (Wales) 2003 states that public bodies¹ no longer need to seek consent for selling below highest financial value, where the undervalue is £2million or less, if the body believes that a sale below the best rate would contribute to the promotion or improvement of economic, social and environmental well-being of all or a part of an area or all or any people in the area. Where these conditions are not met, it is still possible to sell at less than best value, but consent of Welsh Government is needed.

¹ The General Disposal Consent covers county and county borough councils, community councils, fire authorities constituted by a combination scheme, police authorities and national park authorities.

These provisions would therefore enable a council to sell, lease or licence land to a community group, even if that community group could not offer the highest bid.

The local authority must decide whether an offer meets the conditions and is advised to seek external advice. This may result in a more cautious approach.

There are still administrative burdens on councils such as requirements to advertise in the local paper where assets are sold or leased for over 7 years. This may also contribute to the a more cautious approach.

Community Right to Buy

Unlike Scotland (Scottish Government / Riaghaltas na h-Alba (2017) and England (Department for Communities and Local Government, 2011), Wales has no legislative Community Right to Buy or Right to Bid on either public or privately-owned land. The provisions with respect to Assets of Community Value² under the Localism Act (2011), which apply in England, was not applied to Wales, with the Welsh Government deciding in 2014 not to implement its provisions (Griffiths, 2014).

A Report of the Welsh Co-operative and Mutuals Commission (2014), found strong support for such a provision and noted that Wales had the opportunity to pass legislation that learned from the English experience. Following a 2015 consultation on the issue, in 2015, the then Communities Minister Lesley Griffiths (2015) noted cross party support for increasing community's powers in relation to purchasing assets of community value. She promised that a bill implementing the provisions of the Localism Act 2011 would be passed in the 2016-2021 Senedd term. However, this has not happened.

The Future Generations Commissioner (2019) has subsequently advocated strengthening communities' ability to acquire assets. Her strategy document *Journey to a Wales of Cohesive Communities* emphasises the central role of community assets and community anchor organisations and recommends that the Welsh Government should therefore “support and empower communities to acquire assets that matter to local people.”

Research by the Institute of Welsh Affairs (IWA), published in February 2022 found that Welsh communities are the least empowered in Britain with respect to ownership of land and others assets of community value. It found that 68% of the Welsh public would support legislation to give communities a right of first refusal to buy key community assets such as land, village halls and pubs before they are listed on the open market.

The IWA recommendations include:

1. A Community Empowerment Bill establishing a register of community assets and giving communities a statutory first right of refusal over these when they are proposed for sale or transfer.
2. A well-financed Community Asset Fund, based on the Scottish Land Fund that distributes grants of between £5,000 and £1m.
3. A coordinated support package to assist communities, focused particularly on deprived communities.
4. A social value policy that applies to public bodies looking to dispose of or lease land or assets.

² “A building or other land is an asset of community value if its main use has recently been or is presently used to further the social wellbeing or social interests of the local community and could do so in the future” (MyCommunity, 2020: 1)

- Where asset transfer is not possible, communities should be supported as equal partners in future asset management plans.

Community Asset Transfers

Despite the lack of any explicit Community Right to Buy, it is still possible for communities to take over land or buildings via a Community Asset Transfer. Ystadau Cymru (2019), part of Welsh Government, has created [guidance](#) on Community Asset Transfers citing examples and best practices processes applicants and councils should go through. Note that this does not apply to Welsh Government's own land including that managed by Natural Resources Wales (NRW). Ystadau Cymru define a Community Asset Transfer (CAT) as when a Public Sector Body transfers the management and/or ownership of a property asset to a community council or Third Sector/ Community Group. This will sometimes include the delivery of any associated services.

CATs have mostly been used as means to keep key services and facilities that might otherwise have closed due to lack of funding. However, Ystadau Cymru also notes that transferring an asset into community management is a means of delivering positive social, economic and environmental change and can be used to further the goals of the Well-being of Future Generations Act. Although the guidance refers to both buildings and land there is nothing in it specifically dealing with county farms or creating new community farms with council owned land. As per the 2003 General Consent, the guide makes it clear that transfers can be at less than best value, where there would be environmental or social benefits.

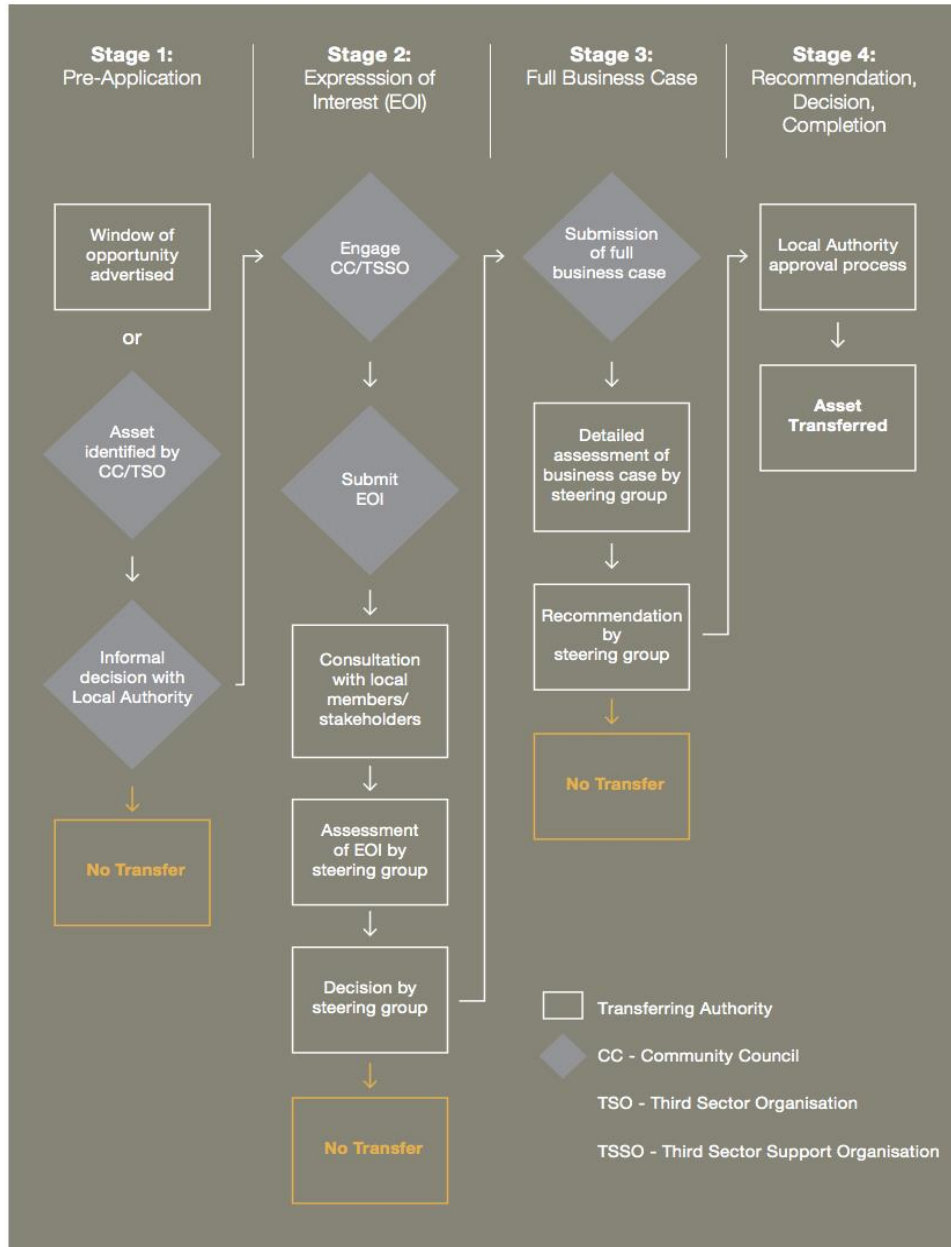
However, the guidance is also clear that there is no obligation on public authorities to transfer assets and no requirement to give local community preference in sales.

CAT Process

Any transfer must be initiated by the Local Authority. Ystadau Cymru recommends that public bodies advertise any assets they are seeking to dispose of in the local community so that community groups can proactively apply.

Potential applicants can include Town & Community Councils, third sector organisations and community-based groups. They must be legally incorporated as non-profit making. It is up to the Local Authority to set out minimum requirements for the group such as governance structures; skills and capacity; documentation needed and any other requirements. Local authorities are advised to conduct due diligence on applicants to ensure that they are capable of taking over the asset and, where relevant, associated services.

The specific process is decided by the Local Authority; however, Ystadau Cymru recommend the following process:



The minimum time taken is usually around 6 months, but it can often take 2 years.

Reviews

Welsh Government’s Social Research & Information Division published a review in 2021 of CAT processes and outcomes (Coates et al, 2021). This followed on from previous research (Coates & Prosser, 2018) into the experience of CATs by Town and Community Councils in

2018. The vast majority of examples covered and the assumed purpose of most CATs was to rescue a community asset and/or service that was at risk of being lost due to council budget cuts. There was no mention of council farms or land for community farms. Nonetheless, some of their findings may still be relevant.

The researchers found that key issues that determined whether the CAT was successful included:

1. Timing: those that gave communities sufficient time, tended to have better results than those that were rushed. Phased approaches to timing also worked well.
2. Communication: those with good communication channels had higher community buy in and the transfers worked better.
3. Flexibility: sufficient flexibility to account for the transferee's individual circumstances and allowed both sides to negotiate responsibilities. An application/approval process proportionate to the opportunity in question also helped.
4. Tenure: ownership of the asset allowed the transferee to borrow against it and build up a financial track record; however, the report noted this might not be suitable for all community groups and assets, since they also inherit all the liabilities.

Key factors that caused communities groups to struggle included:

1. A lack of advice and support for community groups.
2. Insufficient finance and in particular a lack of capital grants, making it difficult for community groups to get funding to take over a project or losing out to commercial buyers.
3. Challenges with staffing and a high volunteer turnover.

Senedd Local Government Committee Inquiry into Community Assets

The Senedd Local Government and Housing Committee (2022) is, at the time of writing (July 2022) in the process of conducting a review into community assets. The Committee's terms of reference for the inquiry are:

- Whether the current statutory and policy framework empowers communities in Wales to develop community assets;
- The extent the Community Asset Transfer scheme promotes and supports effective development of community assets;
- To explore barriers and challenges faced by communities in taking ownership of public or privately-owned community assets, including finance and support services;
- To discover what lessons can be learnt from beyond the Welsh border.

Whilst not specifically about land, its conclusions and recommendations will likely apply to land as well as buildings.

What policies relate to public bodies that are not directly about land ownership or management but could still be relevant?

The Well-being of Future Generations Act (2015) requires public bodies in Wales to consider the long-term impacts of their decisions. Specifically, the WBFGA sets out a legally binding common purpose of 7 well-being goals:

1. A globally responsible Wales
2. A prosperous Wales
3. A resilient Wales
4. A healthier Wales
5. A more equal Wales
6. A Wales of cohesive communities.
7. A Wales of a vibrant culture and thriving Welsh language.

The Act applies to 44 public bodies, including the 22 local authorities, 3 National Park Authorities and Natural Resources Wales. They are required to act in accordance with the Sustainable Development Principle, meaning in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

The Act established the role of Future Generations Commissioner, who makes recommendations to public bodies as well as making more general reporting and recommendations. The office has no enforcement role, but failure to follow the recommendations must be justified.

Public bodies must publish well-being statements setting out their objective and how these objectives will help them achieve the seven goals. They must then annually report on whether and how they have met their objectives.

Relevance of the Well-being of Future Generations Act for Community Land Access

Establishing a community farm could potentially help a public body fulfil all seven of the well-being goals and is particularly relevant to improving health, increasing resilience and creating cohesive communities. However, the limitations of the Act mean that while it can be used to encourage Local Authorities and others to make land available to local communities, it will not be enough on its own.

Firstly, the fact that the Act cannot be enforced through the courts, means that the only result of a failure to follow it is bad publicity. Secondly, the inclusion of the goal of a “Prosperous Wales” means that they can still justify selling to the highest bidder when it comes to disposing of their assets, including land. Furthermore, despite the General Disposal Consent 2003, the context of austerity means councils may feel pressure to prioritise short term financial return.

This does not make the WBFGA irrelevant, it can still be used as a level to persuade public bodies to use their land to support community farms particularly if this can be included in their plans; however, it’s effects are limited as long as it lacks legal teeth and councils continue to face opposing pressures.

The Environment (Wales) Act 2016

Under section 6 of the Environment (Wales) Act 2016 public authorities that exercise their functions in relation to Wales have a duty to maintain and enhance biodiversity and promote the resilience of ecosystems. This goes beyond special designated sites and includes both urban and rural land.

Public authorities must prepare and publish a plan setting out what they propose to do to maintain and enhance biodiversity and promote resilience and report every three years on how they have complied with this duty.

To comply with the duty public authorities should embed the consideration of biodiversity and ecosystems into their early thinking and business planning, including any policies, plans, programmes and projects, as well as their day to day activities.

The Environment (Wales) Act also contains provisions for NRW to make land management agreements with a person who has an interest in that land (e.g. ownership, lease or licence) in order to promote and protect Wales’ natural resources.

Relevance of The Environment (Wales) Act 2016 to establishing a community farm

Although the Environment (Wales) Act does not specifically cover community access to land or the creation of new community farms, if groups wanting to set up a farm can show that their proposed farming methods would support biodiversity, then this should help their case to the local authority. Conversely, if the creation of a new farm were considered a threat to biodiversity at a given site, then the Environment (Wales) Act might make the local authority less inclined to pass on ownership or management of the land.

Relevant Upcoming Legislation

The Food (Wales) Bill is currently being developed as a private members bill and will enter the Senedd in December 2022. Although it does not address use of public land or community land access directly, it does seek to strengthen local food systems and increase public procurement. Current proposals include the development of local food plans by local authorities which could include use of public land for a community farm. This is being introduced by an individual Senedd Member, Peter Fox, rather than Welsh Government, meaning its potential for success is unclear; however, it is definitely one to watch.

The Community Food Strategy was included in the programme for Government 2021-2026. Welsh Government are still in consultation stages of developing this and little information about their plans has been published. However, it presents a potential route for policies supportive of access to land for community food production.

The Agriculture (Wales) Bill is expected to enter the Senedd in autumn 2022. A large part of the Bill will enable the new **Sustainable Farming Scheme**, which is the replacement for the Basic Payment Scheme, now that the UK has left the European Union and its Common Agricultural Policy. The latest proposals for this scheme (Welsh Government, 2022) do not address access to land; however, there is some support for local supply chains, which can play a role in supporting short supply chains. Agriculture Minister Lesley Griffiths is reported to be considering a strategy for council farms (Kay, 2022) as part of wider work ensuring tenant farmers can access the scheme. There will also be future consultations on scheme and Bill so both are worth watching.

Resilient Green Spaces is a £1.27m partnership project being led by Social Farms & Gardens to pilot alternative re-localised food systems using communities and their green spaces as the driving force for change across Wales until June 2023.

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