

CA 24

Ymgynghoriad ar asedau cymunedol

Consultation on community assets

Ymateb gan: Cymdeithas Trecadwgan

Response from: Cymdeithas Trecadwgan

Dear Senedd Housing Committee,

Thank you for this opportunity to respond to your inquiry into the Community Assets and associated policies. This is an issue of which we have direct experience of as a community group who attempted to purchase a local authority owned farm that was put up for sale in 2019. We realise that this inquiry is primarily focussed on buildings, rather than land; however, we believe our experience is highly relevant both because the farm we attempted to purchase included buildings and because our experience exemplifies the many of the failings of the current Community Assets Transfer (CAT) processes and legislation.

Cymdeithas Trecadwgan (CT) is a community group in Solva, Pembrokeshire, which sought to purchase Trecadwgan Farm, a local authority owned farm which was advertised for auction in summer 2019. We wanted to ensure that this beautiful, historic farm remained a public asset and we saw the potential to develop it as a diverse sustainable [Community Supported Agriculture\(CSA\)](#) farm, hosting courses, supporting new entrant growers and a food processing and training centre. This included growing fruit and vegetables to sell directly to the local community; setting up a bakery (amongst our group was an established local baker who had already secured funding); growing heritage wheat to supply the bakery; an onsite butchery and courses in sustainable farming and baking. We wanted to create a community space, with opportunities for outdoor socialising for the elderly and bringing people of all generations together. As we will explain below, despite an enormous effort on our part and three times believing we had secured the farm at a fair market rate, we were ultimately gazumped by a private buyer and our community lost an asset.

We believe that we were failed by both the policies and people who should have been working with us to get the best outcome for the wider community. Rather than being supported to purchase the farm and deliver these multiple community benefits, our experience was that the policies, priorities and attitude of Pembrokeshire County Council(PCC) actively worked against us. Welsh Government legislation such as the Wellbeing of Future Generations Act and the General Disposal Consent (Wales) 2003 was too weak to be able to support us in response to this.

We believe that these policies need to be strengthened and additional legislation is needed such as a community right to buy, the right of communities to register assets of community value and a requirement that when councils dispose of these, they must first offer them to the local community.

We would welcome the opportunity to speak with you further about our experience and answer any questions you may have. Please contact trecadwgan@gmail.com or Secretary ,Gareth Chapman on [REDACTED] to arrange this.

Does the current statutory and policy framework empower communities in Wales to develop community assets?

No, we do not believe that the current statutory and policy framework supports communities in acquiring and developing community assets. As mentioned above, council policies worked against us.

Key PCC policies (or lack of) that thwarted our attempt to purchase the farm included:

1. A prioritisation of getting best financial return from the sale of the farm, above any other social, environmental or broader economic benefits that could have been created. Specifically inappropriate use of Section 123 of the Local Government Act 1972 without reference to, or apparent understanding of, the General Disposal Consent (Wales) 2003.
2. The lack of a proper process for managing CATs at PCC, which was compounded by inconsistent messaging, lack of knowledge within the Council and poor communication.
3. The inclusion of highly restrictive overage clauses in the contract for sale.

PCC's priority in selling the farm was to get the highest price possible. We appreciate the need for public bodies to generate income and despite the numerous community benefits that our farm would bring, we did not expect to get a discount and were prepared to pay the market rate for the farm. All that we asked for was that the price be agreed and we be given time to raise the funds and proceed with conveyancing, without the risk that someone would outbid us in an auction or gazump us.

Initially the farm was put up for auction. Despite it being a public asset PCC made no attempt to consult with the public before doing this or to find out if there were any community groups interested in purchasing it.

After one of our founders spotted the auction advert online, in late June 2019 we formed a community benefit society (CBS) and approached the Council about buying the farm. As a newly formed CBS run by volunteers, raising sufficient funds in time for the auction in July 2019 (without knowing how much we would need to raise) would have been almost impossible. We therefore arranged a meeting with a council representative to discuss our plans for the farm and whether we could reserve the right to purchase it outside of the auction process. We were told that if we could raise a deposit of £50,000 before the auction

date the Council would remove it from the auction and hold it for us for a year, so that we could raise the remaining funds and complete the purchase. The Council would use the money to maintain the property and we would not get it back if it had been spent and we were ultimately unable to purchase the farm. PCC then brought the deadline forward to a week before the auction.

We were successful in raising the money for the deposit, but then told that the representative who had made the offer to us was not authorised to do so and it would have been unlawful for the Council to reserve it for us for a year. It was clear to us that the Council had no process or policy for dealing with the situation and their officers did not know what they were doing.

The Council did, however, agree to remove the farm from the auction and proceed with a sale to us by private treaty. The sale price was to be at an amount set by a valuer and at the time of the agreement we did not know what it would be. Nonetheless we proceeded on that basis despite not having yet agreed on a price.

What the Council did not do, however, was remove Trecadwgan Farm from the market. This meant that we had no certainty over whether we would be gazumped by a higher offer. A council officer said that other parties interested in purchasing the farm had indicated that they would pay above the auction guide price we. She argued that Section 123 of the Local Government Act 1972 required that they sell to the highest bidder. Whilst Section 123 does indeed say that local authorities that sell off assets are required to get best market value for them, it allows for exceptions if they get specific consent from the relevant Minister or Senedd. Furthermore, under, the General Disposal Consent (Wales) 2003 local authorities no longer need to seek consent for selling assets valued under £2million below market value, if the authority believes that it would contribute to the promotion or improvement of economic, social and environmental wellbeing of all or a part of an area or all or any people in the area. As Trecadwgan was valued well below £2 million and we could demonstrate numerous benefits that our proposed use of this farm would have brought, this would have been applied. We raised this numerous times with the Council, but they never responded or justified why they were not prepared to use the General Disposal Consent (Wales) 2003.

For us, proper application of the General Disposal Consent (Wales) 2003, would have enabled us to secure the farm and given us a higher level of certainty and predictability with respect to a sale, making fundraising easier and significantly reducing the stress involved by both parties. The price itself was secondary. We were willing to pay fair market value for the farm and our initial offer was a result of offer-counter-offer between ourselves and another buyer. However, there should have been a cut off point after which the price and buyer are secured.

Despite being put in this position we were successful in securing the farm in partnership with a local business in November 2019. However, the local business pulled out of the sale due to

fears over the overage clauses that PCC had put in the contract.

The overage clauses meant that if we had any subsequent planning consent that resulting in an uplift in value, we and our partner business would have been liable to pay the council **33** % of that uplift in value. Had the farm been sold with 5 hectares, it would have had permitted development rights meaning the overage clauses would not have kicked in. However, despite the fact that the original farm had come with nearly 20 hectares, PCC retained most of the land and sold it with just under 5 hectares. We believe that this was deliberate, not only as a way of benefitting from the overage, but also as an attempt to market the farm as a prospective holiday home, rather supporting its continued use as a working farm.

It is somewhat ironic that a not for profit community project might well have been subject to this overage(some of the development we proposed, such as a cafe, processing and other space, would have required a change of business class use away from agricultural use)(, yet the current owners who are “hobby” farming by their own admission, are not. As it stands the council will have no benefit from this clause, yet were unwilling to remove it or vary it’s condition in favour of the positive benefit to the community, which would have come from a community supported purchase

When our partner pulled out, PCC refused to give us the time to find an alternative partner, again citing Section 123, before putting it back on the open market. We were nonetheless successful in having a second offer accepted, again in January 2020, this time with the support of an individual philanthropist. At this point we reasonably assumed that they had secured the farm; however, the council received a higher offer from another buyer, before our partner completed the paperwork. Rather than turn down the offer on the basis that the sale was already agreed, PCC reverted to their original plan and put the farm on auction in March 2020. The auction was won by wealthy individuals from Gloucestershire, who wanted it for a private home.

At the point the council decided to put the farm to auction, we considered commissioning a judicial review of their sales process; however, we were aware that JRs are lengthy processes and at that point we were too exhausted by the treatment we had been subjected to.

The prioritisation of best financial value at the expense of all else meant that an asset which could have brought jobs, training, local sustainable food production and social cohesion was lost to the community.

To what extent does the Community Asset Transfer scheme promote and support effective development of community assets?

Our experience in Pembrokeshire was that the Community Asset Transfer Scheme did nothing to support the effective development of community assets. We hope that this will change in the future, but the evidence since the farm sale is mixed.

Positive developments

Shortly after the sale, Councillors and officers of PCC later expressed over the way in which Trecadwgan was handled with one saying that they should have listened to us sooner and treated them with more respect. The importance and potential of local food chains and community cohesion was made evident shortly after we lost Trecadwgan, by the pandemic. Meanwhile, despite feeling betrayed by the council over Trecadwgan, two of our committee members worked closely with PCC on a successful programme focussed on improving council-community relationships. This has been an overwhelmingly positive process which is credit to both members of the Council and our committee members. This gives us cause for optimism.

PCC are currently updating their CAT policy, which is yet to be published. We hope that it will be more supportive of CATs and community groups in general, so that the manner in which we were treated is not repeated. We recommend that the Senedd Housing Committee review this CAT policy once it is published, as part of your inquiry.

Negative developments

We are less optimistic about the results of a [report](#) PCC commissioned on learnings from the Trecadwgan case, the recommendations of which were [approved](#) with slight amendments by the Council. Unfortunately, despite acknowledging that PCC had handled the sale badly and caused problems by changing their message, the learnings that they took were not that they should be more supportive of community groups seeking to purchase public assets; but quite the opposite. The recommendations included:

1. That S.123 requirements are fully explained to all parties involving CAT sales.
2. Greater scrutiny of all Business Plans from interested parties from commencement to ensure viability.
3. No Cabinet Member should have involvement in supporting a group that are dealing with the Council to ensure no conflict of interests.

With respect to point 1, it is notable that there was no reference to better understanding and application of General Disposal Consent (Wales) 2003 and how it relates to S. 123. This is despite the Welsh Government [Guidance](#) on CATs, published in 2019 making it clear that the General Disposal Consent (Wales) 2003 can be used to justify the sale of an asset at below best market value.

With respect to the point 2 on business plans, PCC were aware that we did in fact have a robust business plan, which had been deemed sufficient to secure a loan offer in principle of over £300,000 from Triodos Bank. However, on a more fundamental level it is not clear why a business plan was relevant when they were forcing us to compete on price and appear intent on forcing future community groups interested in purchasing council assets to do the same. We have seen no evidence that they required the ultimate buyers of Trecadwgan to submit a robust business plan.

Requiring a robust business plan may be justifiable in some circumstances when a community group is purchasing an asset at a discount in return for delivery of social, economic and environmental benefits or when supported financially by the Local Authority. However, if the Council plans to use S. 123 to justify only selling to a community group if they are the highest bidder, then there is no reason to subject groups to any requirements that would not apply to a commercial or private buyer.

The rule against cabinet members having involvement in supporting groups, is clearly at odds with their roles of elected councillors, with a duty to represent the interests of their community. Unfortunately, this appears to show what we always suspected: that the council does not view community groups as constituents or potential partners in generating opportunities and benefits within Pembrokeshire, but purely as private competitors for purchasing council assets.

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Changes needed

Amendments to S. 123 Whilst we disagreed with PCC's interpretation of S. 123 and their failure to use the General Disposal Consent (Wales) 2003, it seems that they were genuinely afraid of being subject to a judicial review if they sold to anyone other than the highest bidder. Local authorities should not be put in this position. We believe that it would be helpful for local authorities and community groups if both pieces of legislation were reviewed, and if necessary updated to reduce any risk to councils that sell below the highest possible financial return on the basis of social and environmental benefit. Something along the lines of financial compensation from central government to the Local Authority if a community project fulfils certain criteria, objectives or support current initiatives.

Explicitly allowing the Local Authority to confirm a point early on in the sales process after which a community group has reserved the right to buy and no further offers can be accepted would significantly improve things for communities.

Some of these things are already in existence but there is no consistency, or explicit framework of criteria necessary for compliance, which leaves local authorities fearful of scrutiny. Many LAs don't have the experience, expertise nor the time necessary to research and use alternative, available legislation.

Assets of Community Value Registration and first right of refusal for communities: Communities should have the right to register assets of community value. Should a public body decide to sell these off, they should be obligated to first offer local community groups the right to buy them.

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Strengthening the Wellbeing of Future Generations Act 2015 (WFGA) We believe that Pembrokeshire County Council did not follow their obligations under the WFGA and indeed we were supported in our efforts to purchase the farm by the Future Generations Commissioner Sophie Howe. However, as it currently stands the WFGA does not give communities any means of challenging public bodies when the Act is not followed.

Barriers and challenges faced by communities in taking ownership of public or privately-owned assets, including finance and support services

Barriers Created by the Local Authority

In addition to what we believe was a misapplication of S. 123 and a lack of understanding of the Disposal Consent (Wales) 2003, other barriers we faced on the part of Pembrokeshire County Council were a lack of:

1. Appropriate process for dealing with CATs leading to chaotic process in which we were always up against a deadline and fear of being gazumped; ;
2. Professionalism from PCC leading to inconsistencies in their messaging;
3. Willingness on the part of PCC to engage with us or our plans in good faith; and
4. Understanding or appreciation for the potential profitability of small scale farms and in particular horticulture under a community supported agriculture model.

We have explained points 1-3 in detail above.

Lack of understanding of the potential profitability of small scale farms by PCC

As noted above, the farm house and buildings were sold with just under 5 hectares (despite the original farm being significantly larger). This meant it would not have qualified for BPS payments or benefited from permitted development rights.

It also led the Council to argue that it was too small to be a profitable farm; which was part of their reasons for being sceptical of our business plan. However, across Wales and the UK there are numerous examples of profitable CSA schemes that operate on less than 5 hectares. The fact that they remain in business despite not qualifying for the subsidies that larger farms get is testament to the strength of the business model. We shared examples of successful projects under 5 hectares with PCC; but they were unwilling to engage with them.

Other barriers

Lack of time due to being volunteers with paid jobs to do: like many community groups we were all volunteers who also had paid jobs. This meant that we had limited time with which to organise, fundraise and generally keep up with the changing demands of the situation.

Lack of professional legal advice: We believe that the outcome may have been different if we had had the support of a solicitor or other legal professional throughout the process. This would have enabled us to better understand the implications of the overage clauses and ways of mitigating it; put us in a better position to challenge PCC on their interpretation of S. 123 and ultimately been ready to challenge their process in a judicial review. It is also highly likely that with a legal professional on our team PCC would have treated us with more professionalism.

One of our members personally funded a property valuation and some legal advice on essential matters.

Limited funds: Whilst we were very successful in raising funds and finding partners to financially support us we were ultimately unable to compete with the wealthy people who ultimately bought the farm.

If it left entirely to the market to determine what happens to former public assets, it is likely that most community groups attempting to purchase an attractive building in a desirable location will find themselves unable to financially compete with investors, developers, prospective second home owners or wealthy individuals seeking their dream home.

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What lessons can be learnt from beyond the Welsh border?

Scotland - Community Right to Buy, Community Asset Transfers & Common Good Land Registers

In Scotland local authorities must, in consultation with the local community, register publicly owned land that has community value and consult with communities before selling it. Communities also have the right to request an asset transfer where they can show that they would be able to put the asset to better use than is currently the case. They also have the right to register their interest in land and get first refusal if it is put up to sale.

We believe that all of the legislation and how it has been applied should be reviewed with a view to how similar legislation in Wales could be used to empower communities.

England - Assets of Community Value Register and Community Right to Bid

Communities the right to register assets of community value. If those assets are sold within 5 years of registration then the community is given six months to raise funds and bid on the open market for these assets.

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Whilst this is not as good as the right of first refusal which communities in Scotland have, it is better than the situation in Wales.

With both Scottish and English legislation it is important to learn from any mistakes made and in particular, how administrative burden for communities could be reduced. It is also essential that any application in the Welsh context has regard for the unique circumstances of Wales and the Welsh language.