



Response to MHCLG Consultation: Right to Regenerate

Submitted on behalf of the Plunkett Foundation on 12th March 2021 by:

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About Plunkett Foundation

The Plunkett Foundation is a national charity, working across the UK to provide access to advice and expertise for the benefit of community businesses. We have been helping rural communities for over 100 years to tackle the issues they face, through promoting and supporting community business. The businesses we work with are owned and run democratically by members of the community on behalf of the community, such as shops, pubs, farms and woodlands.

We provide practical advice to help communities establish and run successful community businesses, via a network of around 50 self-employed advisers. Plunkett has supported almost 700 rural community businesses to establish in the UK, with a 96% long term survival rate.

Our position in summary

Lack of available premises or land is a critical barrier preventing rural community businesses getting to opening and trading stage. Only 1 in 5 community shops and 1 in 9 community pubs reach trading status for this reason. This number could be improved with reforms to Community Rights.

The Right to Regenerate could be exercised not only to acquire land for housing, but also to bring underused assets into community ownership. Plunkett welcomes any legislative or regulatory means that can facilitate land or assets coming in to community-ownership, which would enable more community businesses to open. However, the proposed Right to Regenerate does not fully achieve this at present. We would want to see assurances that the right does not simply lead to land being transferred without the final use truly benefiting communities.

This consultation is an opportunity for the Government to consider the wider community rights agenda and ultimately provide a genuine Community Right to Buy. While the recent announcement of the Community Ownership Fund is welcome and shows a willingness on the part of the Government to support community

businesses, it provides no protection on community assets coming onto the market. Without a right of first refusal, community groups can be outbid, and the opportunity to protect local interests for community benefit is lost. The Right to Regenerate presents an opportunity to introduce such protection.

For The Right to Regenerate to be effective in its aim to “empower people to challenge the inefficient use” of land/assets, it should include the following:

1. There must be a **Community Right to First Refusal** on land/assets requested for disposal.
2. **Social value and community benefit must be central to any proposal** for acquiring an underused asset, and be a condition of its disposal (secured in a covenant on the deed of sale).
3. The process associated with the Right to Regenerate must be **transparent and democratic**.
4. The process should include a **clear moratorium period** for “first refusal”, enabling community consultation on the intended use of asset or land.
5. **No unused or underused asset or land should be exempt** (local authority, parish/town council, privately owned) from the Right to Regenerate, if it is unused or underused.
6. There must be a **clear definition of “unused and underused land”**, which takes into account not only economic but also social and environmental benefits.
7. Land or assets sold via the Right to Regenerate must be set at an **equitable price**, that makes it viable for community groups to deliver social value and community benefit.

Consultation questions

Q1: Do you consider the Right to Contest useful?

Yes/No – please provide a reason for your answer.

No, the Right to Contest has not been useful and uptake has been low among community businesses.

- The Right to Contest is useful in principle, but there are too many barriers preventing it being put to good use for communities. (See our response to Q2)
- There is no community right to first refusal – so the asset is brought to the open market, and community groups can be outbid.

- The Right to Contest (and the new Right to Regenerate) does not apply to privately owned assets. Many of the community groups we support are trying to acquire unused or underused privately owned assets (e.g. for pubs this is the overwhelming majority of cases).
- Community businesses tend to work on developing good relationships with public bodies (Local Authorities, Parish and Town Councils etc.) anyway, so an agreement is often reached by negotiation, with no need to recourse to the Right. We believe that in any reform of the Right to Contest, cooperation should be favoured over confrontation.

Q2: Do you think there are any current barriers to using the right effectively, and if so, how would you suggest they be overcome?

Yes/No – please provide details.

Yes.

- **The Right to Contest would better service communities if there were a Community Right of First Refusal.**
 - The proposal in this consultation to grant a right of first refusal to the *applicant* would not fulfil this.
 - Giving first refusal to community groups would ensure that social value is delivered for the community.
 - Without a right of first refusal, the asset will simply go to the highest bidder, who may have no intention of using it for community value.
 - Lack of premises is the key barrier to community businesses getting set up, and community groups can be outbid by private developers.
 - The owner of the asset may also refuse sale to a community group for personal reasons, even if the asking price is raised.
 - Legally constituted community groups, such as a Community Benefit Society, are among the best possible recipients of a Right of First Refusal, because they are accountable to the local community, in a way which private bodies are not.
- **The land/asset should be sold at an equitable price that is viable for community groups to deliver Social Value.** Not necessarily market value, as this is determined by the most economically productive use of the asset – market value does not take into account socially or environmentally useful ways of disposing of land/assets.

To make the Right to Regenerate process more effective, we support ACRE's (Action with Communities in Rural England) proposal of a six stage process. This would ensure community engagement and that the disposal of the asset gives genuine benefit to local people:

- ACRE proposes an alternative process that draws on the experience and existing Community Rights legislation for Registration of Assets of Community Value and the Right to Bid, with some amendments to overcome the barriers that currently affect the successful application of this legislation.

There would be six stages to the process, including a step that provides for an appeal to be made to the Secretary of State to order disposal as a course of last resort.

1. Local authorities are required to publish through lists and geo-spatial mapping sites in their ownership, their intended use and timescales for the change of use to be achieved. This should include unused and under-used green and brownfield land and property with no minimum size.
2. A community group, qualifying body as defined in the Localism Act, or private individual or organisation applies for an unused or under-used site to be placed on a register held by the local authority.
3. The application for registration triggers two immediate actions:
 - a. The local authority undertakes a meaningful consultation with the community following a national Code of Practice, to establish what uses of the site would provide Social Value that is relevant to that community.
 - b. There is an immediate moratorium on the sale of the site for which registration is being sought.
 - c. The Right of First Refusal for a community group to purchase the site is triggered.
4. If the local authority refuse to register the site or engage with the community in an effective and inclusive manner, the person or organisation seeking registration can apply to the Secretary of State for an Order to dispose. The Secretary of State's decision should be in line with the requirements of the Social Value Act.
5. As a formal legal entity the community group under the Right of First Refusal purchase the site. There is a review after 12 months from registration by which time the group should have registered as a legal entity, gained 75% committed funding for the site purchase and have a viable business plan for the venture that will use the site.

6. The site is sold at a price that takes into account that the price must make it viable to deliver the Social Value that has been identified through the community consultation.

Q3: Would a definition of unused or underused land be useful, and, if so, what should such a definition include?

Yes/No – please provide details.

Yes, a clear definition is needed without question.

- Without a definition, there will be dispute over what constitutes “underuse”, and assets will be in danger of remaining unused.
- “Use” should not be defined in solely economic terms. A definition of “use” must also take into account social value and environmental benefits. For example, there is a potential threat to green space if a definition of “use” only considers economic productivity.
- “Best use” of the land is not “the most profitable” or “most economically productive” – it should be “most sustainable”, “of highest benefit to the community”, “of best economic, social and/or value to local people”. That is why market value should not determine the price of the asset when being disposed of through the right of first refusal.
- Such a definition could take into account the Social Value Act and the NPPF.
- Any definition of “unused”, “underused”, “under temporary use”, should be attached to a clearly defined period of time. This would prevent underused land/assets remaining perpetually underused, and protect land allocated in a Local Plan.

Q4: Should the right be extended to include unused and underused land owned by town and parish councils?

Yes/No – please provide a reason for your answer.

Yes, with caveats:

- As per Q6, there should be a requirement for parish and town councils to be contacted before a request is made.
- Cooperation should be encouraged before resorting to confrontation. As already stated, community businesses usually develop a good relationship with parish and town councils and reach decisions by negotiation.

- The Right to Regenerate must be extended to parish and town councils, so that they can exercise it themselves to bring assets into use and deliver social value to the community. This may be in partnership with a community business or organisation.

Q5: Should the government incentivise temporary use of unused land which has plans for longer term future use?

Yes/No – please provide a reason for your answer.

It is not clear what “incentivise” means here, so we cannot give a clear yes or no answer. Would that be achieved through the proposed reforms to the Right, or through other measures?

- Temporary use for community benefit should be encouraged for unused land (under a clear definition of “unused”, see Q3).
- The temporary use must have demonstrable social value for the community.
- However, “temporary use” should not be exploited as a means of preventing disposal of the asset for a better, long-term use.
- To avoid “land-banking”, “temporary use” must be attached to a clearly defined timescale, at which point the use of the land can be reviewed.
- Being under “temporary use” should not preclude disposal, for example if a community group can put forward a better proposal for long-term use of the land/asset.

Q6: Should the government introduce a requirement for local authorities to be contacted before a request is made?

Yes/No – Please provide a reason for your answer.

Yes, under the following terms:

- To make the process more transparent, the request and its response should be made public, through digital and non-digital channels.
- This publicity should include a community consultation on the intended use in the request for those living locally to the asset. Consultation would ensure the “regeneration” is of genuine social value to the local community.
- The applicant should not be able to proceed with disposal until the local authority has responded, and a community consultation has taken place.
- The local authority should be obliged to respond within a given timeframe, to justify the use or explain the underuse of the land.

- As stated, effort should be made to reach a decision by negotiation rather than by confrontation. Many community businesses are already doing this by forming good relationships with local authorities and councils. Cooperation can be the key to a scheme's success and benefits both sides in terms of sharing local knowledge and technical expertise.
- We suggest that the Right to Regenerate takes place as a staged process, as proposed by ACRE above.

Q7: Should the government introduce a presumption in favour of disposal of land or empty homes/garages where requests are made under the right?

Yes/No – Please provide a reason for your answer

No, a presumption in favour would contradict a Community Right to First Refusal.

“Presumption in favour” of disposal does not guarantee “regeneration” of assets for the benefit of local communities, and is undemocratic.

We would only support “presumption in favour” if:

- There is demonstrable long-term social value for the local community in the new proposed use.
- Accountability for this intended use is made statutory, through a covenant in the deed of the sale.
- “Presumption in favour” is granted to a legally constituted community organisation.
- The Community Right to First Refusal has been respected.
- There has been meaningful community engagement through a community consultation.

Q8: Do you agree that the government should require these publicity measures where requests are made under the right?

Yes/No – Please provide a reason for your answer

Yes. This will encourage transparency and accountability.

- The process must be transparent and accessible (so not just made accessible through digital channels).

- Requirement to publish justifications for use also ensures a degree of accountability. (Although accountability must also be statutory, such as in a covenant on the deed of sale.)
- Making this information public would enable community consultation and therefore ensure the intended use is for genuine community benefit. (See our response to Q6.)
- The results of a community consultation, and how the community's views have been taken into account, should also be published.
- Local authorities should also be obliged to published lists and maps of sites that they own, their intended uses and timescales of use.

Q9: Should government offer a 'right of first refusal' to the applicant as a condition of disposal?

Yes/No – Please provide a reason for your answer. Please also include what you believe would be a reasonable timeframe for the expiration of the right of refusal.

No.

- The right of first refusal should not be offered to the applicant, but to the local community.
- Without first refusal to the community, the Right to Regenerate will very likely only benefit private interests and not deliver social value.
- Including a Community Right of First Refusal is the key to making sure the reforms actually benefit communities.
- A Community Right to First Refusal must not be offered on a discretionary basis by the Secretary of State; it should always apply.

Why is a Community Right of First Refusal needed?

- Without Right of First Refusal, communities can be outbid, and so there will be little incentive to exercise the Right to Regenerate to deliver social value.
- This is what we have seen in our work with community businesses and the lack of uptake of Right to Contest.
- There are similar problems in the ACV process. An ACV is registered, but can be "land-banked" by the owner and remain unused for several years, until the ACV classification expires. When an ACV goes up for sale, there is no guarantee that the community group will get first refusal – the asset is on the open market and the interests of the community are not protected.

- Loss of assets disproportionately affects rural communities, where these are increasingly scarce, and go hand in hand with a loss of services, increasing levels of isolation, and rising costs of living. If assets are not protected by community ownership, this can have highly detrimental consequences for community wellbeing and the local economy.

Who would receive the Community Right of First Refusal?

- Constituted community groups (e.g. Community Benefit Societies, Community Land Trusts, etc.), which are locally rooted.
- An unconstituted community group should also be allowed to express an interest in purchasing the asset, on the condition that they can demonstrate community engagement with their proposal, and become legally constituted prior to disposal.

For the Community Right of First Refusal to be effective, it needs to offer:

1. **An equitable price.** Not a price based on market value or the most profitable use, but instead taking into account the social value of intended use. A valuation could be shaped along these lines by the Social Value Act. (The National Community Land Trust Network suggests in its response that decisions on land disposal could be based on a social value policy and the Local Plan.)
2. **A reasonable timeframe** within which community groups have sufficient time to put together a business case, consult with the community and raise finance. This would require at least 12 months. We would suggest that the community should be allowed to extend this period beyond 12 months if they are (i) a legally constituted body, (ii) can demonstrate community support and a viable business case, and (iii) have raised pledges for at least a portion of the purchase price.

Q10: Should the government impose conditions on the disposal of land? And if so, what conditions would be appropriate?

Yes/No – Please provide a reason for your answer.

Yes:

1. The intended use has demonstrable social value for the local community.
2. The community (CBSs, CLTs etc.) has been offered first refusal.
3. There is a community consultation on disposal of the land. Proposals for use should be published and the community consulted prior to disposal.

4. The purchase price has been set following an equitable valuation; the asset should not be sold at market value by default.
 5. The new owner must not allow the land to again become unused or underused, or sell on the land/asset for profit.
 6. The party acquiring the land must be have statutory accountability for using the land/asset according to the agreed intended use within a set timeframe. This must be ensured through a covenant on the deed of sale.
- If these points are not taken into account, the Right to Regenerate will be ineffective.
 - A loophole presents itself if the land/asset is acquired by private developer, then remains unused. The asset could be sold for profit or used for a different purpose, if there is no legal accountability.
 - This is why the Right to Regenerate needs to be extended to privately owned land/assets - “land-banking” by private owners and developers has consistently undermined community efforts to purchase assets for local benefit.

Q11: Do you have any additional suggestions regarding reforms that could improve the effectiveness of the Right to Contest process?

Please explain your answer.

Extend the Right to Regenerate (and Community Right of First Refusal) to unused or underused privately owned land and assets.

- Community businesses (therefore communities) face the same problems raised in this consultation when trying to acquire unused or underused privately owned assets.
- Community businesses have the most problems with private owners, rather than local authorities – in the latter case, an agreement can often be reached by negotiation. In the former, the asset simply goes to the highest bidder, or the owner’s personal preference. Raising the asking price or market value of an asset is no guarantee of purchase for community groups.
- ACVs are not an adequate protection for privately owned assets – because there is no right of first refusal, and a tight initial 6 week moratorium period, followed by an equally tight 6 month period to raise a bid. Extending Right to Regenerate and including a Community Right to First Refusal to privately owned assets would rectify some of these problems and dramatically improve Community Rights.

- Extending these Community Rights to privately owned assets would also make the delivery of the Community Ownership Fund (and other existing or future “levelling up” schemes) more effective. While match funding is welcome, finances alone are not the only barrier to communities acquiring assets.
- In the face of countless business closures across the UK in the wake of COVID-19, it is vital that publicly *and* privately owned unused assets do not fall into dereliction and underuse. The Right to Regenerate would be a timely intervention to ensure empty business premises can be put to good long-term use for the community. Community businesses have a longer term survival rate vs. private enterprise (96% vs 44%) and are an economically viable, sustainable way of regenerating communities.

We would also welcome the extension of the Right to Regenerate to land/assets owned by government departments and agencies.