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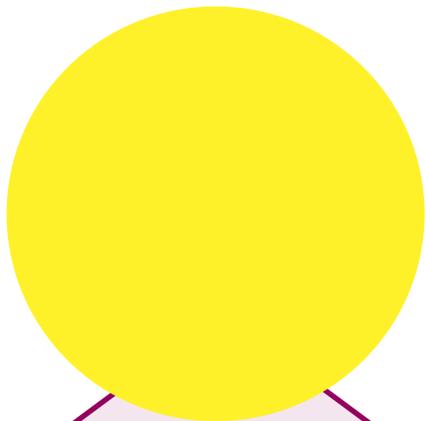
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Acknowledgements Shaping Community Planning

Dr Gavan Rafferty is a Lecturer in Spatial Planning and Development at the Belfast School of Architecture and the Built Environment, Ulster University, and is a member of the Built Environment Research Institute (BERI). Gavan's research interests include the interplay between community planning and spatial planning; community engagement and participation; regeneration and urban governance in post-conflict societies/contested spaces; inclusive planning for creating healthy places; and European and cross-border spatial planning.



SHAPING COMMUNITY PLANNING



Community Planning

Introduction

In thinking about the priorities for enhancing community rights and how these might be delivered within a community planning framework, we need to look at the scope of existing legislation, processes, plans, and performance in NI.



Preface

The coronavirus pandemic is disrupting public service provision and steering society into a dire economic crisis. Local government – and other service providers – are adopting agile and innovative approaches for the delivery of services, which may have longer term consequences. The pandemic is setting the foundations for a radically alternative future which will have unknown implications across public, private, and third sectors and for society at large.

Early and anecdotal evidence points towards a future where health and well-being will be paramount both for citizens and the state. Recent shifts in policy thinking emphasise the importance of targeting interventions at a local level for reducing social and economic inequalities and, more widely, preventing the potential impacts of the impending climate crisis. It is undoubtable that such rapid change and restructuring will have a profound effect on the kind of services our society will need in the future and how these will be funded, designed, and delivered.

It is against this backdrop that any discussion on advancing community rights in Northern Ireland should consider the valuable role that citizens as individuals, and communities can play in co-producing innovative solutions in what will be very challenging times ahead.

This summary paper explores community planning, spatial planning, and community asset transfer, and seeks to inform and shape ongoing discussions on advancing community rights in Northern Ireland (NI). The suite of separate but complementary papers provides the grounds for serious debate on expanding the remit of responsibilities beyond local government for ensuring that the community voice is further legitimised in local decision-making and democratic practices.

Introduction

In thinking about the priorities for enhancing community rights, and how these might be delivered within a community planning framework, we need to look at the scope of existing legislation, processes, plans, and performance in NI. There is a need to consider community planning in terms of public interest and social well-being, alongside openness and transparency and trust and power relationships in decision-making. If we are to move the debate forward we need to understand the opportunities and challenges posed by community rights in general, and to community planning for providing public services.

Context

Substantial change has occurred in public administration across the UK and Ireland in recent decades. Local government reforms in both the Republic of Ireland (ROI) and Northern Ireland have identified the need for vibrant, and stronger, local government systems. In Scotland, at both national and local government, there has been a strong focus on delivering public service reform.

At the heart of these reforms is repositioning local government as the democratically accountable leader for economic, social, and environmental well-being outcomes. This repositioning acknowledges the need to engage better and more meaningfully with local people, to involve them more effectively and experiment with new ways of and co-delivering solutions.

Public service provision plays an important role in democratic practices and has a direct bearing on individual quality of life and collective social well-being, crucially influencing the dynamics of a place and directly influencing well-being outcomes of those who live there. Community planning (the process of managing public service provision) should be viewed as a complementary place-shaping instrument to the apparatus of spatial planning.

Public Service Delivery

Community planning is associated with local service provision and delivery, having emerged as part of a process of public sector reform and continual improvement. That process of improvement, for efficiency gains in public service management, recognises local government as an 'enabler' rather than a sole deliverer of public services (Pemberton and Peel, 2016). The move towards a contractual relationship between local state actors and citizens, concerning how public services are conceived and delivered, has seen the introduction of Citizens' Charters and Customer Service Excellence schemes with an emphasis on improved standards and empowering citizens. This perceived improvement approach, however, failed to deliver on the minimal requirements for true contractual relationships between service providers and citizens: mutuality, parity, reciprocity, and legal enforceability (Drewry, 2005: 17).

The changing landscape of government's role in public service – e.g., surrendering elements of service provision to external parties - is coupled with an expansion of its role in other areas, including policy advice, regulation, partnership working, and interacting 'with external entities to elicit their productive contributions' (Alford and O'Flynn, 2012: 5). And this can include local communities.

Community Planning UK & Ireland

New relationships are emerging across other parts of the UK and Ireland that have overseen a proliferation and differentiation in legislation and policy guidance associated with public service delivery. While there are criticisms of the rationale and vigour of the differing localism agendas evolving in Scotland, Ireland, and England, the respective laws in each context are attempts to decentralise some powers from local government to enable a form of empowerment that gives communities stronger rights in the design and delivery of public services and in asset management.

The national reviews in Scotland and Wales (the 2011 Christie Commission, and the 2014 Commission on Public Service Governance and Delivery respectively) identified significant conclusions (table 1 below) that offer insight into the debate in NI on the relationship between community planning and community rights.

Table 1: Public Service Commission Recommendations (Wales & Scotland)

Wales

A clearer shared vision and sense of common purpose between government at all levels, citizens, and communities.

A much greater focus on co-production with citizens and communities to identify and implement means of pursuing those outcomes.

Consequently, a much stronger emphasis on enablement, empowerment, and prevention in the design and delivery of public services.

Scotland

Recognising that effective services must be designed with and for people and communities – not delivered ‘top down’ for administrative convenience.

Maximising scarce resources by utilising all available resources from the public, private, and third sectors; individuals, groups, and communities.

Working closely with individuals and communities to understand their needs, maximise talents and resources, support self-reliance, and build resilience.

Making provision in the proposed Community Empowerment and Renewal Bill to embed community participation in the design and delivery of services.

Scotland

The **Local Government in Scotland Act 2003** formalised the statutory basis for community planning to secure ‘best value’ in local government service provision, and more recently, the Community Empowerment (Scotland) Act 2015¹ has sought to strengthen community voice and rights in decisions about public services and enabling communities to own and manage land and buildings.

The Act and the policy environment that surrounds it presents a range of opportunities for communities around participation and planning, from initiating dialogue with public bodies on their own terms to the ownership or use of local assets. Community Planning Partnerships will have to produce Local Outcomes Improvement Plans (LOIPs), with an additional requirement to prepare locality plans for those areas where communities experience disadvantage and the poorest outcomes.

The Scottish act introduces participation requests as a means by which community groups can request to have greater involvement in, and influence over, decisions and services that affect communities, and sets out key definitions to clearly establish the criteria for the community body so that it can qualify as a community participation body to:

- Help people start a dialogue about something that matters to their community.
- Help people contribute to decision-making processes.
- Help people to participate in the design and delivery of service provision.
- Help people challenge decisions and seek support for alternatives.

The message from Wales and Scotland is strong and consistent; that further rights be bestowed on communities (the means) for producing appropriate public services (the ends), which in turn deliver impactful change and enhance local well-being outcomes in the public interest.

¹ Summary of the Act is available at: <https://www.gov.scot/publications/community-empowerment-scotland-act-summary/>

Ireland

The Government of Ireland's *Putting People First - Action Programme for Effective Local Government*, (2012) represented a significant policy change in relation to local government. At the heart of this reform was to give local government a more central coordinating role in local economic and community development. Allied to this is the outcome of achieving greater efficiency and effectiveness in local and community development programming and improving the delivery of services for citizens and communities.

The Local Government Reform Act (2014) provided the legislative basis for modernising local government. A restructured committee system consisted of Strategic Policy Committees (SPCs), Corporate Policy Groups (CPGs) and Local Community Development Committees (LCDC).

The establishment of Local Community Development Committees (LCDCs) represents a significant departure from what existed before. The remit of LCDCs is to develop, coordinate, and implement a coherent and integrated approach to local and community development, promoting the interests of local communities (public interest) similar, in a way, to community planning in Northern Ireland. The composition of LCDCs will consist of local authority members and officials; state agency representatives; and stakeholders actively working with local development, community development, and economic, cultural and environmental organisations.

An innovation accompanying the community planning model in Ireland was the creation of Public Participation Networks (PPNs), which enables the public to take an active formal role in relevant policy-making and oversight committees of local authorities. These structures provide a network for sharing information and for giving communities of interest, within a community of place, a voice. Representatives on a PPN tend to be from the following sectors: local voluntary and community; social inclusion; and environment.

The process and action for creating and implementing services that communities need raises fundamental questions about the role citizens and communities have in influencing public service design and delivery. The ability to influence rests with having access to power that provides a degree of control. Community power and control must act as an influential counterweight, providing balance to the statutory authority of government and/or political power. How community power or influence is defined in any future legislation, policy, and operational design is central to the reframing of community rights in relation to community planning.

The Government of Ireland's 'Putting People First' - Action Programme for Effective Local Government, (2012) represented a significant policy change in relation to local government



Table 2: Community Planning Comparisons across Northern Ireland, Ireland and Scotland

	Legislation	Processes	Plans	Performance
Northern Ireland	<p>The legislative basis for Community Planning in NI is specified in the Local Government (Northern Ireland) Act 2014.</p> <p>Section 73 (Part 10) of the Local Government (Northern Ireland) Act 2014 identifies the statutory requirement for community involvement.</p>	<p>The legislation specifically refers to councils working with 'community planning partners' in Community Planning Partnerships (CPPs) to collaboratively agree actions and functions related to the planning, provision, and improvement of public services.</p>	<p>Community Planning Partnerships are established in each district, comprising the council, statutory bodies, agencies, and the wider community, including community and voluntary sector. The partners develop a shared Community Plan for their respective council district area</p>	<p>There are varying degrees of experimentation of directly involving community representatives within the governance structures of community planning. Some community planning structures, e.g., in Mid and East Antrim Borough Council, Armagh Banbridge and Craigavon, and Belfast City Council are unique in creating community panels; others have established forums and local area-based partnerships alongside their Community Planning Partnership, to proactively capture the 'community voice'.</p> <p>Statements of Progress are required to be completed by each Community Planning Partnership every two years.</p>
Republic Of Ireland	<p>The Local Government Reform Act (2014) provided the basis for modernising local government by enhancing the electoral mandate through a restructured committee system.</p>	<p>Strategic Policy Committees (SPCs), Corporate Policy Groups (CPGs) and the Local Community Development Committee (LCDC) were established as a result of the restructuring of local government.</p>	<p>The remit of LCDCs is to develop, coordinate and implement a coherent and integrated approach to local and community development, promoting the interests of local communities. The LCDC is statutorily required to prepare and implement the community elements of a 6-year Local Economic and Community Plan.</p>	<p>Public Participation Networks (PPNs) were created to enable the public to take an active formal role in relevant policy-making and oversight committees of local authorities. The network is supported by a National PPN Advisory Group which was established in 2016 for monitoring and evaluating the operations of PPNs.</p>
Scotland	<p>The Local Government in Scotland Act 2003 formalised the statutory basis for community planning to secure best value in local government service provision.</p> <p>The Community Empowerment (Scotland) Act 2015 sought to strengthen community voice and rights in decisions about public services.</p> <p>The Land Reform Act 2016 expanded community rights in relation to land reform.</p>	<p>Community Planning Partnerships produce Local Outcomes Improvement Plans (LOIPs).</p> <p>Community participation bodies (community groups) can request to have greater involvement in, and influence over, decisions and services that affect their community. These Participation Requests were introduced as part of the 2015 Act.</p>	<p>Local Outcomes Improvement Plans (LOIPs) replace traditional community plans that cover an entire council district. In addition, Locality Plans are prepared in areas where communities experience particular disadvantage and the poorest outcomes.</p>	<p>Community Planning in Scotland has been revised leading to additional instruments and developments e.g. the Concordat (2007) and a Statement of Ambition (2012).</p> <p>The reviews restated the importance of community planning in advancing public sector reform and positioned community planning at the heart of an outcomes-based approach aligning with the Scottish Government's National Performance Framework.</p>

Complexities with 'Community' and 'Community Planning'

When discussing community planning and community rights, an immediate dilemma emerges with the term 'community'. Hillery's (1955) research discovered 94 definitions of community, acknowledging four common characteristics across 69 of the definitions: people, common ties, social interaction, and place. It is a complex yet extensively used term in public policy discourse, and has its own unique connotations for people and place in Northern Ireland. In helping to further refine the term, Duane (1997) offers the following classification:

- **A community of place** a neighbourhood, a village, town, or a collection of streets.
- **A community of identity** women, youth, black and minority ethnic communities, people with a disability or communities of sexual identity and age.
- **A community of interest** perhaps citizens concerned with climate change, heritage, sport, or the arts.

Communities are not easily definable; they are fluid and interlocking. Communities do include physical spaces, neighbourhoods if you like, which will comprise people from various ethnic identities, ages, and genders with specific and passionate interests and none. The above classification provides a valuable framework for interpreting community planning – and for informing the debate surrounding community rights. What types of community are involved in community planning and under consideration in the progression of community rights legislation in Northern Ireland?

Recommendations

The following are proposed for consideration in any future debate on progressing with legislation and supporting structures to introduce community rights in Northern Ireland:

1. Defining a 'community' with rights

The experience in Northern Ireland, as a divided society with contested notions of place and identity, along with learning from Scotland, suggests a need for clear articulation of what constitutes a community when considering any expansion of rights. Provision of a definition of community, setting out clear criteria when considering rights is necessary to set clear workable parameters in deploying any expanded rights to a sub-local government level.

2. Capability Building

Thus far, community planning has more meaningfully engaged communities of interest than communities of place and identity in decision-making. Moving towards strategically engaging with communities of place is not without challenge. Many citizens do not live in localities with properly-constituted community bodies or access to the right mix of skilled, influential support, to participate in decision-making processes. The learning from Scotland and Ireland points toward attempts to create a support culture and a set of structural arrangements that address community capability issues.

Future legislation, guidance and supporting infrastructure needs to reflect the policy principles of subsidiarity, recognising and harnessing the potential of communities to play their co-productive role. The NI Executive illustrates an acceptance of this approach for enhanced civic participation in public life. *New Decade New Approach* details that 'People and communities will have an opportunity to shape the future Programme for Government and the budget, through citizen engagement and co-design' (2020: 9).

3. Power and Influence

Decades of evidence demonstrates the inability of the state (unilaterally) to adequately understand, design, and solve complex public policy issues. Not addressing the skewed power imbalances between government and communities will perpetuate the underlying causes of the problems in the planning, provision, and improvement of public services. Recent attempts to experiment with more collaborative models of partnership working, bringing together the state, the market, and civil society, e.g. community planning reveals a willingness of government to share (some) responsibility.

Sharing responsibility does not equate to the equal sharing of power and influence. Future legislation needs to carefully consider the empowerment of the powerless, and, in doing so, ensuring that communities (whether of place, identity, or interest) are equal players in the decision-making structures and processes of making change. This should include participation requests (including participatory budgeting), the right to challenge, and the right to buy.

A more equitable distribution of influence and power offers the prospect to experiment with the building of more effective working relationships between public bodies, local partners, and local communities, producing reciprocal trust and openness to co-produce solutions to pressing social, economic, and environmental challenges.

4. Monitoring and Evaluation

Community planning lacks an adequate assessment of the quality of engagement that would provide a baseline to reflect on engagement practices and inform the debate on the future role of communities. Monitoring and evaluation processes appear much stronger in Scotland and Ireland, with supporting organisations, networks, and universities conducting reviews and independent research that offers valuable information and data to inform and refine future practice.

Legislation on community rights should outline clear and strong evaluative monitoring mechanisms to manage the acquisition and progression of rights, track engagement, ownership, and performance, and capture good practice in any new instruments for advancing well-being outcomes in the public interest.

5. Accountability and Transparency

There should be a recognition – and legal articulation – that community organisations or bodies that will be the likely basis for enacting greater community rights must be representative of legitimate concerns that relate to the broader public interest.

Legislation has to appreciate the nuances of the Northern Ireland context and ensure the introduction of community rights does not conflict with, or be counterproductive to, the ambitions set out in other social policy fields, e.g. building a shared society, space, and future.

There should be a requirement on community bodies pursuing community rights instruments that a strong evidence base is collected to support any right to challenge, bid or buy, which is underpinned by engagement with the wider community and with other community organisations or networks.





Acknowledgements Shaping Spatial Planning

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SHAPING SPATIAL PLANNING



Spatial Planning

The key function of any planning system is to ensure that development not only causes no damage to public interests - be they economic, environmental, or social - but also increases public benefit through application of fair and equitable processes.

Yet, there are major concerns about the capacity of planning systems to meet public need. Despite reforms in Northern Ireland, levels of trust are low and engagement with key community and environmental interests is, at best, ineffective. The decision-making process is said to lack transparency and accountability and is limited in scope, needing to embrace a broader range of environmental and social issues, including climate change and the provision of accessible green space.

To remedy these challenges, consideration will need to be given to the incorporation of a framework of rights for citizens and community-based organisations: rights to information, to participate, and to challenge in development decision-making. Community-led plans will need to be included and linked to spatial planning processes. The well-being and access needs of local communities - from green spaces to play spaces - must be more effective, with investment and capacity development support for decision partakers and makers in local government and community. The context for further development must be based on explicit rights and goals with structural mechanisms for continuous review and reform.

Introduction

This paper draws on major reviews of spatial planning in the UK and Ireland, and presents new primary research to identify opportunities for the improvement of the Northern Ireland (NI) planning system and its capacity to meet urgent social, economic, and environmental needs.

It proposes a number of recommendations to meet these challenges. These point to the need for a strengthened framework of rights for citizens and community-based organisations: rights to information, rights to participate, and rights to challenge in development decision-making; rights underpinned by enhanced training, support, and monitoring alongside strengthened checks and balances to ensure transparency and public trust.

The Role of Spatial Planning

The Planning Act (NI) 2011 notes that land planning has 'the objective of furthering sustainable development and promoting or improving well-being'. There is an interdependence of human and ecosystem health and well-being, and awareness of this interdependence increasingly plays out in the development of our neighbourhoods and use of resources.

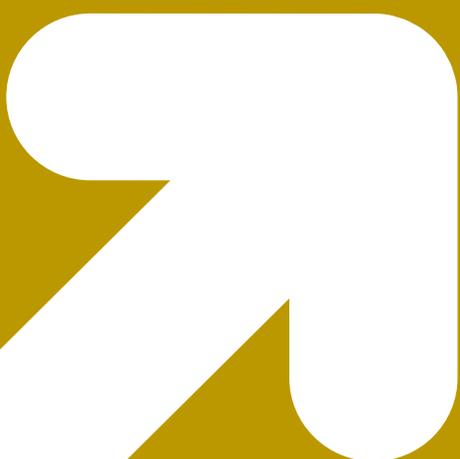
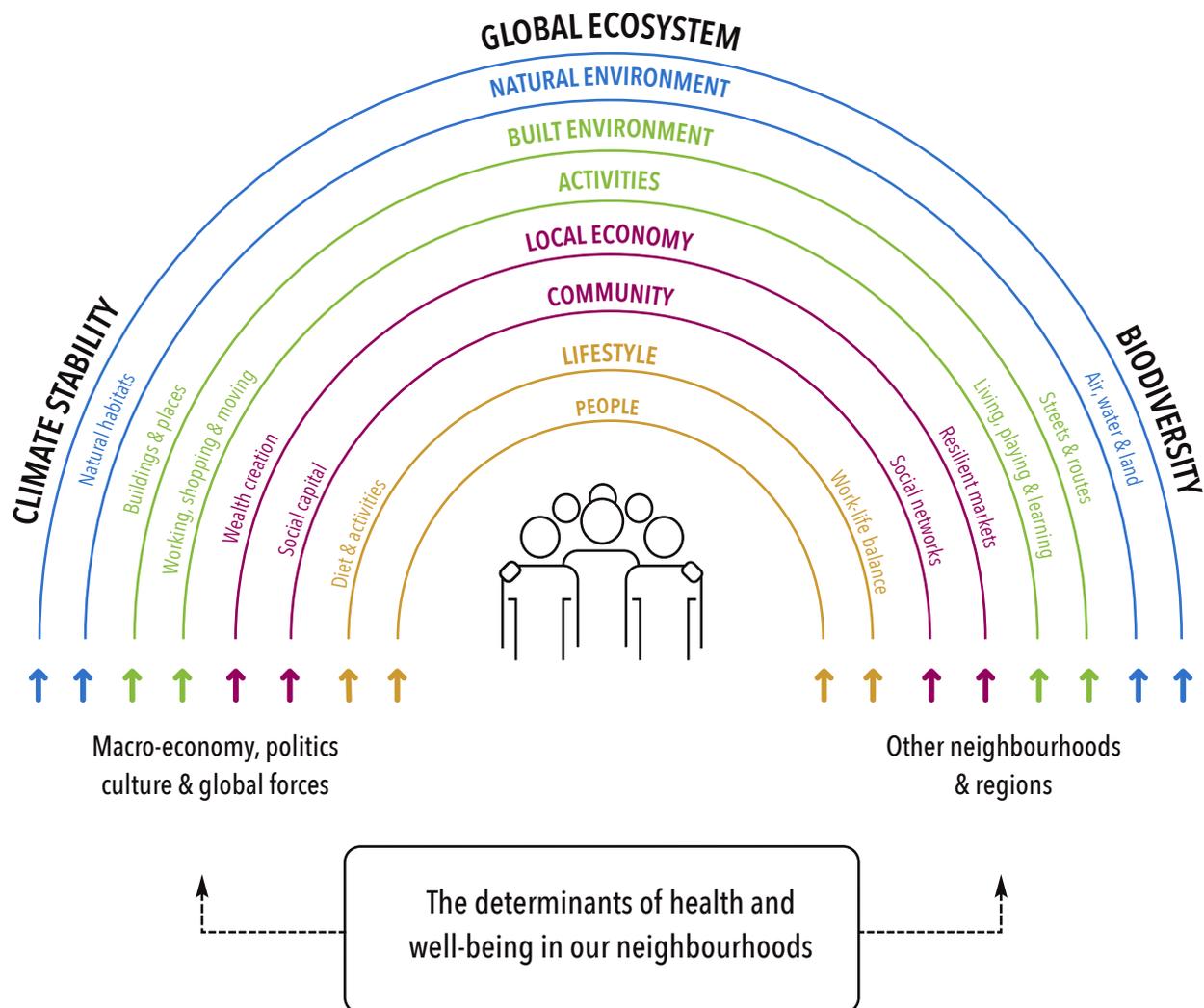


Figure 1: Determinants of health and well-being in our neighbourhoods (Barton and Grant, 2006) as reproduced in the Strategic Planning Policy Statement (SPPS) for Northern Ireland (DOE, 2015)



Spatial Planning & Rights

The rights of the individual (e.g. to develop land in personal ownership) are balanced against the wider public interest (e.g. economic prosperity or provision of public services). Decision-makers seek to achieve or justify a balance between stimulus and regulation that delivers the multiple complex functions and outcomes that society demands from our cities, towns, villages and countryside. Elected representatives, advised by professional planners, seek to arrive at decisions that balance competing interests and objectives; but where the balance lies is often the subject of conflict. Decision making is ultimately political, reflecting both the nature and distribution of power and cultural values within society.

Though the planning system is thought to favour developers rather than the rights of citizens, local and national planning policy is practiced within a legal framework. This includes the Human Rights Act 1998 (UK) and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, ratified by the UK and Ireland in 2005 and 2012 respectively. The largely procedural nature of planning practice gives us a process wherein rights to information, to participate and to challenge are to be expected, but does not guarantee specific rights-based outcomes (such as access to affordable housing or a decent living).

Transparency and accountability, and inclusion of checks and balances is central to the reform of planning if it is to establish balance between competing interests. The objective is to move beyond value-based judgements and deliver against a shared definition of public interest, not based on project outcomes or short-term individual interest but on longer-term shared priorities concerned with society, well-being, and the sustainability of place. Though such decisions cannot be informed with access to a 'perfect' knowledge, they must be informed with nothing less than adequate knowledge that supports technical assessments and value judgements on benefits and risks made democratically and accountably and involves those who will be most affected. Authentic engagement and inclusion of community voices within a rights-based legislative framework and a clear commitment to well-being is critical to determining public interest.

Planning Reform

Planning is characterised by a deficit of public trust. In England, the Raynsford Review of Planning concluded that it 'does not work effectively in the long-term public interest of communities or the nation' (p.9). and that 'rebuilding trust in the system and promoting a more constructive dialogue between planners and the public is clearly a priority' (p. 9). Legislative changes introduced in the Localism Act 2011, which accounts for inclusion of community-led neighbourhood plans in development decision making, achieved limited community-level outcomes, compounded by an 'imbalance in access to planning expertise, particularly in excluded communities' (page 78). In addressing the challenges, the Raynsford Review calls for a new covenant for community participation, and the development of a participative model of planning that gives communities decision-making rights and responsibilities.

The Wellbeing of Future Generations (Wales) Act 2015 acknowledges rights to basic living conditions that support health and well-being, situated alongside sustainable development goals for public authorities. The degree to which the Welsh planning system facilitates an advancement toward achieving these goals is undetermined. Research undertaken by The Auditor General for Wales (2019) found that

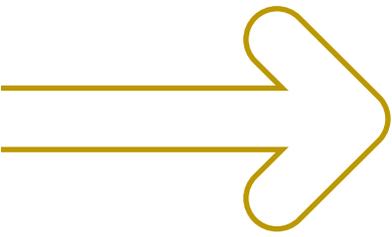
despite legislative commitments the planning system is disproportionately delivering greater benefits for developers than communities. Its recommendations for reform included the development of 'place plans' to engage and involve citizens and communities in planning decision-making and well-being training for planning committee members.

Perhaps the most prominent difference in terms of community or citizen rights in the Republic of Ireland compared with the systems in the UK is the long-standing provision for third party rights of appeal (Ellis 2002). Trust in planning was eviscerated because of corruption, which in turn led to the setting up of the Office of the Planning Regulator in 2019 (Fox-Rogers 2019). Its wide remit – building confidence back into practice – includes: provide information to the public, educate members and staff of planning authorities, review the performance of planning authorities and the appeals body, An Bord Pleanála, and ensure alignment with development plans and economic strategies.

Planning in Northern Ireland

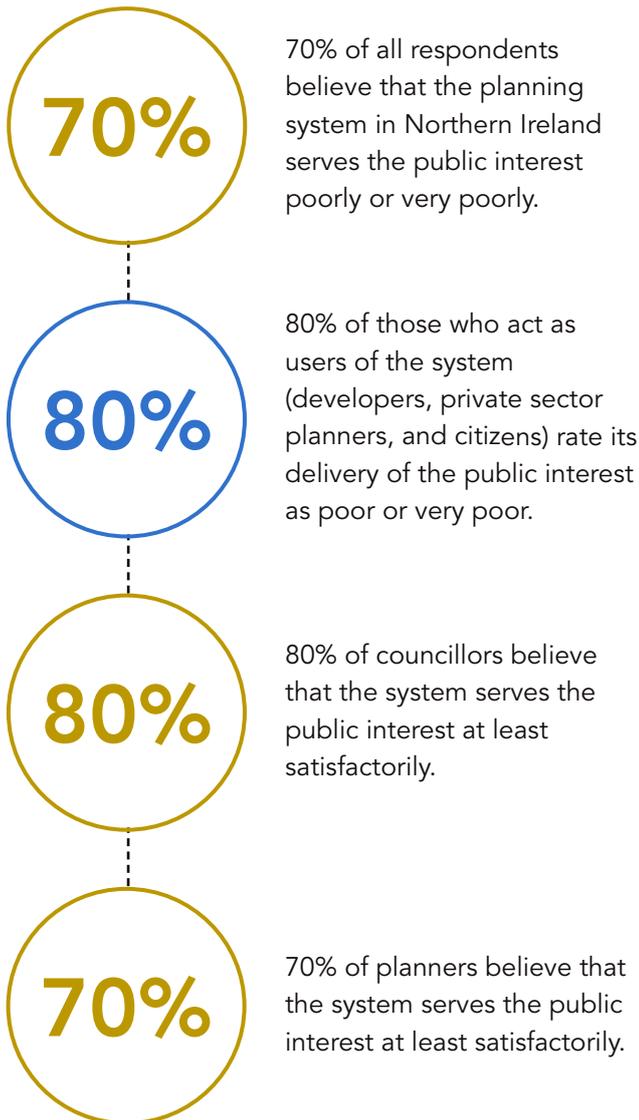
In Northern Ireland, key goals of planning reform over the last decade have aspired to improve public accountability and democratic input to development decision-making (e.g. Lloyd and Peel, 2012). Research carried out by Queens University Belfast (QUB) in 2011 revealed that the planning system was not performing well for the people, with most planning stakeholder groups in favour of reform. The anticipated 'powerful democratisation of local communities and localities across Northern Ireland' (Lloyd and Peel, 2012, p.182), following the transfer of planning responsibility to local government in 2015, has not materialised.

The following review of current delivery of the public interest by the Northern Ireland planning system in this paper is based on a survey of over 400 stakeholders in planning in Northern Ireland, carried out by the authors between June 2019 and February 2020 (Fox-Rogers et al, 2020). The survey not only sought feedback on stakeholder perceptions of public interest but also attempted to relate these to issues of inclusion, trust, and accountability. In summary, the research findings reveal the following:

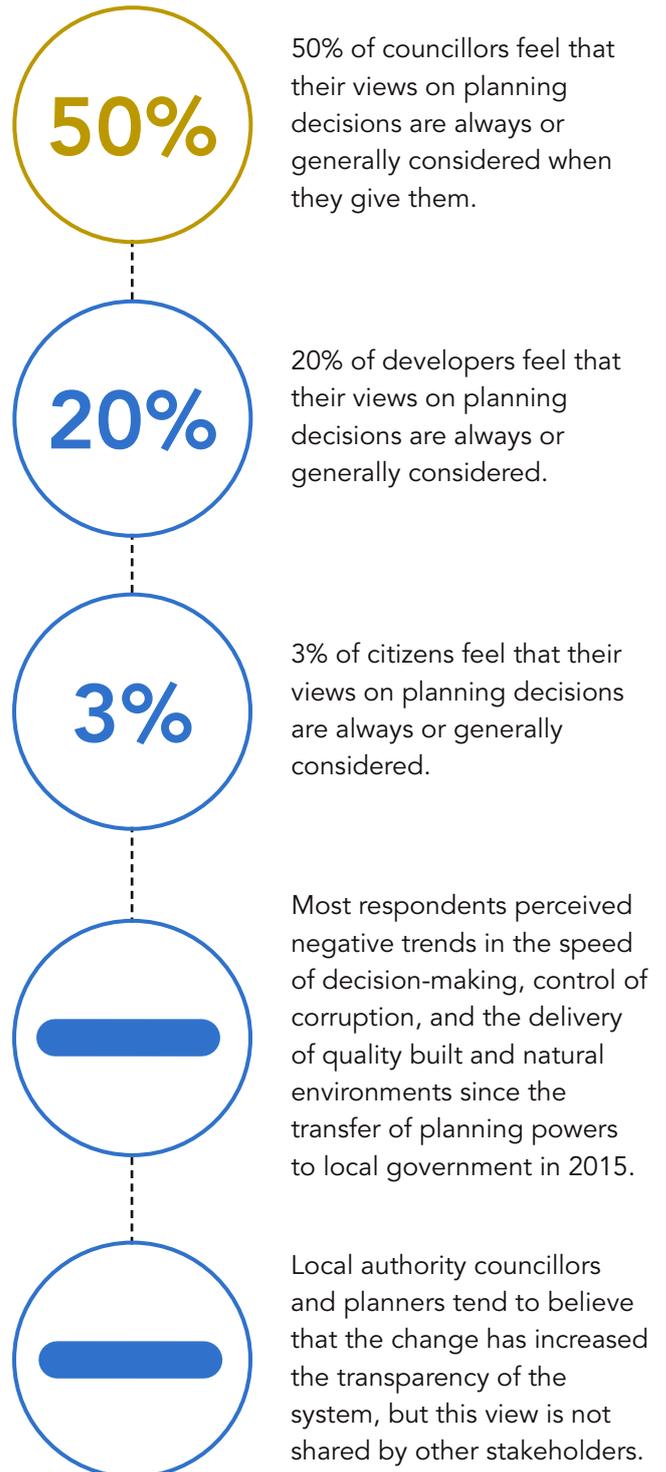


Transparency and accountability and inclusion of checks and balances are central to the reform of planning if it is to establish balance between competing interests

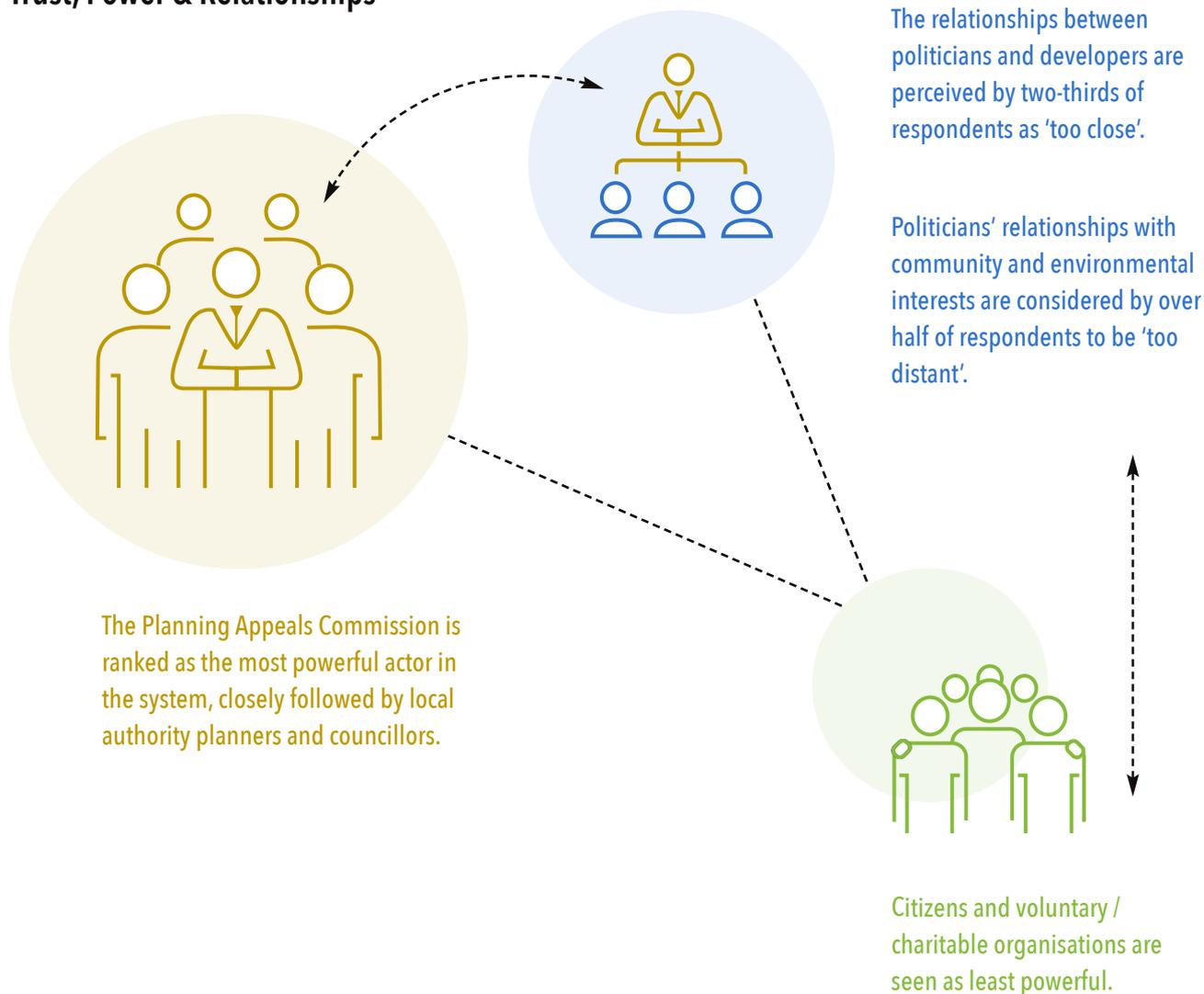
Delivering Public Interest



Decision-Making, Transparency & Accountability



Trust, Power & Relationships



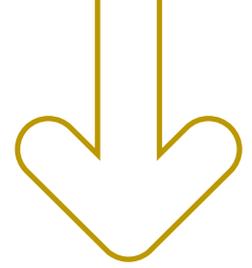
Reform Priorities



The priorities for intervention were: enforcement of councillors' codes of conduct; publication of full justification of Planning Committees' decisions; the public registration of all lobbying about planning issues; lower thresholds on the publication of donations by developers to political parties; and the establishment of an independent planning regulator.

The priority reform issues were: lack of training for councillors; lack of transparency in the relationships between developers, politicians, and planners; potential for corruption; and poor political leadership.

Climate change and the provision of open/green space were flagged as issues that the planning systems needs to address better by over 70% of respondents.

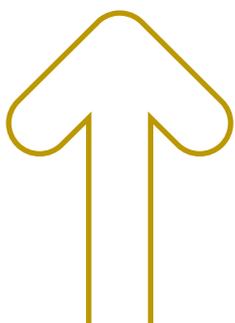


Strength & Opportunity

It is clear that planning systems across the UK and Ireland are wrestling to achieve what the Raynsford Review (TCPA, 2018, p7) describes as a 'a balanced settlement in which the development needs of our communities are met in the most sustainable ways and in which all parts of the community have a real voice in the decision-making process.' The structural challenges faced in NI are comparable to those of its neighbouring jurisdictions, including the continued challenges of climate change and the addition of planning post-Brexit and Covid. We should seek to draw learning and solutions from the UK and Ireland to inform our ongoing discussion on spatial and community planning and to assess the potential value added through the inclusion of citizen and community rights.

NI planning system has a relatively coherent and up-to-date legislative base for spatial planning (The Planning (NI) Act 2011), and its relationship with local government and community planning is set out in the Local Government Act (NI) 2014. There are, however, clear gaps within our legislative frameworks, and major concerns about the broader coordination of development, its protection of environmental resources and climate change, the role of communities, and public trust. The fact that the region is unique in not having an independent environmental protection agency is a matter of concern, as is weaker environmental governance as compared with other parts of the UK.

The inclusion of the community voice can potentially facilitate planning to transcend its narrow economic focus



“a balanced settlement in which the development needs of our communities are met in the most sustainable ways, and in which all parts of the community have a real voice in the decision-making process.”

Whilst community plans feed into local plans, there is no provision to accommodate community-led plans (i.e. at the neighbourhood or sub-district level). We have failed to capitalise on the knowledge and experience within the community sector in NI and to accommodate for community-led plans to inform local place plans. Scotland has led the way in this; the Community Empowerment (Scotland) Act 2015 makes provision for community organisations to feed into planning and gives them statutory weight in decision-making processes. The Auditor General for Wales has recommended that the Welsh Government should adopt a similar approach to strengthen the voice of local communities and citizens. The inclusion of the community voice can potentially facilitate planning to transcend its narrow economic focus, that privileges short-term financial gain, towards a broader consideration of purpose; that is, one concerned with climate change and environmental quality, overcoming disadvantage, and the promotion of sustainable economic development.

Recommendations

Alternative scenarios for ongoing improvement in the NI planning system must consider the priorities of transparency, engagement, and rights of challenge. These priorities are organised under three main themes.

- 1 An enhanced agenda for community outcomes through the planning system, i.e. using existing resources and legislation to improve the way the planning system can deliver its existing duties to promote sustainable development and well-being, including:**
 - a. Develop outcome indicators for the planning system and each local planning system.
 - b. Establish a public conflict-of-interest register covering donations and lobbying.
 - c. Provide training on delivery of community outcomes through planning.
 - d. Introduce innovative civic engagement methods.

- 2 Review of support for engagement, i.e. identifying the ways in which the capacity of the community sector can be enhanced so it can more effectively contribute to the planning system, including:**
 - a. Optimise the NI Planning Portal as an interface for public engagement.
 - b. Invest in research and analytical support for community-led planning activity.
 - c. Invest in technical and planning aid support.

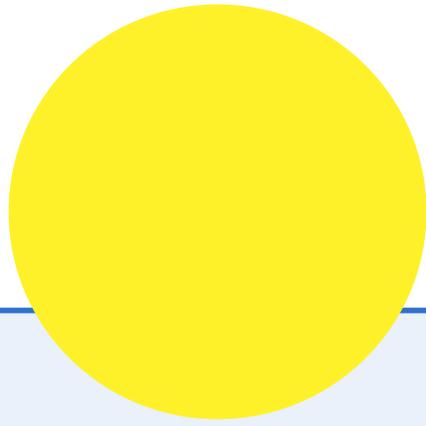
- 3 Reviewing current legislative provisions, i.e. identifying those statutory provisions that may need to be strengthened if community rights are to be enhanced, including:**
 - a. Develop a legislative base for the input of community-led planning into local development plans; strategic decision-making aligned to rights to buy, for example.
 - b. Review UK Environment Bill and other legislation on impacts for planning-related information and public engagement.
 - c. Appoint an independent planning regulator for Northern Ireland.
 - d. Provide for a community right of appeal on decisions that are counter to the furthering of sustainable development and promoting or improving well-being.



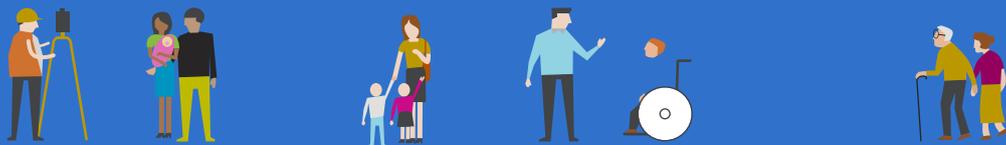


Acknowledgements Shaping Community Asset Transfer

Lorraine Hart is Director of Community Land Use, a London-based organisation committed to the promotion and support of community-led development and regeneration. Lorraine leads on policy research for funders and statutory authorities, as well as practical support for voluntary and community organisations who are developing a land or building project.



SHAPING COMMUNITY ASSET TRANSFER



Community rights for Asset Transfer in Northern Ireland

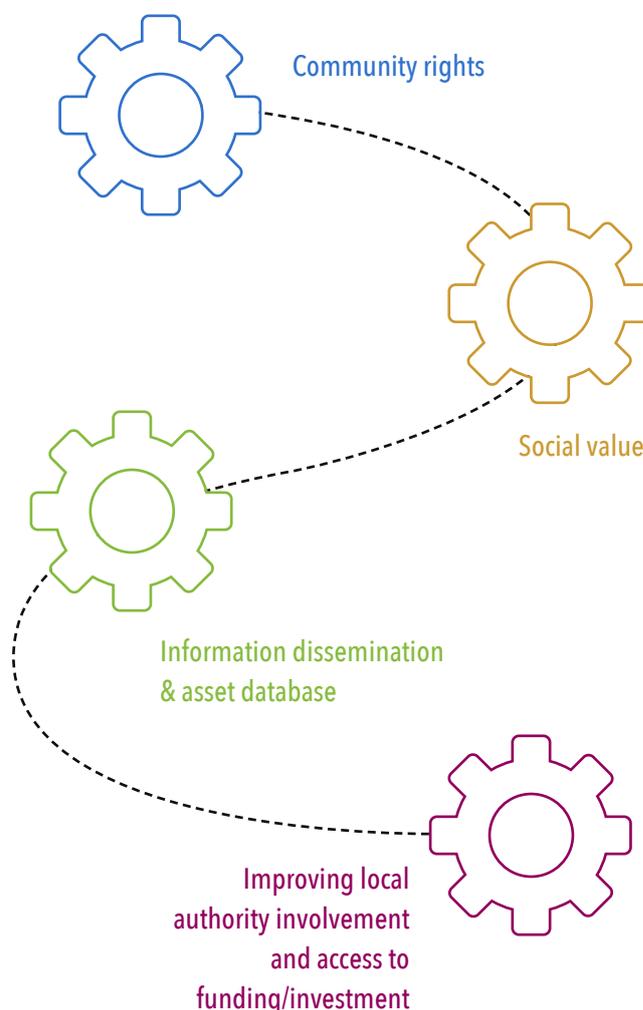
In 2014, the Northern Ireland Executive introduced a policy framework in support of Community Asset Transfer¹ (CAT)². The term 'asset transfer' was originally used to indicate that communities were to be the beneficiaries of public assets via transfer of ownership. There is a recurring inconsistency in how the CAT policy guidelines are used by public bodies in Northern Ireland (NI). In practice, some public bodies have transferred assets at less than market value or no financial consideration, but many more have involved a financial transaction, sometimes at open market value (OMV).

1. Introduction

Several factors have decelerated the promised social, economic, and environmental returns envisioned through making public assets available to voluntary and community sector organisations³. The collapse of the NI Executive in January 2019 has been a significant contributory factor, as has the absence of legislation to underpin the delivery of the CAT policy framework aspiration; that is, to 'invest in social enterprise growth to increase sustainability in the broad community sector', and by extension, progress community rights of ownership.

In September 2019, an Innovation Lab was held by the Department of Finance (DfC), and the Department for Communities (DfC) which looked in detail at the operation of the Community Asset Transfer process in NI. It identified both the gaps and weaknesses and recommended that the possibilities for framing community rights legislation in Northern Ireland be examined.

A total of thirty-six recommendations were made covering the areas of:



This scoping paper reflects on the actions needed to advance on community ownership and rights in NI. Current legislation and practice across the UK can inform the development of community rights legislation for NI concerning community ownership and, specifically, land and buildings acquired by means of CAT. The rights would be for use by community/voluntary/not-for-private-profit organisations (referred to throughout as 'community organisations').

This paper is based on the results of a review of literature and data on practice in asset transfer across the United Kingdom. A desk-based review was then followed up with interviews with Northern Ireland practitioners and academics selected by Development Trusts NI (DTNI). These stakeholders were asked for their views on:

- (i) Experience of asset transfer in NI.
- (ii) Provisions for acquiring land and building assets to be embedded in community rights legislation.
- (iii) The specific issues that the rights would have to address so that any legislation could be framed for purchasers/recipients and sellers in NI.
- (iv) The specific difficulties that there would be for purchasers/recipients and sellers if such rights existed.

2. Community Rights in the UK related to Asset Transfer

(i) The NI Context

TABLE 1: Policy & Legal Provisions Northern Ireland

1. Community Asset Transfer in Northern Ireland - Enabling and Supporting Community Ownership and Management of Public Assets:⁴

The policy framework for supporting community asset transfer and the potential introduction of community rights legislation in NI. Specifically, it supports delivery of the NI Executive's commitment in the Programme for Government (2011-2015) to 'invest in social enterprise growth to increase sustainability in the broad community sector'. It also commits to working to identify resources to support the development of Community Asset Transfer.

2. Land Disposal at Less Than Best Consideration:

The Stormont Regulation and Government Property Act (Northern Ireland) 1933 makes provision (section 5) for the sale of assets by NI central government departments at less than best consideration to a body that does not trade for profit subject to the consent of the Department of Finance NI.

3. Local Government Act (Northern Ireland) 1972:

Allows councils in Northern Ireland to acquire and to dispose land (part VII, sections 95 & 96) for the purposes of carrying out their statutory functions. The power to dispose of land at less than best consideration requires ministerial consent.

4. General Power of Competence:

As in England, this general power exists within the Local Government (Northern Ireland) Act 2014 (sections 79 & 80) and grants councils the ability to do anything an individual can do (subject to restrictions) rather than only what they are directly empowered to do.

¹ Community Asset Transfer in Northern Ireland: Enabling and Supporting Community Ownership of Public Assets.

² Community Asset Transfer is an established mechanism used to enable the community ownership and management of publicly owned land and buildings.

³ For benefits of CAT see: Murtagh B, Bennett E, Copeland L, and Goggin N (2012) "Community asset transfer in Northern Ireland" JRF & Power to Change Research Institute Report No 3 (2016) "A common interest: the role of asset transfer in developing the community business market".

⁴ General Powers of Council.

(ii) The UK Context

The key legislative instruments supporting community asset transfer in Great Britain are the Localism Act 2011 and the Community Empowerment (Scotland) Act 2015. The respective legislation relevant to England and Scotland is summarised below along with the eligibility requirements for community organisations pursuing the exercise of community rights.

TABLE 2: The Localism Act⁵ (England)

- 1. Community Right to Bid:** Enables community organisations to nominate local authority 'assets of community value'. If successful, and if the asset is put up for sale, the nominating community organisation has a window of six months in which it can put together an offer to buy it. There is no obligation to accept the bid of the community organisations.

Community requirements

Nominating community groups can include a parish council, a neighbourhood forum, a not-for-profit organisation or a group of at least twenty-one individuals connected to the local area.

- 2. Community Right to Build (Neighbourhood Development Orders):** 'As part of neighbourhood planning, the Act gives groups of local people the power to deliver the development that their local community wants. They may wish to build new homes, businesses, shops, playgrounds or meeting halls.'

Community requirements

The group preparing the neighbourhood plan must have more than half its members from the local area and they must be established to pursue the social, economic, and environmental improvements of the area. Any profits resulting from the development must be used for the good of that community, not for private gain.

- 3. Community Right to Plan/Neighbourhood Planning:** 'The Act introduces a new right for communities to draw up a neighbourhood plan... and say where they think new houses, businesses, and shops should go... Local communities will be able to use neighbourhood planning to grant full or outline planning permission... making it easier and quicker for development to go ahead... local people will be able to vote on it in a referendum. If the plan is approved by a majority of those who vote, then the local authority will bring it into force.'

Community requirements

The minimum criteria differ dependent on the location of the proposed Neighbourhood Plan area. If it is a parish area (the lowest level of local government in England) then the parish can apply. If in an urban area then the group must constitute with a minimum of twenty-one people drawn from the area and be established to pursue the social, economic and environmental improvement of the area.

- 4. Community Right to Challenge:** 'Provides groups, parish councils and local authority employees the right to express an interest in taking over the running of a local authority service. The local authority must consider and respond to this challenge and, where it accepts it, run a procurement exercise for the service in which the challenging organisation can bid.'

Community requirements

The provisions for local authority employees who want to use the right must form a suitable not-for-private-profit legal vehicle.

- 5. General Power of Competence:** This took effect in England in 2012 and allows councils the ability to do anything an individual can do (subject to restrictions) rather than only what they are directly empowered to do.

⁵ Descriptions in quotes below are drawn from the *Plain English Guide to the Localism Act 2011* Dept for Communities, and local government.

TABLE 3: Supplementary Legal Provisions (England)

1. **Community Right to Reclaim Land:** The Local Government, Planning and Land Act 1980 gives power to individuals to request that the Secretary of State makes an order requiring a public body to dispose of land it owns. Previously known as the Public Request to Order Disposal, it was renamed the Right to Reclaim Land in 2011.
2. **Land Disposal at Less Than Best Consideration:** The Local Government Act 1972 allows councils in England and Wales to dispose of land at 'best consideration that can be reasonably obtained... best consideration... is not simply about a financial transaction but also about any transfer of ownership being seen to contribute to the wellbeing of communities...'
3. **The General Disposal Consent 2003:** Provides a general consent and guidance which allows councils to sell land at less than best consideration without the need to seek the consent of the Secretary of State, provided that the undervalue is less than £2 million.

TABLE 4: The Community Empowerment (Scotland) Act 2015⁶

1. **Participation Requests:** Part 3 of the Act enables communities to request to participate in decisions and processes which are aimed at improving outcomes. Subsequent guidance in 2017 on the request to participate clarifies that the purpose of their request is to facilitate a dialogue with a service provider, contribute to decision-making processes, contribute to service changes, challenge decisions, and seek support for alternatives.
2. **The Community Right to Buy Land:** The Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003 has been amended by Part 4 of the Community Empowerment (Scotland) Act 2015. This extends the Community Right to Buy to all of Scotland, urban and rural. The local community can register an interest in the land, and if the land comes up for sale, they have first choice to buy it. This depends on the landowner deciding to sell the land.
3. **Asset Transfer Requests:** This provision gives community bodies a right of request to buy, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish ministers that they feel they could make better use of. The public authorities must transparently assess requests against a specified list of criteria, which include whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social wellbeing, or environmental well-being, and agree the request unless there are reasonable grounds for refusal. Should such a request be refused, the community group has a right to appeal or to ask for a review of that decision.

'Relevant authorities will be required to publish a register of the land they own or lease to help communities identify suitable property. The Act does not say whether the community body should pay full market value for the property or should be allowed a discount. The guidance includes advice on the assessment of non-financial benefits.'
4. **Participation in Public Decision-Making:** Part 10 of the Act is 'a new regulation-making power enabling ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the allocation of its resources.' The provision notes that 'involving people and communities in making decisions helps build community capacity and also helps the public sector identify local needs and priorities and target budgets more effectively.'

Community requirements

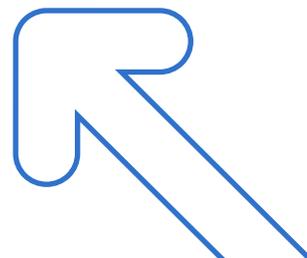
Exercise of all the rights requires that community bodies be of a type and legal structure that is defined in the act. To make an asset transfer request, your organisation needs to be a '**community transfer body**.' It can be either a community-controlled body or a body designated by the Scottish ministers.⁶ This includes provisions regarding accountability, asset locks to protect assets into the future, defined communities of interest or geography, application of surplus funds, minimum membership numbers (20), affordable membership fees, and control of the organisation by the defined community. Copies of governing documents for community bodies must be approved and submitted as part of exercising the community rights.

⁶ Community Empowerment Act Summary (for narrative description in parenthesis) Community Empowerment (Scotland) Act 2015: community transfer bodies' guidance

TABLE 5: Supplementary Legal Provisions (Scotland)

- 1. The Land Reform (Scotland) Act 2003:** Introduced a new system of legal provisions governing land ownership, use, rights and responsibilities so that land may contribute to a fair and just society while balancing public and private interests. The act covers matters relating to the community right to buy and the crofting community right to buy, as well as introduces a provision covering abandoned, neglected or detrimental land.
- 2. The Local Government in Scotland Act 2003:** The power to transfer assets at less than market value was established in this act which amended section 74 of the Local Government (Scotland) Act 1973, and set out that Scottish ministers may, by regulations, provide the circumstances in which local authorities can dispose of land at less than the best consideration that can be reasonably obtained.
- 3. Disposal of Land by Local Authorities (Scotland) 2010:** Provides discretionary powers to local authorities to dispose of land (and assets) to community organisations at less than best consideration without reference to the minister.

Communities have assets which could be built upon – people with skills and local buildings and facilities that could be used more directly to provide stimulus to the local economy to ensure that money and jobs are retained locally



3. Asset Transfer: Data on Practice

I. England

In 2015, the House of Commons Community and Local Government Committee conducted a review into the use and operation of the community rights available to community organisations in England. A striking feature of the review was the lack of data gathered on those who attempted to use the community rights, whether completing a neighbourhood plan, securing an asset through the Right to Bid, expressing an interest in delivering services through the Right to Challenge (after nominating an asset of community value), or successfully reclaiming land that was underused or unused. The review committee recommended that a basic level of data on take-up of community rights be retained by all local authorities and that government periodically analyses the data to understand which groups are using community rights, why they succeed or fail, and how the rights might be reformed in order to target resources to improve take-up.

The Right to Plan was not included in the House of Commons review but data from February 2020 shows that currently 2,835 neighbourhood plans have been started and over 1,000 have been 'made' so that they are now used by the local planning authority to guide decisions about planning applications made in the Neighbourhood Plan area and the local plan covering their district/borough. Specific issues raised by communities that have exercised this right include the cost and time needed to be invested in the process (principally of volunteers) and the varying degrees of support and cooperation from their local council.

II. Scotland

Data on community asset registration is not fully publicly available. A review undertaken by McMillan, Steiner and Hill O'Connor 2020⁷ identified a lack of longitudinal data on asset transfer requests from public bodies to which the 2015 Act relates. Their study showed that between 2017 and 2019 there were 139 asset transfer requests to the relevant authorities that the Act covered. Of these, 81 were agreed and 10 refused. The majority (approximately 80%) of requests were submitted to local authorities. The asset requests in the periods reviewed included land and buildings and a combination of both.

A further indicator of the take-up of asset transfer is the Scottish Land Fund, which since 2016 has awarded £33,176,137 in 177 grants to community organisations. This total includes some exceptionally large investments - £4.4 million to buy a woodland estate and lake in Mull - and some very modest ones (e.g. £147,000 to buy a harbour master's house to convert it into two affordable apartments).

III. Northern Ireland

The Community Asset Transfer policy framework in Northern Ireland was published in 2014, and data has been collected by Land & Property Services in the NI Department of Finance. There are two time periods covered by the available data: the first, 2014 to 2017, and the second from 2018 onwards. The information is not robust enough to draw any meaningful conclusions, especially concerning the experiences of community organisations expressing an interest in CAT. The types of assets being disposed of were unknown in 2018 with significant information gaps remaining in 2019. The profiles of the disposing bodies cover central government, local government and the NI Housing Executive. The value of the assets being disposed of has frequently been withheld. Available data suggests that community organisations make up approximately 21% of all expressions of interest to acquire surplus assets, of which 35% have been successful.

Of the eleven assets successfully purchased, two were transferred at nil value others at open market value, and the average time from declaration of the asset being surplus to requirements to purchase was two years. Of the eleven assets successfully purchased, two were transferred at nil value, others at open market value, and the average time from declaration of the asset being surplus to requirements to purchase was two years.

⁷ McMillan, C., Steiner, A. and Hill O'Connor, C. (2020) Participation Requests: Evaluation of Part 3 of the Community Empowerment (Scotland) Act 2015, Scottish Government.

4. Asset Transfer:

Weaknesses and Challenges

The reviews carried out in England by the House of Commons Select Committee and in Scotland by C. McMillan et al revealed a remarkable congruence covering the weaknesses and challenges of practice in asset transfer which can be summarised as:

- Variations in awareness and take-up of the opportunities, both by the public authorities who can provide the asset and the community organisations who could benefit.
- Lack of time and technical support for community-based propositions to be worked up in detail within deadlines.
- Lack of awareness by public bodies of non-financial returns from asset transfer that meet their other non-financial policy objectives related to health and well-being, housing, and the local economy.
- Lack of awareness by public bodies of capital leverage/return into transformation of underused publicly owned assets that cannot be accessed by public bodies.
- Concerns that asset acquisition was more likely to be undertaken by community organisations in affluent areas due to both a lack of awareness and capacity to respond in non-affluent areas.

Delivering shared social, economic, and environmental outcomes can be strategically advanced by framing the roles to be played by communities within a legislative framework of community rights.



5. Stakeholder Views

Stakeholders views recorded for this scoping paper about the CAT process in NI presents the following viewpoints.

Table 5: Community Asset Transfer - Stakeholder Views

Stakeholder View	Details
Poorly promoted	Not integrated across all levels of government. Many community organisations not aware of council-owned surplus assets in some areas
Bureaucratic and confused	An internal market trawl of other public bodies - should be done prior to inviting community organisations to express an interest... Confusion about the responsibility for preparation of business cases despite the guidance.
Unimaginative	Little promotion of the idea of multiple use of assets to meet a wide range of community needs. See, for example, community-led housing projects in England.
Inhibits stakeholder participation	The timescales are too short, particularly to prepare a detailed case for asset acquisition. Guidance should identify sponsor bodies who have the powers required to enable them to facilitate the transfer assets to community organisations.
Lacks a support infrastructure	Funding for feasibility work and business plan/business case preparation is needed as are professional services (e.g. valuation, town/area planning, asset managers, business/financial planners, architects/surveyors) to meet the support needs of communities and disposing bodies.
Clarity	Disposal at less than best consideration needs to be considered as an investment in communities to meet their own needs, particularly where future use aligns with government policy objectives.
Consistency of approach	All assets in public ownership should be offered via one route. No current obligation for councils to use central government trawl and disposal process.
Narrow outcome focus	Fails to capitalise on the relationships between local government and community organisations or invest in use of CAT to advance mutual partnerships in service provision via funding or service contracts.
Narrow tenure options	CAT presents a spectrum of transfer options (e.g. lease or a licence to occupy) but in practice it is usually a long term lease or freehold disposal. Central Government departments rarely facilitate variable leasehold arrangements especially if it is unaligned to its policy outcomes and service delivery areas. Restricted tenure prevents smaller community organisations from developing capacity.
Lacks capital funding	A form of capital funding is necessary especially if open market value or something close to it is required by the seller.
Carry risks	There is a danger that larger, established, experienced community organisations and charitable bodies may forge ahead in multiple asset acquisitions of public assets when smaller organisations may not get an opportunity to build capacity for asset acquisition.
Community risk aversion	The public sector has a failure bias tolerance which favours market disposal and private sector organisations.
Lacks ongoing support	Training and support post-acquisition was lacking in terms of financial and asset management.

Legislating for a community rights framework to overcome the myriad of existing challenges and weaknesses is not without its own challenges. Framing legislation for asset transfer as a community right could cause problems where community organisations possibly overreach and submit underdeveloped proposals that are not financially viable or sustainable. Moreover, future legislation may confer a sense of entitlement for communities to acquire assets regardless of the strength of their case/proposal in viability or sustainability, and any unevenness in the take-up of rights has the potential to amplify divisions (religious, political) between communities within an area and across areas. Many of the weaknesses and challenges of the current CAT process would remain even if new legislation was enacted, and it would still not realise its potential to deliver community benefits. Capital funding to support acquisition, which had been key to the successes in other parts of the UK, is central to future success in NI, coupled with a change of culture within asset owner organisations, particularly in relation to risk and a positive approach to the process overall.

Strengths and Opportunities

The take-up of rights available elsewhere in the UK is uneven but does exist, and the legislation in support of asset transfer in Great Britain provides a source of learning to help avoid issues associated with these rights in the NI context.

It is important to note that even before the implementation of the NI CAT policy framework, asset disposal to community organisations had already taken place. Previous examples have involved the NI Housing Executive and the development of enterprise workspaces for example. The NI CAT policy framework has been able to build from this experience and widen the opportunity for asset acquisition to more community organisations.

The stakeholders spoken with in the preparation of this scoping paper were supportive of calls to provide a legislative basis for asset acquisition by community organisations. The power of this approach, they thought, is that it is not part of a 'deficit model' where communities are seen as places that only have needs, and recognises that communities have assets which could be built upon – people with skills and local buildings and facilities that could be used more directly to provide stimulus

to the local economy to ensure that money and jobs are retained locally. The assets that are available for acquisition by community organisations present opportunities since they were designated as underused or surplus and providing no economic, social, or environmental returns to the people and businesses of NI.

There are emerging investment opportunities in strategic funding via the Special EU Programmes Body, and a renewal of previous funding interventions such as the Social Investment Fund NI. The issues associated with implementing the CAT framework to date have, perhaps, prevented these opportunities from being grasped but the opportunity is still present to align community ownership with the policy priorities set out in *New Decade New Approach* (Jan 2020), which commits to deliver a regionally-balanced economy and an anti-poverty strategy. The refresh of the Northern Ireland Outcome Delivery Plan (2019) presents a further opportunity to make the acquisition of assets by community organisations more integrated into government agreed outcomes with more locally-devolved delivery to achieve them. Delivering shared social, economic, and environmental outcomes can be strategically advanced by framing the roles to be played by communities within a legislative framework of community rights.

6. Recommendations

Based on the review and interviews undertaken as part of this scoping paper, the following recommendations are proposed to achieve three objectives:

A Process Improvement: *make asset transfer and disposal policy more effective, ensuring it fulfils opportunities to meet the needs of communities.*

- The acquisition of assets by community organisations should be expressed as an investment of assets in communities to achieve economic, environmental, and social impacts especially where these align with government's policy outcomes.
- Guidance needs refreshed to communicate clearly to community organisations that the acquisition of an asset is a negotiation in relation to the balance between financial value and the social value outcomes.

- To provide clarity on the process steps and community requirements and extend timescales for its requisite stages.
- Frame the financial characteristics of asset transaction: focus on capital and revenue funding for agreed social, environmental, and economic outcomes, and acknowledge the role and duty upon public servants to implement and balance competing government policies to enable this.
- Policy promotion, information and awareness raising to local councils and community organisations: facilitate early discussions and capacity building and enhance councils' awareness of how asset acquisition by community organisations can deliver policy objectives for public service.
- Establish a capital development fund to acquire and improve assets that could release their future value to people and the local economy.
- Establish a pre-acquisition support programme to increase the pipeline of community organisations that could go through the process and respond to opportunities should they emerge.
- Invest in the support infrastructure: provide access to independently-commissioned and independent advisors to cover technical and strategic appraisal aspects (redevelopment /refurbishment of assets, business cases); financial aspects (valuation and business planning); and reporting and monitoring post-acquisition.

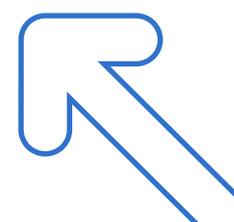
B Strategic Integration: *improve integration between central and local government in mapping and making surplus and underused land and buildings available*

- Councils should be obliged to use the trawl process for their surplus assets to ensure that all potential assets are available to community organisations

C Legislation: *draft legislation that balances the opportunity for community ownership with shared government and community objectives*

- Provide powers that are referred to as community empowerment - and investment - provisions so that community organisations can act via the acquisition of land or buildings in public ownership to address community needs (a defined geographical area, or an interest).
- Provide powers that apply to both public and privately owned assets where they are of value to the community, including a community right to register an interest to buy.
- Provide right to appeal decisions (by public authorities) which refuse registration of a community interest to buy. A community bid to acquire, when the asset is put on the market, should be similarly imposed upon an owner.
- Provide powers to local government in the eleven councils of NI, which simplify the decision-making process on asset acquisition by community organisations.
- Enhance general disposal consent which allows local government to decide on the sale of its assets to community organisations at less than best consideration, subject to a maximum undervalue, without the need for central government department or ministerial consent.
- Provide a 'community definition guidance framework' and governance eligibility criteria for asset acquisition (e.g. asset locks, open membership, etc) covering religious and/or political affiliations and their manifestations in communities of place⁸.

The acquisition of assets by community organisations should be expressed as an investment of assets in communities to achieve economic, environmental, and social impacts.



⁸ See Community Empowerment (Scotland) Act 2015





Empowering Communities

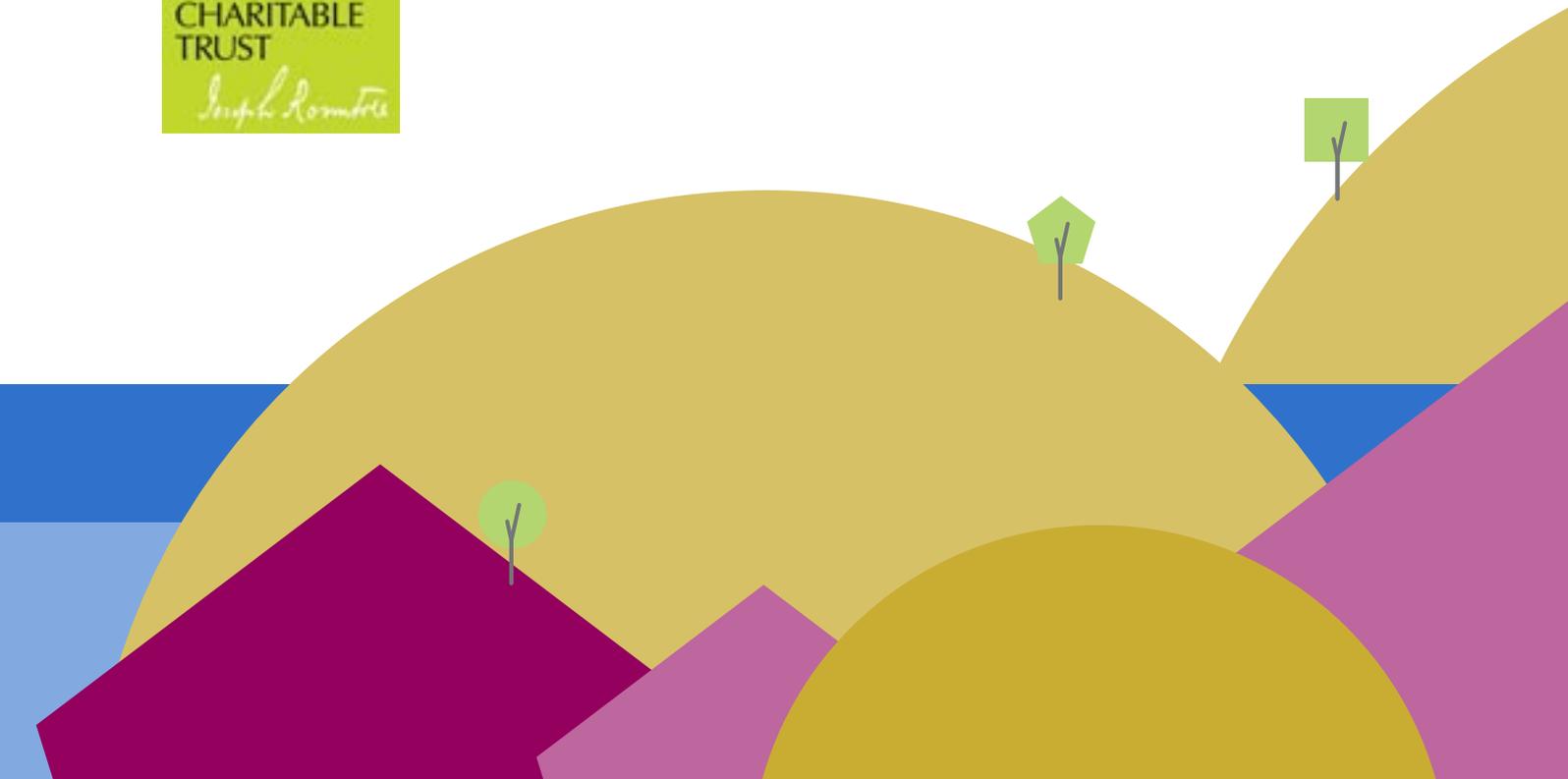
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