



THE RIGHT

TO GROW

2022



**CYMUNED
DYSGU
BUSNES**

SENEDD Inquiry into community assets

Incredible Edible's vision for a Right to Grow

1 Introduction

The Incredible Edible model of putting local food at the heart of the place we call home, from community gardens to sharing food skills and supporting local businesses, has shown how local food growing can bring people together to reduce loneliness, connect with nature, combat climate change, provide healthy affordable diets and stimulate local economies. Our grassroots experience from the 150 UK wide groups over the years has identified solutions to these problems that go beyond a focus on any one of them but seek multiple benefits for people and planet. Transforming spaces in villages, towns and cities for food growing creates green places which are cooler in summer, less polluted, better for our mental and physical health, better for wildlife and encourage local food spend. In times of real need, they also create access to nutritious food for those less able to afford the basics of a healthy diet. Because many of these actions are about giving power to people to shape their community and their sense of well-being, they turn out to be more sociable and more connected places.

Incredible Edible Conwy

"From the beginning, Conwy County Borough Council has been completely supportive of the idea and needs of Incredible Edible Conwy. They have allowed us the space in which to flourish and grow by giving permission to use redundant beds or to add planters to areas to grow free food. They have also supplied us with sheds to store tools and water taps for when the water butts run dry. It is of course a mutually beneficial partnership, they help us and we add value to the town creating a vibrant community asset. Our most popular site is the Wishing Well Garden opposite Conwy Castle and this year the Council got funding on our behalf for some large sturdy raised beds, we couldn't believe our luck, so now the area can house more volunteers and there can be even more fresh produce grown in Conwy. If only all Councils could recognise the value of supporting community growing, as then we wouldn't have any need to go chasing officers and policymakers for permission."



- Quote from Celia Williams (Conwy Incredible Edible Group)

2 The barriers to community food growing

The Senedd Committee terms of reference make clear that it wishes to explore the barriers to the ownership of community asset in Wales. The experience of our IE network of groups demonstrates the case for major changes in the way that communities can gain access to the assets they need to thrive. Across the UK communities are being held back from being more active by a lack of land for local food. Their desire and ambition can be felt when speaking to the volunteers that make up our network, but without land communities simply can't deliver the positive change that we all need after the pandemic. The frustrating thing is that the land is there in underused verges; space waiting for development or land which is simply derelict. A lot of this land is in public sector ownership and is either costly to manage or not managed at all. Where communities have the resources and the opportunity they can enter into leases or even buy small pieces of land. But for most community food growers that aspiration is out of reach because of both cost, experience and a quite often complex legal process. What is required is a simple way for local people in Wales to access land which is cheap and doesn't involve lengthy and complicated legal agreements.

Since in many places there is plenty of land that could be used for local growing the question is **how can we make a new law to speed up and simplify access to land for community growing?**

Incredible Edible Porthmadog

"Bwyd Bendigedig Port or Incredible Edible Porthmadog (registered charity number 1189361) is an award winning, community supported project on public land. It began in 2016 after two women inspired by an Incredible Edible TED talk rolled up their sleeves and decided to grow food in a few unloved raised beds by the leisure centre in Porthmadog.. This looked great, so with other volunteers from the area, we moved on to infrequently cut, grassy verges, and then, publicly accessible land at the neighbouring primary school. Our specialism is resourcefulness and demonstrating use of waste materials in the gardens and for building. On a weekly basis, we work with core volunteers, the primary school children, the secondary school Duke of Edinburgh (D of E) group and Dementia Actif. As the site is open 24/7, everyone has unrestricted access to the food and the gardens and wildlife is returning.



For a few years, the work progressed smoothly, but in 2020 things changed and we have increasingly been immersed in drawn out Local Authority communications to legitimise or defend the land use which, drains our resources and spirit substantially. For example, last month, the verges around the Council car park (which we planted with native trees) were dug up for electric vehicle infrastructure, without the Council telling us and our plants were carted away in the discarded soil or damaged. The poor contractors were subjected to outrage by all ages in the community but if there had been a clear definition and communication by the Council for the areas that we use, these mistakes could have been completely avoided. If the land and its use were clearly defined, this would have allowed Bwyd Bendigedig Port/Incredible Edible Porthmadog to do what they do best and what the community supports and resources all round would be far better used."

- Quote from Lizzie Wynn (Porthmadog Incredible Edible Group)

3 A Rights based approach to community assets

Since existing forms of ownership present a significant barrier to community control, IE has been exploring the benefits of granting communities a 'right to grow' on suitable public sector land. IE has begun to explore this in an English legal context, but the basic principles have direct relevance to Wales and the ambitions of the Senedd. The proposal is for a new law that would create a sensible and balanced system which can transform the look and feel of our communities. Many already know the plots of land which could be permanently, or just for a few years, made available for growing. This new right would create opportunities for these communities and their public sector bodies to come together to make the very best use of public sector land. It is important to be clear that we understand that communities need much more than new rights over land, if they're going to thrive. The morale of the local community and adequate finance to get started are probably the most important ingredients of success but the proposed new right would deal with one of the major blockages to progress and enable much greater levels of local action.

Our proposals include sensible limitations to this right, to public sector rather than all land and with safe guards; which mean public land required for homes etc. can be exempted.

The draft legislation has been subject to formal legal advice from Landmark Chambers and is set out in Annex 1. It is based upon the provisions of the Localism Act 2011 but significantly extends those provisions to create a new community right to grow. We are currently developing a version of the legislation specifically for the Welsh legal context. The provisions of our proposed new law would:

- **Create a legal duty on local authorities to publish a list of land held by all public authorities which is suitable for community cultivation or environmental enhancement.** We are still working through how wide this list would be, but it would include local authorities and all Welsh Assembly Government departments and agencies and include the NHS. It might also include water utilities. The presumption would be that all this land is suitable for cultivation or environmental enhancement unless there are clear and demonstrable reasons why not.
- **Create a right to cultivate land on the list through a certificate of lawful use.** The community can apply for this certificate at any time and once issued by the local authority they can cultivate the land for the agreed period. There would be no change in the ownership of the land and no rental charge would be applied. There would be a presumption in favour of giving permission to the community.
- **Communities would be able nominate land for the list if they felt the council had missed an important asset.**
- **Once on the list the land can't be disposed of for a defined period and the community has the right to bid for the land if it's being sold.**
- **Communities could use the land for food growing or environmental enhancement.** This ensures land which may be unsuitable for cultivation because of contamination could be used for non-food gardening, bioremediation, habitat creation, place making or bee keeping.
- **Public authorities would be able to refuse to include public sector land if they can show it is going to be used for other public interest objectives, like social housing within a period of 24 months.**

We do not pretend this new law would be a perfect solution because there will still be arguments about what 'suitable for cultivation' means. But by creating a duty to map land suitable for growing and environmental enhancement it radically increases the transparency of potential community assets revealing the scale of local possibilities for change. By creating a Right based approach, it also creates a more level playing field for discussions between people and their public bodies. We believe that this proposal firmly sits within the devolved powers of the Welsh Assembly Government and we very hope the committee will commit to exploring how it can be pioneered in Wales. Let's reconnect people with the land and make our communities healthy and green.

The Community Food and Land Bill 2022

Long Title: An Act to make provisions to provide a community right to access to land held by public authorities for community cultivation; nature enhancement; and for connected purposes.

Land for Community cultivation

1 List of land for community Cultivation

(1) A local planning authority must within six months of this Act coming into force adopt a list, and thereafter maintain a list of land in its area that is land suitable for community cultivation.

(2) The list maintained under subsection (1) by a local planning authority is to be known as its list of land for community cultivation.

(3) The appropriate authority may by regulations make further provision in relation to a local planning authority's list of land suitable for community cultivation including (in particular) provision about—

(a) the form in which the list is to be kept;

(b) contents of an entry in the list (including matters not to be included in an entry);

(c) modification of an entry in the list;

(d) removal of an entry from the list; (e) cases where land is to be included in the list and—

(i) different parts of the land are in different ownership or occupation, or

(ii) there are multiple estates or interests in the land or any part or parts of it;

(f) combination of the list with the local planning authority's list of land nominated by unsuccessful community nominations.

(g) Appeals against non-inclusion, removal or inclusion of land in the list.

(4) Within ten weeks of the coming into force of this Act each local planning authority shall invite nominations for inclusion of land in the first list including by advertisement for two weeks in a local newspaper and publication of a notice on its website.

(5) Subject to any provision made by or under this Chapter, it is for a local planning authority to decide the form and contents of its list of land suitable for community cultivation.

2 Land for community cultivation and environmental enhancement

(1) For the purposes of this Act but subject to regulations under subsection (3), land in a local planning authority's area is land suitable for cultivation if in the opinion of the authority—

(a) the land is in the ownership of a public authority, and

(b) it is realistic to think that the land can be utilised for cultivation for at least six months

(c) there is no record/evidence that the land is unsuitable for cultivation due to contamination

(d) there is no planning permission in respect of the land likely to be implemented within 12 months.

(2) In this section—

“Public authority” has the meaning defined in section 15. **3 Procedure for including land in list**

(1) Land in a local planning authority's area may be included by a local planning authority in its list of land suitable for community cultivation at the instigation of the local planning authority or in response to a community nomination,

(2) For the purposes of this Chapter “community nomination”, in relation to a local planning authority, means a nomination which—

(a) nominates land in the local planning authority's area for inclusion in the local planning authority's list of land suitable for community cultivation, and

(b) is made—

(i) by a parish council in respect of land in England in the parish council's area,

(ii) by a community council in respect of land in Wales in the community council's area, or

(iii) by a person that is a voluntary or community body with a local connection.

(iv) by a group of ten or more individuals with a community connection.

(3) Regulations under subsection (1)(b) may (in particular) permit land to be included in a local planning authority's list of land suitable for community cultivation in response to a nomination other than a community nomination.

(4) The appropriate authority may by regulations make provision as to—

(a) the meaning in subsection (2) of “voluntary or community body”;

(b) the conditions that have to be met for a person to have a local connection for the purposes of subsections (2);

(c) the contents of community nominations;

(d) the contents of any other nominations which, as a result of regulations under subsection (1)(b), may give rise to land being included in a local planning authority's list of land suitable for community cultivation

(5) The appropriate authority may by regulations make provision for, or in connection with, the procedure to be followed where a local planning authority is considering whether land should be included in its list of land suitable for community cultivation.

4 Procedure on community nominations

(1) This section applies if a local planning authority receives a community nomination.

(2) The authority must consider the nomination within ten weeks of receiving it.

(3) The authority must within 21 days of the nomination notify the landowner and anyone with an interest in the land and consider any response to the nomination made within 21 days of the notification.

(3) The authority must accept the nomination if the land nominated or part of it—

(a) is in the authority's area, and

(b) is not unsuitable for community cultivation

(4) If the authority is required by subsection (3) to accept the nomination, the authority must cause the land or part of it to be included in the authority's list of land suitable for community cultivation.

(5) The nomination is unsuccessful if subsection (3) does not require the authority to accept the nomination.

(6) If the nomination is unsuccessful or partially successful, the authority must give, to the person(s) who made the nomination, the authority's written reasons for its decision that the land or part of it could not be included in its list of land suitable for community cultivation.

(7) Any person so notified has a right to request a review of the decision by the local planning authority and may appeal against non-inclusion or removal to the Planning Inspectorate.

5 Notice of inclusion or removal

(1) Subsection (2) applies where land—

(a) is included in, or

(b) removed from,

a local planning authority's list of land suitable for community cultivation.

(2) The authority must give written notice of the inclusion or removal to the following persons—

(a) the owner of the land,

(b) the occupier of the land if the occupier is not also the owner,

© if the land was included in the list in response to a community nomination, the person(s) who made the nomination, and

(d) any person specified, or of a description specified, in regulations made by the appropriate authority,

(4) A notice under subsection (2) of removal of land from the list must state the reasons for the removal.

(5) Any person notified of the inclusion of land in the list may appeal against inclusion to the Planning Inspectorate.

6 Publication and inspection of lists

(1) A local planning authority must publish—

(a) its list of land suitable for community cultivation, and

(b) its list of land nominated by unsuccessful community nominations.

(2) A local planning authority must at a place in its area and on a website make available, for free inspection by any person, both—

(a) a copy of its list of land suitable for community cultivation, and

(b) a copy of its list of land nominated by unsuccessful community nominations.

(3) In this section “free” means free of charge.

7 Community right to cultivate

(1) A community interest group defined under subsection 9 (3) has the right to cultivate land included in the local planning authority’s list of land suitable for community cultivation if,

(a) It has notified the local planning authority in writing

(b) notified the landowners

(c) has a valid certificate of community cultivation

(2) If a community interest group defined under subsection 9(3) satisfies the conditions of subsection (1) the community interest group shall be deemed to enjoy a licence to cultivate the land for a period of 36 months unless the list specifies some other period of the licence.

(3) The owner of the land may grant the community interest group a community cultivation licence granting access to the land for the purposes of cultivation subject to conditions not inconsistent with fulfilment of the right to cultivate.

(4) The appropriate authority may by regulations make further provision in relation to the form and content of a community cultivation licence.

8 Certificate of lawful community cultivation

(1) A local planning authority must issue a certificate of lawful cultivation if,

The request comes from a community interest group

The relevant land is contained within the list of land suitable for community cultivation.

(2) Regulations may make provisions for duration of the certificate..

9 Moratorium on public authorities on disposing of land suitable for community cultivation

(1) A public authority whose land is included in the local planning authority's list of land suitable for community cultivation must not enter into a relevant disposal of the land unless,

(a) the interim moratorium period has ended without the local planning authority having received during that period, from any community interest group, a written request (however expressed) for the group to be treated as a potential bidder in relation to the land, or

(b) the full moratorium period has ended.

(c) that the protected period has not ended.

(2) Subsection (1) does not apply in relation to a relevant disposal of land—

(a) if the disposal is by way of gift (including a gift to trustees of any trusts by way of settlement upon the trusts),

(3) In this Act

- “community interest group” means a person specified, or of a description specified, in regulations made by the appropriate authority,
- “the full moratorium period”, in relation to a relevant disposal, means the 12 months beginning with the date on which the local planning authority receives notification under subsection (2) in relation to the disposal,
- “the interim moratorium period”, in relation to a relevant disposal, means the six weeks beginning with the date on which the local planning authority receives notification under subsection (2) in relation to the disposal, and

- “the protected period”, in relation to a relevant disposal, means the eighteen months beginning with the date on which the local planning authority receives notification under subsection (2) in relation to the disposal.

10 Meaning of “relevant disposal” etc in section 7

- (1) This section applies for the purposes of section 7.
- (2) A disposal of the freehold estate in land is a relevant disposal of the land if it is a disposal with vacant possession.
- (3) A grant or assignment of a qualifying leasehold estate in land is a relevant disposal of the land if it is a grant or assignment with vacant possession.
- (4) If a relevant disposal within subsection (2) or (3) is made in pursuance of a binding agreement to make it, the disposal is entered into when the agreement becomes binding.

11 Publicising receipt of notice under section 7(2)

- (1) This section applies if a local planning authority receives notice under section 7(2) in respect of land included in the authority’s list of land suitable for community cultivation.
- (2) The authority must cause the entry in the list for the land to reveal—
 - (a) that notice under section 7(2) has been received in respect of the land,
 - (b) the date when the authority received the notice, and
 - (c) the ends of the initial moratorium period, the full moratorium period and the protected period that apply under section 95 as a result of the notice.
- (3) If the land is included in the list in response to a community nomination, the authority must give written notice, to the person who made the nomination, of the matters mentioned in subsection (2)(a), (b) and (c).
- (4) The authority must make arrangements for those matters to be publicised in the area where the land is situated.

12 Informing owner of request to be treated as bidder

- (1) Subsection (2) applies if—
 - (a) after a local planning authority has received notice under section 95(2) in respect of land included in the authority’s list of land suitable for community cultivation, and
 - (b) before the end of the interim moratorium period that applies under section 7 as a result of the notice,
 the authority receives from a community interest group a written request (however expressed) for the group to be treated as a potential bidder in relation to the land.

(2) The authority must, as soon after receiving the request as is practicable, either pass on the request to the owner of the land or inform the owner of the details of the request.

(3) In this section “community interest group” means a person who is a community interest group for the purposes of section 95(3) as a result of regulations made under section 95(6) by the appropriate authority.

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13 Co-operation

If different parts of any land are in different local authority areas, the local authorities concerned must co-operate with each other in carrying out functions under this Chapter in relation to the land or any part of it.

14 Advice and assistance in relation to land of community value in England

(1) The Secretary of State may do anything that the Secretary of State considers appropriate for the purpose of giving advice or assistance—

(a) to anyone in relation to doing any of the following—

(i) taking steps under or for purposes of provision contained in, or made under, this Chapter so far as applying in relation to England, or

(ii) preparing to, or considering or deciding whether to, take steps within sub-paragraph (i), or

(b) to a community interest group in relation to doing any of the following—

(i) bidding for, or acquiring, land in England that is included in a local planning authority’s list of land suitable for community cultivation,

(ii) preparing to, or considering or deciding whether or how to, bid for or acquire land within sub-paragraph (i), or

(iii) preparing to, or considering or deciding whether or how to, bring land within sub-paragraph (i) into effective use.

(2) The things that the Secretary of State may do under this section include, in particular—

(a) the provision of financial assistance to any body or other person;

(b) the making of arrangements with a body or other person, including arrangements for things that may be done by the Secretary of State under this section to be done by that body or other person.

(3) In this section—

(a) the reference to giving advice or assistance includes providing training or education,

(b) “community interest group” means a person who is a community interest group for the purposes of section 7(3), and

(c) the reference to the provision of financial assistance is to the provision of financial assistance by any means (including the making of a loan and the giving of a guarantee or indemnity).

15 Interpretation

The “appropriate authority” is the Secretary of State

“cultivation” shall include horticulture and the use of land the keeping of bees, and the growth of fruit, vegetables, and the like, the planting and cultivation of trees, plants or flowers.

“local planning authority” has the meaning given to it by section 1 of the Town and Country Planning Act 1990

“public authority” has the same meaning as in section 6(3) of the Human Rights Act 1998.