

John Griffiths AC / AM  
Y Gweinidog Diwylliant a Chwaraeon  
Minister for Culture and Sport

Eich cyf / Your ref P-04-539  
Ein cyf / Our ref JG-00366-14  
William Powell AM  
Chair Petitions committee  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF991NA  
[committeebusiness@Wales.gsi.gov.uk](mailto:committeebusiness@Wales.gsi.gov.uk)



18 April 2014

Dear William,

Thank you for your letters of 25 March to Cadw and to me about the petition from Jon Avent seeking a commitment from the Welsh Government to set up a public enquiry into the events surrounding the Coal Exchange, Cardiff, and to support public opinion which seeks to protect and conserve the building. I am replying to both letters as the historic environment and Cadw are within my ministerial portfolio.

The Coal Exchange is an exceptionally important grade 11\* listed building located within the Mount Stuart Square conservation area. I understand that Cardiff Council is currently considering the possibility of facilitating the conversion of this privately owned building into a business centre and has undertaken emergency works under section 78 of the Buildings Act 1984 to protect public health and safety. I also understand that the Council has been in contact with the Prince's Regeneration Trust and asked it to produce options for a rescue plan for the building. Any preferred rescue plan may be the subject of an application to the Heritage Lottery Fund.

My officials in Cadw have been in regular contact with Cardiff Council and have arranged a further meeting later this month to inform the next steps. Cadw has already been providing advice to the Council about the parameters within which it must operate given the significance of this listed building. Cadw welcomes the Council's intention to protect the listed building and is supportive of its actions in principle, but has expressed reservations about the extent of internal demolition that a proposed business use may entail. It has been explained that any demolition would need to be carefully justified and the Council has been asked to consider more benign options.

## Response

53 Mount Stuart Square  
Cardiff  
CF10 5LR

William Powell AM  
Chair Petitions committee  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF991NA

5 May 2014

Dear Mr Powell

I am writing in response to the letter from John Griffiths AM

For the purpose of clarity in response to the letter this letter has been set out to respond generally on a paragraph by paragraph basis.

In summary it is felt that the minister has not specifically responded to the petitions aim of seeking a public enquiry into the events surrounding the Coal Exchange. This is a significant concern. Similarly the apparent abuse of section 78 powers, which is at the core of the concerns raised has been completely ignored by the Minister and Cadw; stating that this is a matter for the Council. This is of equal concern in view of the apparent lack of accountability.

The letter from the Minister sets out many aspects of policy and procedure, which are simply general requirements that should be followed. The overriding concern is that these procedures are not actually being followed, and most significantly the Council are seeking to avoid compliance through their use of the building act.

Many of the statements made in the Ministers letter do not relate to the issues raised and where issues have been raised in the petition the Minister has mainly avoided comment.

It is requested that the Minister and Cadw are asked to respond with direct focus on the specific issues raised.

It is a concern that Cadw have not been permitted to respond independently.

All evidence points to the fact that the works under section 78 powers were not justified. There has still been not evidence put forward to substantiate the use of s78 powers. It has been stated that the Head of Planning is the designated 'Proper Officer' for the Council, but despite efforts to obtain evidence of the legal use of these powers it has not been possible to prove that their use was justified.

This is a positive statement, but it still fails to address the methods being used by the council via s78 powers and a complete absence of engagement with interested and concerned parties. Correspondence from prominent national heritage bodies such as the Victorian Society has been ignored. It is a positive statement that Cadw has asked the Council to '*consider more benign options*', however there is no commitment here from Cardiff Council on this.

The proper mechanism for considering any proposal to alter or demolish any part of the building to create a business centre is through an application for listed building consent (lbc), although clearly the demolition of any listed structure is an option of last resort requiring comprehensive justification. Those concerned about the extent of any proposed demolition will have the opportunity to submit comments through the statutory requirement for the Council to publicly advertise an application for lbc and invite comments.

Each application is considered on its merits in the light of the Welsh Government's Land Use Planning Policy - *Planning Policy Wales* (PPW) - and circular guidance which indicate that there should be a general presumption in favour of the preservation of listed buildings, and the retention of those buildings that make a positive contribution to the character and appearance of a conservation area. PPW explains that the demolition of any grade I or grade II\* listed building should be wholly exceptional and require the strongest justification.

In determining an application for the total or substantial demolition of a listed building, authorities should take into account the condition of the building; the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use; the adequacy of efforts made to retain the building in use, and the merits of alternative proposals for the site. The Welsh Government would not expect consent to be given without convincing evidence that all reasonable efforts have been made to sustain existing uses, or to find viable new uses, and that these efforts have failed, that the preservation of the building in some form of charitable or community ownership is not possible or suitable, or that redevelopment would produce substantial benefits for the community which would decisively outweigh the loss resulting from demolition.

The relevant documents are available through the following web links:

PPW <http://wales.gov.uk/topics/planning/policy/ppw?lang=en>

Circular 61/96 and 1/98

<http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars?lang=en>

I trust that you will agree that these documents along with the level of justification that is required to accompany an application for lbc provide the necessary assurance that the significance of the building will be carefully considered in determining any proposal for the site.

It is inappropriate for either Cadw or me to comment on the merits of any proposals for the building as we must not prejudice the decision making process involved with an application for lbc. Any such application may either be made by the Councillor a private individual or company but either way Cadw has a role in the process. The Minister for Housing and Regeneration will determine an application for lbc made by the Council and Cadw will be asked to inform the decision making process by providing a specialist assessment on the merits of the application. Alternatively, an application for lbc by a private person or company would be determined by the Council but before approving any application, Cadw must be given the opportunity to recommend if the application should be called-in for determination by the Welsh Ministers. In either scenario, Cadw will look very carefully at all the pertinent issues in preparing its advice.

Turning now to the Buildings Act 1984, I have sought procedural guidance from the officials of the Minister for Housing and Regeneration who has policy responsibility in this area. Emergency powers under section 78 of the Act are exercisable by the Council rather than the Welsh Government. It is for the Council to address any concerns that the petitioner may have about the manner in which the Council might have exercised those powers.

The significance of the section 78 powers is that they have the potential to override this process or create a situation where the due process can be 'side-stepped' by the Council. There are significant concerns that this is the objective of the council in their apparent misuse and abuse of the building act.  
The Minister is simply stating general policy and not addressing the specific concerns raised in relation to the Coal Exchange.

The issues surrounding the apparent misuse and abuse of the building act are reiterated. It is repeated that the Council are continuing to portray the building as being in a condition that warranted the use of section 78 powers. With the time that has now elapsed with no works on the building the justification for use of s78 powers has become increasingly weak; in fact the justification for use of s78 powers is unsustainable.

This is simply stating the legislation that should apply, as with all listed buildings. It is repeated that the use of section 78 powers has the potential to 'side-step' some of these aspects. If the section 78 powers were abused or misused (and there is evidence that they were) then a serious concern is justified.  
The Minister has clearly failed to address this aspect of the petition.

These are simply standard policy documents.

In normal circumstances these documents would provide assurance. Unfortunately the issues surrounding the apparent misuse of the building act, and specifically s78 powers, are central to the issues and the future protection of the Coal Exchange.

The petition did not ask for comments on the '*merits of any proposal*'. The petition seeks to gain public engagement in the decision process which has been progressed under a veil of secrecy by Cardiff Council.  
No businesses or residents have been consulted over the past 12 months. Cardiff have consistently used the building act and s78 powers to avoid all consultation.  
  
Promised public meetings never happened.  
  
The petition seeks a commitment from the Welsh Government to set up a public enquiry into the events surrounding the Coal Exchange, not a comment on the merits of any current proposal.

In the light of the comments above this statement is the most concerning, and further emphasises why the potential abuse of the building act has the potential to override all of the listed building legislation and protection that SHOULD be in place. It is a loophole that it would appear the council are seeking to exploit in their development deal with Macob Exchange which they refuse to discuss.

In terms of process, Section 78 provides for the local authority to undertake emergency measures where a building or structure is in such a state as to be dangerous and immediate action should be taken to remove the danger. The action undertaken by the local authority is whatever may be necessary to remove the danger. If the building is a listed building, the local authority still has to assess the necessary action to protect public safety within the scope of section 78. The Welsh Government has no powers to intervene.

In terms of costs, the local authority may recover any expenses it reasonably incurs from the owner of the building. If the Court determines that the local authority was not justified in exercising their powers under section 78, the authority's expenses are not recoverable. If an owner or occupier sustains damage as a result of the authority exercising its powers under section 78, they can apply to the magistrates' court and may be awarded compensation if the authority was not justified in doing so.


For my part, I would also highlight the discretionary powers that are available to the Council to intervene and undertake works which appear to be urgently necessary for the preservation of an unoccupied listed building. These powers are available under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and provide a mechanism to repair a listed building's historic fabric rather than having to possibly revert to more extreme or emergency measures. The use of these powers can also serve to alleviate the need to incur substantial sums of expenditure at a later date when a listed building may require more radical intervention.

Finally, if he has not already done so, I would suggest that Mr Avent outlines his concerns to the Council and requests an explanation of its approach. These should be addressed to the Council's Director of Strategic Planning, Highways, Traffic and Transportation in the first instance. If the response is not satisfactory then it is open to Mr Avent to ask the Council's Monitoring Officer to investigate his concerns. The Monitoring Officer has a duty to inform the Council when he considers that the Council's actions are likely to breach legislation or the Local Government Code of Practice.

If, after pursuing matters with the Monitoring Officer there are still concerns, Mr Avent may wish to consider taking matters up with the Public Services Ombudsman for Wales who can investigate instances of personal injustice that have arisen through maladministration. The Ombudsman will, however, direct complainants to exhaust all other avenues of complaint, including those available via the local authority, before he will consider an investigation.

The Public Services Ombudsman for Wales can be contacted at 1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ or by telephone on 0845 601 0987.

I hope my reply is of help.

Best wishes,  


**John Griffiths AC / AM**

Y Gweinidog Diwylliant a Chwaraeon  
Minister for Culture and Sport

This is a significant loophole which potentially allows any council to misuse the building act to achieve development plans in collaboration with a private developer that would otherwise be protected by listed building legislation.

This is an issue of national concern which must be investigated independently. It is of the greatest frustration and disappointment that the Minister is apparently failing to recognise the core issues here.

As with much of the letter it states general legislation but does not recognise the specific issues surrounding the Coal Exchange. The Council and building owner are progressing a joint venture in the plans for the building. There would not appear to be any reason to use building act powers when the two sides are collaborating. Even if they were not collaborating it has already been noted that the condition of the building did not warrant, and does not warrant the use of such draconian powers.

Again the letter states general powers but does not recognise the specific issues surrounding the Coal Exchange. The Council and building owner are progressing a joint venture in the plans for the building.

The comment '*The use of these powers can also serve to alleviate the need to incur substantial sums of expenditure at a later date when a listed building may require more radical intervention.*' fails to appreciate that almost none of the £1m+ spent to date by Cardiff Council has done anything to protect the building from further deterioration.

This is one of the most disappointing comments. The concerns have been raised and documented extensively and submitted to the council. Offers to meet and view the building have been refused or ignored. The matter is already the subject of a complaint to the Information Commissioner. It is considered that this is a further paragraph that states general policy and procedure, which fails to focus on the specific issues surrounding the Coal Exchange.

This process is time consuming and the suggestion would simply appear to seek to pass responsibility. It would have been hoped that the final paragraph would respond to the specific aim of the petition seeking a commitment from the Welsh Government to set up a public enquiry into the events surrounding the Coal Exchange, Cardiff.

This has not been answered, and it is considered appropriate that that the Minister is asked to respond to the specific request of the petition as a matter of urgency.

I appreciate the time and effort spent by the Minister in responding to the petition, however there remains an apparent fundamental failure to appreciate the potential destruction of the Coal Exchange though the abuse of the building act to avoid appropriate consultation on proposals. I would welcome the opportunity to meet and discuss the significant concerns which remain.

Yours sincerely



**Jon Avent**