

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



Llywodraeth Cymru
Welsh Government

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
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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 II* 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.

Bae Caerdydd • Cardiff Bay
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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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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 Council or 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.

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,



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