

**Illustrative community situations relating to the proposed Community Right to Buy within the Community Empowerment Bill to help illustrate and with a view to helping clarify what is and may not be within the scope of the policy intentions of Ministers and the Bill.**

**Case A**

Community (A) is a small village by-passed by some years ago. Changes in retailing and service delivery in recent years has seen a serious decline in the village centre. There are now a number of shop units which have lain unused for a number of years, falling into increasing disrepair and giving rise to declining reputation of the place as a place to live. Meanwhile, the need for new services, for a growing elderly population, for example, and to provide for new types of niche services is arising. The community are anxious to reverse the decline of their place and seek to strengthen its sustainable future. The ownerships and lack of use of the village centre buildings has been identified as a barrier to that sustainable development. The buildings continue to decline, and the place continues to suffer.

The community wish to purchase the buildings, with a number of potential uses in mind. There are Scottish Government and other potential funds available to fund purchase and re-development. The owner of the buildings lost the capacity for decision making and the buildings are within a trust arrangement managed from over 150 miles away by a legal firm. The firm is unwilling to deal with the community as potential purchasers of the buildings.

The creation of a new Part 3A in the Land Reform (Scotland) Act through Part 4 of the Community Empowerment Bill offers the potential for the community to request the approval of Ministers to purchase the buildings. Ministers would, inter alia, have to decide if such a purchase was in the public interest and furthered the achievement of sustainable development. However, they would also have to be satisfied that the buildings were 'wholly or mainly abandoned or neglected' in the terms of the proposed provisions. This may be difficult to argue as they are still intact, some measures have been taken to board up and secure the buildings.

It would appear the community aspirations and desire to act fit well within the scope of Ministerial policy objectives for the Bill, by addressing the potential for furthering the sustainable development of their place, and seeking to remove a barrier to sustainable development. They appear to fit well within funding criteria for the Land Fund designed to help deliver the policy and legislative intent, but may well lie out-with the scope of the actual provisions themselves as currently drafted.

**Case B**

Community B is a rural community within the boundaries of a large estate. The estate was purchase a number of years ago by a wealthy owner who is an absentee for large parts of the year and retains the estate for the personal enjoyment of the 'sport' it provides. Since purchase the owner has undertaken a systematic ending of any renewal of property leases, boarded up the then empty properties. The owner's intentions appear to be to remove as much population from the area as is possible, for reasons best known only to the owner. Tenancies of farms have been brought back 'in hand' whenever possible. Attempts by the community to acquire small parcels of land for community purposes, for example, to extend the community graveyard, have been refused by the owner, who shows no interest in the sustainability of the community. In consequence, the

population has been steadily falling, local services closing and what was once a vibrant community, is now an empty and largely lifeless place, with virtually no young people coming through, or housing to accommodate any growth.

It would seem difficult to argue that this area is abandoned or neglected in the terms of Part 4, Section 48, of the Community Empowerment Bill, which creates a new Part 3A of the Land reform Act. The acts of the owner are deliberate acts of his management and his intent for the land. There is still stock on parts of the farmed ground and so the physical conditions could not be said to be abandoned or neglected. This is not a crofting estate.

However, when viewed from the perspective of furthering the achievement of sustainable development, to the community, the current ownership arrangement is a distinct barrier to sustainable development.

The community do not have an aspiration to own the whole estate, but do have aspirations to own land for the development of housing, and existing (boarded) housing stock, to bring it back into use. They have aspirations for other land to be used for generic community purposes, possibilities would include developing woodland for amenity and for carbon footprint reduction purposes. There is no prospect of a voluntary sale of any of the land in question for such purposes, so the decline of what remains of the community is set to continue.

The aspirations and intentions of the community, to be able to provide to further the sustainable development of their place through ownership of some land as a key to unlock a more sustainable future, appear to fit well within Ministers' policy objectives. However, it is not clear the provisions of 3A would offer the community any means to successfully argue to take ownership of key assets for the purpose of furthering the achievement of sustainable development.

### **Case C**

Community C has a substantial building, known as a Castle locally, and once used as a large private house and then an activity centre, which has lain empty for many years. The building is a significant feature of the local community. The building has been secured to prevent entry to it and is 'maintained' at a minimal level to seek to keep it wind and water tight, but the battle for this appears to be being lost. Security arrangements are in place to occasionally inspect the building as to its security. The decline of the building is a great sadness to the local community and it has the effect of blighting a positive feel for the place.

The local community, as part of wider plans to regenerate their place, have developed and worked through plans to secure investment, to restore the building and also create a sizeable number and mix of local jobs in what is a difficult area for employment. The new uses would add considerably to furthering the improvement in the appearance of their place and in its sustainable development.

The owner has declined to sell the building to the community, and has no other planned use for it. The prospects are that it will progressively decline further, will remain an asset with potential, even though it is likely to retain a managed security system for the building.

Given that there are actions taken to keep the building secure and to carry out a level of maintenance designed to prevent further decline, it may be difficult to see that it could be argued

that the building is wholly or mainly abandoned or neglected. On the other hand, it would be possible to see arguments that in relation to the question of furthering sustainable development of that place, the building certainly representing a barrier to sustainable development and neglected when having regard to the social and economic aspects of sustainable development.

The intentions of the community appear to fit well within the terms of what the policy of Scottish Ministers seek to achieve, but may fall out-with any narrow interpretation of the the specific provisions of Part 4, Section 48, new 3A.

#### **Case D**

In community D an old three story hotel sits in the centre of the main street in a market town and tourist destination, and has lain empty for a number of years. The bottom level, on the main street was used for shop units beyond the period when the hotel fell into disuse, the upper part the hotel. The building is boarded up, and while the boarding is occasionally attended to, the appearance falls well short of what would be expected.

In community meetings and consultations undertaken over the years, the condition of the former hotel is cited as the biggest issue the community needs to resolve. The ownership of the hotel has passed between different hands through what the community understand to be speculative property purchases. The owner of the hotel has shown no interest in disposing of the building.

The community would have an interest in seeking to acquire the building for a variety of community uses, or for re-development as commercial property. They believe it might be possible to argue that the upper part is wholly or mainly neglected, though it might not be possible to argue that for the bottom part. It is not clear whether the 'land' in question could however, be described in those terms as actions have been taken to maintain the security of the building and occasional work is undertaken to maintain its security. The roof is intact. Developing the property would fit well within the scope of what development trusts in Scotland now regularly do.

In terms of Ministers objectives for furthering sustainable development, the aspiration of the community appears a good fit. It is not clear, however, that Part 4, Section 48, new 3A would provide a means for the community to successfully argue to take control of the asset which is, none the less, a clear barrier to the sustainable development of their place. When viewed from the perspective of the social and economic development aspects of sustainable development the building is a barrier to sustainable development, and its development would further the achievement of sustainable development.

#### **Case E**

In community E ground sitting on the edge of, and of material significance to, that urban community are held by a Trust. The land was once part of a country estate and part was once used for allotments. These fell into disuse and the land was then taken over for greyhound racing, which also fell into abeyance. The land was however, then 'occupied' by criminal elements who used it for illegal hare coursing, dog bating, and the like. It became a place which was the home to drug dealing and other alleged criminal activity, blighting the community. The land is currently less popular for such activity, but remains accessible as open ground, and is not in attractive condition.

The community aspire to take over the land to secure its future, to utilise it for a mix of social and community uses, including restoring some of it for allotments, and to remove the general blight being caused by the lack of its sustainable and proper use. Dealings with the Trust with a view to community purchase have been unproductive; with no indication a sale will be possible.

On the face of it this may be a case where it could be argued that the land in question was wholly or mainly abandoned or neglected, but would that actually prove to be the case, given activity has been taking place on the site, unrestricted by the owners?

However, in terms of the sustainable development of that place and that land currently being a barrier to that sustainable development, it can be more readily be seen that a cogent case could be made that the land is in need of development in order to further sustainable development.

The aspirations of the community are certainly in line with Ministerial policy objectives, but do the provisions as drafted allow for the potential grant of a right to buy.

### **Case F**

In community F, an urban area of social disadvantage, a large plot of land has lain vacant for many, many years. The land is fenced off, but it is used as a local dumping ground when the fence is breached, though occasionally cleared. The land has little development value, given its location within a disadvantaged community.

The community aspire to own the land to turn it into productive use, partly to erect a community building, and for other complimentary uses. The community has raised money for the purchase and the building, but the owner has declined to sell.

There is adjacent land which is also vacant and in similar condition where the owner might be prepared to sell, but access to that site depends on access through the former site. The owner of the first site refuses to sell the necessary land for access – it is a ransom strip for which they are seeking £500 per month from the community for access, in perpetuity. This is neither desirable nor possible.

On the face of it, it may appear that the land in question is a either wholly or mainly abandoned or neglected and a case could be made under Part 4, Section 48, new 3A for consent to the right to buy, but could the community be confident about this? When viewed in terms of the economic and social dimensions to furthering sustainable development, Ministers' policy objective, then there would be more confidence a case could be made as the land is currently a barrier to sustainable development.

### **Case G**

Community G sits within a large land-holding in a remote area which faces significant economic challenges and has experienced significant population loss over many generations.

The land is owned by a private charitable trust. The Trustees live hundreds of miles away. The Trust office is close to 70 miles away. The community feel the Trust has and is continuing to frustrate their efforts to build a more sustainable future. This is an attractive place visited by many tourists and the community believe they are a place with real potential for a stronger and more vibrant future. The community has aspirations to develop housing, forestry, recreational facilities, energy generation, service and wider facilities for visitors. The Trust has a different vision for the future and claims to be

unable to support any sustainable development activities as they are out-with the terms of the Trust's purposes but, despite being able to, show no sign of seeking to change their Trust Deeds to permit co-operation with the community in a range of sustainable development activities. Meanwhile, the community continues to age and show signs of decline, despite efforts the community has been able to make to improve its condition.

The community would wish to acquire either particular pieces of land, the current lack of use of which are a barrier to their sustainable development. There could be a case for community ownership of the whole estate to bring it into productive use and in support of a very wide range of activities which would further sustainable development. Public funding would be available to help meet the purchase of either parts of the estate or the whole estate. This is not a crofting estate.

This would be a community which would be in a not dissimilar condition to that of Eigg, or Knoydart, or Gigha prior to their community purchase, all of which were not crofting estates either. The Land Reform Act was introduced to support more communities follow the example of Eigg and Knoydart and Gigha.

There would appear no possibility of the community arguing that the estate was wholly or mainly abandoned in terms of its physical condition. It is managed for some sporting and environmental purposes, and there is access and a network of footpaths. The 'big house' which the Trustees occupy on their summer visits is in good condition and the grounds maintained. At the same time, the community continues to decline, population shrinks, sustainability is threatened.

In terms of the economic and social development aspects of sustainable development, the community would believe that the current ownership is a significant barrier to sustainable development.

Notwithstanding that the community's aspirations are a close fit with Ministers policy objectives, under the terms of Part 4, Section 48, new 3A, they would not have a real opportunity to make a case to Ministers for a right to buy.

If this were a crofting estate, as in the case of Pairc, where Ministers decided to agree to the right to buy because it demonstrated a range of social and economic development purposes which furthered the sustainable development of the land, then Part 3 of the Land Reform Act could have been used to make a case for what is an analogous community.

## **Case H**

Community H lies at the end of a narrow single track road in a remote area. Large areas of hill land around the community were planted with exotic conifers in the 1970s and 80s by the local estate, but there has been little or no woodland management since: the fences are in disrepair allowing red deer to use the woods for shelter.

Conventional harvesting of the woodland is not considered economically viable by the estate, because of the long distance to timber mills and the need for work on local road, which is unsuitable for modern timber lorries. As the trees reach maturity, wind-blow is having an increasing impact, further increasing harvesting costs whilst degrading the potential value of the timber for sawlogs.

The community has recognised that there is an opportunity develop a viable fuel-wood business based on this local resource: contributing to local employment, tackling fuel poverty, and making a small but important local contribution to mitigating climate change.

The community have formed a development group to take forward this project: they have approached the (absentee) landowner, offering to either buy the plantations or to simply take over the management of the woodlands to carry out the necessary harvest and restock, but they have been repeatedly rebuffed, with the landowner making it clear he is quite content for the plantations to blow over completely and simply rot away (NB this would avoid any obligation to restock the woodlands).

For the community this appears to be a clear case of abandonment and neglect and see the management of the forests which are material to their environment and well-being as a barrier to sustainable development, but the landowner's contention is that the plantations serve a useful purpose in sheltering deer, the shooting of which, whilst not managed as a business, contribute significantly to the "peaceful enjoyment" of his property. The community's aspirations seem aligned with the delivery of a range of Scottish Government policies, and they would contend would further the achievement of sustainable development in an effective way, removing a current barrier to that sustainable development. It is not clear if the provisions of Part 4, Section 48, new 3A would assist the furtherance of sustainable development in this instance.

## **Conclusion**

The short case descriptions above are illustrative of situations communities are contending with.

The cases would tend to show that any potentially narrow interpretation of Part 4, Section 48, new 3A, could thwart community and Ministerial objectives and ambitions, as it as yet seems unclear if the intention is to cover other than the physical attributes of the land in question or to cover the wider social and economic aspects of sustainable development.

Whatever the specific merits of any of the individual cases, what communities seek is the ability to make their case to Ministers to remove barriers to sustainable development they perceive and associated with the ownership of land that is of material importance to their future sustainable development. It would be for Ministers to weigh the various considerations and judge what actually furthered sustainable development and was in the public interest, etc. What can be regarded as eligible land for this purpose becomes crucial to any realistic opportunity to make a case.

It would be important to have the new 3A of Section 48 of Part 4 clarified and strengthened to either define neglect in terms of the social and economic aspects of sustainable development, as well as any physical descriptions of the land, or to have a third criterion for what will be eligible land in terms of land in need of sustainable development to further its sustainable development.

## **Note**

The material for these illustrative situations came from the experience of the Development Trusts Association Scotland, the Community Woodlands Association and Community Land Scotland.