

A briefing on Part 5 Community Right to Buy and the Poets Neuk case

Background

On 25th April 2025 the Dundee Sheriff's Court rejected an appeal by Forthay Ltd against a Scottish Government decision in January 2024 to granted consent for the exercise of the Community Right to Buy to Further Sustainable Development (Part 5 introduced by the Land Reform Act 2016).

This decision means that unless there is a further appeal, the parcel of derelict land in St Andrews will be sold to the community group, Poets Neuk, against the wishes of the absentee landowner, to enable them to create a public poetry garden.

Further details on the case can be found here:

[Sheriff refuses appeal against permission for community group to acquire St Andrews site | Scottish Housing News](#)

[Court ruling paves way for forced sale of St Andrews land - BBC News](#)

Legal significance

This is a profoundly significant case. **It is the first legal decision under the most legally challenging of the Community Rights to Buy which forces the sale of land under certain circumstances.** The Sheriff refused the appeal of the landowner, which means the transfer to the community must go ahead unless the landowner appeals.

The Sheriff has recognised that when considering whether the transfer of the land is likely to further the achievement of sustainable development, the Scottish Ministers have given less weight to 'achieving a sustainable economy' and more weight to 'living within environmental limits' and 'ensuring a strong healthy and just society'. However, the judge finds that this approach is in accordance with law. This is important and **underlines that property rights and landownership should not just contribute to economic goals, but also environmental and social goals.**

In relation to the public interest, the judge was content with Scottish Ministers' description that the community was 'leading by example'. In that there was 'a community presented with an area of land that has been left to fall into disarray becoming an eyesore and a problem for the residents and businesses alike coming up with a plan and making the appropriate application.' **This type of statement normalises Community Rights to Buy as a method to deal with landowners who are not productively using the land or considering impacts on the local community.**

When considering if the transfer of the land is likely to result in significant benefit to the community, the judge was content with the Scottish Ministers' approach which recognised that, although this application did not have economic activity as its primary motive, there may be positive economic effects on the local economy by using the land in a more productive and community-centred manner.

The judge also found that the Scottish Ministers' decision did not breach the Article 1, Protocol 1 (A1P1) of the European Convention on Human Rights which protects private property rights.

Fear of falling foul of A1P1 is often used as a rationale for not pursuing more transformational land reform policies. It has been used as a reason for limiting the scope and impact of the current Land Reform Bill. **This ruling shows that robust land reform interventions, including forced sales of land under certain circumstances, are legally sound.**

Community Land Scotland's response

Community Land Scotland welcome this landmark decision in favour of the community and the Scottish Government. This is the first time a community has used this compulsory right to force the sale of land.

The judgement sets an important precedent that land should be owned and managed in the public interest. If land is not, then communities with plans for sustainable development can force the sale of unproductive land and bring it back into community use for public benefit. The community in St Andrews have had a long road to this point and we wholeheartedly congratulate them on this success.

This decision reinforces the fact that our compulsory Community Rights to Buy - which naturally interfere with private property rights - are not only morally robust but legally sound.

Implications for the Land Reform (Scotland) Bill 2025

This legal decision demonstrates that private property rights are contingent on the public interest and can justifiably be interfered with when existing landownership is not meeting public interest considerations.

This important judgement should provide the Scottish Government with much-needed encouragement to take positive and ambitious action on the current Land Reform Bill.

The Bill needs to ensure that all significant landholdings in Scotland are owned and managed in the public interest. And if they are not, ultimately the existing landownership can be challenged.

This case demonstrates the importance of ensuring that the public interest is at the heart of land reform legislation to ensure both legal competence and clarity for all concerned.

Importantly for the current Bill it adds further weight to the argument that:

- There should be a list of public interest considerations on the face of the Bill underpinning both the 'transfer test' and Land Management Plans – this will add coherence and predictability to a meaningful Public Interest Test
- A Public Interest Test needs to be introduced – this would be a forward-facing assessment made by the Land and Communities Commissioner on whether the landholding and the incoming landowner's land management principles will both meet the public interest