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Your ref/Ur faidhle:
Our ref /Ar faidhle: CB00204
2 November 2016

Dear Mr Adams

NOTICE BY THE SCOTTISH MINISTERS UNDER SECTION 37(17) OF THE LAND REFORM (SCOTLAND) ACT 2003: DECISION ON THE APPLICATION BY HELENSBURGH COMMUNITY WOODLANDS GROUP TO REGISTER A COMMUNITY INTEREST IN LAND CONSISTING OF APPROX. 0.8 HA OF OPEN LAND, TO THE SOUTH OF CUMBERLAND AVENUE, HELENSBURGH, DUNBARTONSHIRE G84 8QP

Case Number: CB00204

Notice under section 37(17) of the Land Reform (Scotland) Act 2003 ("the Act") is enclosed.

The Scottish Ministers have considered the application by Helensburgh Community Woodlands Group to register an interest in land consisting of approx. 0.8 ha of open land, to the south of Cumberland Avenue, Helensburgh, Dunbartonshire G84 8QP. Scottish Ministers have decided that the interest **should** be entered in the Register of Community Interests in Land.

The enclosed Notice sets out the reasons for the Scottish Ministers' decision.

Scottish Ministers would also like to take this opportunity to clarify a number of points raised in the response from Morton Fraser in relation to the HCWG's application to register a community interest in land:

- Morton Fraser state that HCWG are not a community body. Scottish Ministers view that it is for the community company to determine how they define their community. There is no requirement in the community right to buy legislation that provides that a community company must explain why it has defined itself in such a way.

- Morton Fraser state that the purpose of the application is incompatible with furthering the achievement of sustainable development. Scottish Ministers view that evidence has been supplied within the application to show how HCWG's proposals for the land could further the achievement of sustainable development of the land and community. It is for Scottish Ministers to be satisfied whether this criterion has been met. The application to register a community interest in land is merely that, a registration of interest where the landowner is prohibited from taking steps to transfer the land (subject to the exemptions noted in section 40 of the legislation). A registered interest does not have the effect of stopping development of the land.
- Morton Fraser state that the community have no connection with the land and it is not sufficiently near to land with which members of the community have a connection. Scottish Ministers view that these criteria are not to be met at the same time. The legislation provides that one of the criteria, that is under section 38(1)(b) either (ii), (iii) or (iv) be met, in each case. It is also stated in Morton Fraser's response that 'This is not an area over which the community have enjoyed rights of access over many years amounting, in effect, to a public right of passage or of usage'. Scottish Ministers view is that this statement suggests that the community have no right of access over this land, though Part 1 of the Land Reform (Scotland) Act 2003, in relation to the right to roam, would suggest otherwise.
- Morton Fraser state that there is no means of assessing objectively the level of community support due to the way that the Applicant has approached the definition of community and the question posed on the petition. Scottish Ministers view that evidence has been provided which indicates that 14% of the residents with the defined community, who are eligible to vote at a local government election, support HCWG in registering a community interest in land over the land to be registered. Should the landowner wish to dispose of the land and HCWG decide to pursue acquisition of the land (or part of it) through the community right to buy legislation, a ballot of the eligible voters in the community area will be undertaken at that time.
- Morton Fraser state that it is not in the public interest to register a community interest in land in the circumstances. Scottish Ministers view that the public interest test is a broad one, which can include sustainable development, but not restricted to it. As noted above, the registration of a community interest in land does not stop the development of land. Scottish Ministers agree with the statement that from Morton Fraser that 'Registration of an interest will have no environmental or amenity benefits.', though without a registration being in place the community may have no opportunity to meet the aspirations of the community and provide the benefits as noted in the application.

In accordance with section 37(17) of the Act, a copy of this letter is being sent to the landowners, Margery Ray Osborne, Brandon Grove, 119 West Princes Street, Helensburgh, Dunbartonshire G84 8EX and Thomas Henry Luigi Paterson, Cartref, Back Road, Clynder, Helensburgh G84 0QQ. In terms of section 37(20) of the Act, Scottish Ministers will direct the Keeper of the Register of Community Interests in Land to enter the interest in that Register with effect from the date of this decision.

Your attention is drawn to the notes contained in the Notice which provide information about the effect of Scottish Ministers decision and on rights of appeal against the decision.

Yours sincerely

Colin Gray
On behalf of Scottish Ministers

Notice under section 37(17) of the Land Reform (Scotland) Act 2003 of Scottish Ministers' Decision

The Scottish Ministers ("Scottish Ministers") have received the application by Helensburgh Community Woodlands Group (HCWG) to register a community interest in land consisting of approx. 0.8 ha of open land, to the south of Cumberland Avenue, Helensburgh, Dunbartonshire G84 8QP in terms of Part 2 of the Land Reform (Scotland) Act 2003 ("the Act").

Having considered the information provided Scottish Ministers have decided that the interest **should** be entered in the Register of Community Interests in Land ("the Register"). Scottish Ministers' decision is effective from 2 November 2016 ("the Decision Date"). This notice states the reasons for that decision.

- Whether a community body

HCWG is a Scottish Charitable Incorporated Organisation (SCIO) and its constitution meets the requirements of section 34(1A)(a) to (i) of the Act. Section 34(4) of the Act requires Scottish Ministers to be satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development. Scottish Ministers are satisfied that such provision is made in Clause 4 of the company's Clauses of Association.

- Sustainable development

Scottish Ministers believe that, if successfully delivered, HCWG's proposals could contribute positively to the sustainable development of the land and the local community of Helensburgh through, for example;

- Creation of a community woodland which may include;
 - a better footpath network and an all-ability access circuit. Scottish Ministers consider that these proposals could have the effect of improving the amenity value of the land and also provide opportunities to improve the health and well-being of visitors and locals alike by providing increased access opportunities for all. The creation of paths within the land to be registered, which could link up with existing paths in the area to form a circular route, may also have a positive effect on the number of people visiting the land, which may have additional knock on effects in regard to the health and well-being of locals and visitors alike. Scottish Ministers also consider that there could be local economic benefit to the community, insofar as making the area more attractive to visit, could impact positively on the number of visitors to the area who then may decide to spend money in local shops etc.
 - establishment of a full native woodland and removal of non-native trees. Scottish Ministers consider that these proposals could have a positive effect on the amenity value of the land, and by replanting with native species, the biodiversity and habitat of the area may be improved.
 - management of understorey and vegetation. Scottish Ministers consider that the management of the land, which could promote biodiversity of the site, could also improve the sustainable development of the community as

there is scope for input from volunteers and schools alike. This could have positive impacts on the social cohesion of the community.

- creation of more welcoming access points. Scottish Ministers consider that by developing the access points, so that they are 'more welcoming', this proposal could have a positive impact on the number of people taking the opportunity to visit the area. An effect of improving the access points could result in improvements to the land for those areas in question.
- creation and management of an open space area – likely to be in the centre. Scottish Ministers consider that the provision of an open space could provide opportunities to improve the health and well-being of visitors and locals alike. The open space will be required to be managed and therefore there may be volunteering opportunities to assist with this. The open space may also assist in allowing for further biodiversity of flora and fauna in the area.

Scottish Ministers are satisfied that this application and subsequent acquisition of the registered land could provide an opportunity for HCWG to address the aspirations of the local community, thereby delivering the HCWG's intentions of furthering the achievement of sustainable development through the provision of, for example; a better footpath network and an all-ability access circuit; establishment of a full native woodland and removal of non-native trees; management of understorey and vegetation; creation of more welcoming access points, and; creation and management of an open space area – likely to be in the centre as noted above. Consequently, Scottish Ministers are satisfied that this application meets the sustainable development criterion in section **38(1)(b)** of the Act.

- Registrable land

The land is registrable and not 'excluded land' within the meaning of section 33(2) and (2A) of the Act.

- Community connection with the registrable land

HCWG states in their answer at question 3.9 of the application form that the land is sufficiently near to land with which those members of the community have a connection, as;

- Castle Woods provide a prominent southern backcloth to a larger area of recreational land in West Helensburgh, which is very well used by members of the community and indeed by the people of Helensburgh more generally. The immediate area to the north between Castle Woods and Rhu Road Higher is occupied by the new Lomond School Sports Hall and associated all-weather sports pitch.
- This is one of several local schools that could benefit educationally from our proposals to preserve and enhance Castle Woods. Although a private school, Lomond School makes its Sports Hall available for local community organisations to hire at a modest charge – indeed HCWG has already held two of its meetings there. Helensburgh Rugby and Cricket Clubs occupy the large area on the other side of Rhu Road Higher and provide an important focus for local sporting activity. Both clubs have junior as well as several senior teams, making the area

a busy place for community activity particularly at weekends, both for fixtures and for extensive training activities involving both adults and all ages of children.

- Duchess Woods, which are heavily used by members of the community for informal recreation, wrap around and extend well beyond, these formal sports facilities. We plan to develop strong connections between Castle Woods and Duchess Woods. As one of only two Local Nature Reserves in Argyll and Bute, Duchess Woods is estimated to have around 100,000 annual visits, many of which are made by members of the community who walk there daily. It is important to note that both Duchess Woods and Castle Woods are ecologically very similar, with large and old oak and beech dominating over birch, alder, willow and other wet woodland species. The understorey and flower populations also reflect their common ancestry as woodland parkland around Ardencaple Castle, as shown in Ordnance Survey maps from the 1860's. HCWG has held discussions with the Friends of Duchess Woods who are highly supportive of our proposals, which they believe will connect well to the informal recreational activities at Duchess Woods and indeed help divert some of the visitor pressure currently experienced at Duchess Woods. Although Castle Woods are environmentally significant in their own right, it also contributes much to the overall landscape of this wider area of open and recreational space in West Helensburgh, and importantly to the local microclimate enjoyed by the playing fields, through lessening the impact of winds.
- Immediately to the east and south of Castle Woods are the residential streets that form a core part of the local community area. People here benefit from the proximity of Castle Woods both visually in providing an attractive wooded setting for housing and functionally in relation to the shelter that the woods offer to neighbouring areas in mitigating adverse weather conditions. This is especially the case for the 47 properties in Ardencaple Quadrant immediately to the south of Castle Woods, and the 26 properties in Bannachra Drive immediately to the east, but also applies to a lesser extent to over 220 properties on, or close to, those parts of West King Street from which Castle Woods are clearly visible.

It is Scottish Ministers view that HCWG provides evidence that the land is sufficiently near to land with which those members of the community have a connection, Helensburgh Rugby and Cricket Clubs, Duchess Woods, and the 47 properties in Ardencaple Quadrant immediately to the south of Castle Woods, the 26 properties in Bannachra Drive immediately to the east, and also over 220 properties on, or close to, those parts of West King Street. It is Scottish Ministers view that the criterion in **section 38(1)(b)(ii)** of the Act has been met.

- Community support

Sections 38(1)(d), Section 38(2) and Section 38(2A) of the Act set out the level of support required for registration and the validity of the support. HCWG indicates that it obtained 296 signatures to a petition list (the earliest signature of which is dated 14 August 2016, which is within the 6 months before the date on which the application was received by Scottish Ministers), of persons within the defined community, which it was able to identify on the Closed Electoral Register used by HCWG to verify support. HCWG indicates that this represents 14% of the 2,102 residents, entitled to vote at a local government election, who support the application, which exceeds the minimal level of support required in terms of section 38(2)(a) stated as one tenth or

more of the members of the community. After scrutinising the petition list against the extract of the Open Electoral Register supplied by HCWG, Scottish Ministers were able to identify 155 names, which equates to 7.3% of the eligible voters in the community area. Scottish Ministers then carried out a spot check with the Electoral Registration office, against the Closed Electoral Register, on 15 names selected at random (out of the 141 names not found). A total of 15 names were found to be eligible. Grossing up the figures of 15 out of 15 (15/15 x 141 names not found), indicates that 141 out of the 141 additional signatories may have been found to support the HCWG's aims. If the 141 signatories are added to the 155 initially found, Scottish Ministers arrive at a figure of 296 signatories. This calculates to **14%** community support. Scottish Ministers are satisfied that the level of support meets the requirements of **sections 38(1)(d) Section 38(2) and Section 38(2A)** of the Act.

- Public interest

In considering the issue of public interest at section 38(1)(e) of the Act, the Scottish Ministers must be satisfied that it is in the public interest to register the application. In considering the public interest, Scottish Ministers have taken into account, for example:

- The sustainable development proposals from HCWG including the environmental, social and economic benefits to the community and land should the land to be registered be acquired by HCWG.
- The aspirations of HCWG are not in conflict with current local development plan which has the site designated as open space.
- Evidence submitted shows that the landowner and HCWG have similar aspirations for the land to be registered in that to ensure (minus a small housing plot planning application identified by the landowner) that it is used as open space for woodland for the community.
- The landowner is not prohibited from developing the land as they wish (subject to obtaining the required consents) even if the land is subject to a community right to buy registration.

Scottish Ministers have considered the evidence submitted by HCWG in the application form and the evidence submitted by the landowner and HCWG's reply to those views.

Scottish Ministers view is that the proposed development could result in benefits to the community and the land. These proposals include: creation of a community woodland which may include a better footpath network and an all-ability access circuit, establishment of a full native woodland and removal of non-native trees, management of understorey and vegetation, creation of more welcoming access points and creation and management of an open space area – likely to be in the centre, the opportunity to provide for educational learning, and environmental land improvements.

Scottish Ministers are content that granting the application to register an interest in the land for the proposed development could provide positive social, economic and environmental benefits to the land and the community. Scottish Ministers believe that these proposed developments could, for example, lead to increased levels of

social cohesion within the community through interaction in managing the site, provide opportunities to enhance the health and well-being of locals and visitors alike through the creation of a relaxing place to visit and walk, improve the bio-diversity and environmental sustainability of the land, provide the ability to increase educational awareness and provide local training and volunteers opportunities for the community to build up skills.

Having considered all the information provided in the application and the views supplied by the landowner and HCWG, Scottish Ministers view is that they are satisfied that the proposed application to register an interest in land at Cumberland Avenue is in the public interest. HCWG'S aspirations show intent to address the needs identified and supported by the local community and, if HCWG are successful in acquiring the land in the future, the sustainable development proposals by HCWG should benefit the community of Helensburgh and the wider area through ensuring the land is used for the benefit of the community through the provision of a long-term land and forestry management plan for Cumberland Avenue, which will help promote the general and social, environmental and economic well-being of the community. There is no evidence to suggest that the proposals would disadvantage the wider community, the environment or the economy, nor harm any private interest as a result.

The aim of the legislation includes creating opportunities to empower and strengthen communities where this would be in the public interest. It is Scottish Ministers view that they are satisfied that the proposed application to register an interest in land at Cumberland Avenue is in the public interest under **Section 38(1)(e) of the Act**.

- International Covenant on Economic, Social and Cultural Rights

In reaching their decision under section 38(1) of the Act, Scottish Ministers have had regard to the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 subject to any amendments in force in relation to the United Kingdom for the time being, and any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

- Decision

As the Scottish Ministers are satisfied in all the circumstance that the requirements of section 38 of the Act are met, they have decided that the community interest in the land should be entered onto the Register of Community Interests in Land.

Effect of Ministers' Decision

Where a community interest in land is registered or where that interest has been re-registered, the owner of the land and any creditor in a standard security having the right to sell the land, is prohibited from transferring the land, or any part of it, or from taking any action with a view to transferring the land, or any part of it, while the interest is registered in the Register. This is subject to section 40(4) of the Act.

A community body may apply to re-register their interest in the land within 6 months before the expiry of the period of 5 years that a registered interest has effect.

A community body and owner of the land have a duty under section 44A of the Act to notify changes to information relating to a registered interest to Ministers as soon as reasonably practicable after the change.

Should an owner of land in respect of which a community interest is registered or, as the case may be, a creditor in a standard security with a right to sell the land proposes to transfer that land (or any part of it) that person is required to notify Ministers and the community body of such a proposed transfer under section 48 of the Act in the form set out in Schedule 6 of the Community Right to Buy (Scotland) Regulations 2015.

Under section 45 of the Act, if Ministers are satisfied that there has, since the date on which they decided that a community interest should be registered (or re-registered) in the Register, been a change in any matters to the extent that, if the application to register that community interest were made afresh, they would decide that the interest is not to be entered in the Register, they shall direct the Keeper to delete that interest.

An owner of land may, by virtue of section 61(1) of the Act appeal to the sheriff against a decision by Ministers that a community interest in the land is to be entered in the Register.

A person who is a member of a community may, by virtue of section 61(3) of the Act appeal to the sheriff against a decision by Ministers that a community interest in land is to be entered in the Register.

An appeal under section 61 of the Act should be lodged within 28 days of the date on which Ministers decided whether to enter the community interest in the Register.

Any person (other than a community body) who has incurred loss or expense in complying with the procedural requirements of Part 2 of the Act is by virtue of section 63 of the Act entitled to compensation from Ministers of such amount as Ministers may determine.