



Mr A Donald
Helensburgh Community Woodlands Group
12 Duchess Park
Helensburgh
Dunbartonshire
G84 9PY

Our ref /Ar faidhle: AB00001
Date 18 August 2020

Dear Mr Donald

NOTICE BY THE SCOTTISH MINISTERS UNDER SECTION 97M(1) OF THE LAND REFORM (SCOTLAND) ACT 2003: DECISION ON THE APPLICATION BY HELENSBURGH COMMUNITY WOODLANDS GROUP FOR CONSENT TO EXERCISE RIGHT TO BUY LAND AT SOUTH OF CUMBERLAND AVENUE, HELENSBURGH, G84 8QP

Case Number:AB00001

Notice under section 97M(1) of the Land Reform (Scotland) Act 2003 ("the Act") is enclosed.

The Scottish Ministers have considered the application by Helensburgh Community Woodlands Group to apply for consent to exercise right to buy land south of Cumberland Avenue, Helensburgh, G84 8QP. Scottish Ministers have decided **not to grant** consent to Helensburgh Community Woodlands Group to exercise the community right to buy abandoned, neglected or detrimental land in relation to the land at south of Cumberland Avenue, Helensburgh, G84 8QP.

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

In accordance with section 97M(1)(b) and (c) of the Act, a copy of the enclosed Notice is being sent to the landowners, Ms Marjory Osborne, Brandon Grove, 119 West Princess Street, Helensburgh, Dunbartonshire, G84 8EX and Mr T Paterson Cartref, Back Road, Clynder, Helensburgh, G84 0QQ and all persons who were invited to send their views on the application . In terms of section 97M(1)(d) of the Act, Scottish Ministers will send a copy of the enclosed Notice to the Keeper of the Register of Applications by Communities to Buy Land to be included in that Register..

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

On behalf of Scottish Ministers

Notice under section 97M(1) of the Land Reform (Scotland) Act 2003 of Scottish Ministers' Decision

The Scottish Ministers ("Ministers") have received the application by Helensburgh Community Woodlands Group for consent to exercise the right to buy land at south of Cumberland Avenue, Helensburgh, G84 8QP in terms of Part 3A of the Land Reform (Scotland) Act 2003 ("the Act").

Having considered the information provided, Ministers have decided to **refuse consent** to Helensburgh Community Woodlands Group to exercise a right to buy in relation to the land that forms the subject of the application. The decision is dated 18 August 2020 ("the decision date"). This notice states the reasons for that decision.

Section 97C of the Act: Land in respect of which community can exercise a right to buy

Section 97C of the Act provides that a community body can apply for consent to exercise a right to buy land under Part 3A of the Act in relation to any eligible land. In order to be eligible, land must either be wholly or mainly abandoned or neglected, or the use or management of the land must be such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of the community. This is considered in more detail below at paragraph 6.1, however, Ministers are satisfied that the land is **not eligible land** in terms of **section 97C** of the Act.

Section 97D of the Act: Community Bodies

Section 97D(1) of the Act requires a community body to be either, a Company Limited by Guarantee (CLBG), a Scottish Charitable Incorporated Organisation (SCIO), or a Community Benefit Society (BenCom). The application is submitted by Helensburgh Community Woodlands Group, a SCIO, which satisfies the requirements under **Section 97D(1)** of the Act. The governing document of Helensburgh Community Woodlands Group is their constitution which includes provision for the matters required by **Section 97D(3)** of the Act. The requirement of the Act has therefore been met.

Section 97D(9) of the Act requires the community to be defined by reference to a postcode unit or units or a range of prescribed areas (or a combination of postcode units and a prescribed area). The community have defined themselves using postcode units listed at Annex A of Helensburgh Community Woodlands Group's governing document and will comprise the persons resident in those postcode units who are entitled to vote at a local government election. Clause 4 of the community body's constitution makes such provision. The requirement has therefore been met.

Section 97D(3)(b) of the Act requires that the community body's governing document include provision to enable the community body to exercise the right to buy land under Part 3A of the Act. Clause 6 of the community body's governing document makes such provision. This requirement has therefore been met.

Section 97D(3)(c) of the Act requires that the community body's governing document include provision that the community body must have no fewer than 10 members. Clause 11.1 of the community body's governing document makes such provision. The governing

document also contains a provision at Clause 103 that should the number of members fall below 10; the community body will not conduct any business until it has secured that minimum number of members. This requirement has therefore been met.

Section 97D(3)(d) of the Act requires that the community body's governing document include provision that at least three quarters of the members of the community body are members of the community. Clause 11.2 of the community body's governing document contains such provision. Ministers have scrutinised the membership list provided by Helensburgh Community Woodlands Group as part of the application, and are satisfied that this requirement has therefore been met.

Section 97D(3)(e) of the Act requires that the community body's governing document include provision that members of the community have control of the community body. Clauses 10.1 and 10.2 of the community body's governing document provides for three categories of membership – Local Community Members, General Members and Junior Members. Only Local Community Members are eligible to vote at any general meeting stated at Clause 12.1 to 12.3 of the organisation's constitution. The board of Charity Trustees is accountable to the Local Community Members who have ultimate control of the community body. The Board will, in terms of Clause 54 and 55 of the community body's governing document consist of Elected and Appointed Charity Trustees. Clause 54 of the community body's governing document provides that only Local Community Members of the company can be appointed as an Elected Charity Trustee.

Under Clause 79 of the community body's governing document, the board is only quorate where, at any board meeting, Elected Charity Trustees (i.e. Local Community Members of the company) are in the majority and that the quorum shall not be less than 50% of all the Charity Trustees. The requirement has therefore been met.

Section 97D(3)(f) of the Act requires that the community body's governing document contain provision ensuring proper arrangements for the financial management of the community body. Clause 98 to 102 of the community body's governing document makes such provision. This requirement has therefore been met.

Sections **97D(3)(g) and (h)** of the Act require that the community body's governing document include provision that, on the request of any person for a copy of the minutes of a meeting of the community body, that, provided the request is reasonable, the minutes are supplied within 28 days and, that if any information contained in the minutes is withheld, that the person requesting the minutes is informed of the reasons for doing so. Clause 91 and 92 of the community body's governing document makes such provision. This requirement has therefore been met.

Section 97D(3)(i) of the Act requires the community body's governing document to include provision that any surplus funds or assets are to be applied for the benefit of the community. Clause 102 of the community body's governing document makes such provision. This requirement has therefore been met.

Section 97D(6) of the Act states that a body is not a Part 3A community body unless Scottish Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development. Clause 5 of the community body's governing document contains such a

provision and Scottish Ministers have confirmed to the community body, in writing, that they are satisfied in this regard.

Ministers are therefore content that the community body comprises a compliant community body as the governing document contains the provisions that are required under **section 97D** of the Act.

Section 97H of the Act: Criteria for Consent

Section 97H(1)(a) of the Act requires Scottish Ministers to be satisfied that the land to which the application relates is eligible land. Land is eligible under the community right to buy if it is either wholly or mainly abandoned or neglected; or the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community. The community body are of the view that the land they are applying to acquire is wholly or mainly abandoned or neglected.

The community body's views are:

"There was mature woodland habitat at the site in Cumberland Avenue until 2011 when the owners cleared the site of trees. According to Iona Hyde, an Arboricultural and Environmental Consultant (see Attachment 6. Cumberland Avenue, Helensburgh Public Consultation Report and Concept Plan June 2017) "map evidence suggests that this site has been wooded for at least 160 years (and probably much longer) until it was felled in 2011." The 1 51 Edition OS Map of 1865 shows the area as predominantly broadleaf woodland with a path running North to South from what is now Cumberland Avenue. By the time of the 2nd Edition of the OS Map published in 1899 the site had been underplanted with conifers and the site supported a mixed woodland. A natural pathway through the woodland running North to South between Cumberland Avenue and West King Street (adjacent to the Macaulay tower) was still in use for public access up until the owners closed the site in 2007. This area has long been designated by Argyll and Bute Council as an Open Space Protected Area, and, in view of Part 1 of the Land Reform (Scotland) Act 2003, it is reasonable to assume that the owners would have ensured it remained in safe condition for public access.

In 2011 the owners began clearing larch trees on the basis of safety to neighbouring properties. This "safety" based maintenance resulted in more than 300 trees being cut down. No felling licence was sought by, or granted to the owners prior to the felling. The site was effectively cleared of trees, except for some mature trees on a narrow strip of land that does not belong to the owners . (see photograph Attachment 7.).

Alongside the larch trees, the owners also felled over 100 non-larch trees that were protected by Argyll and Bute Council Tree Preservation Order 16/04 (see Attachment 8. which shows the site at Cumberland Avenue annotated as W2). This resulted in Argyll and Bute Council serving a replanting-notice on the owners. The owners appealed the replanting notice and the Reporter finally served notice that 28 trees should be replanted by the owners. The owners refused even to do this, and the 28 trees were finally replanted by Argyll and Bute Council. The owners took no action to reinstate the site to allow public access, despite pressure from the Council under Part 1 of the Land Reform (Scotland) Act 2003. Instead they have ensured the site remains closed to public access on the basis of public-safety.

According to a letter from their solicitors (McArthur Stanton) to Argyll and Bute Council, dated 9 March 2017 (see Attachment 9.), the owners themselves consider the land to be in a dangerous condition. The letter was sent in the context of a longstanding dispute between the local authority and the owners, dating back to 2008, on whether public access to the land should be reopened under the Land Reform (Scotland) Act 2003. The letter states: "We would make it very clear that our clients do not accept your assessment that the site is now safe and they remain of the view that there would be a significant risk to public safety should public access be allowed ... Mr Paterson knows the area of land in question very well and indeed visited the site and entered the same as recently as 15 February this year. He describes the land as being treacherous under foot. He has explained to us that there are four bunds spread across the full site ... the bunds have started to decay and in our clients view this makes the site even more hazardous. Our clients do not accept the view contained within your letter of 7 February that "it is very unlikely that even children would attempt to climb on these piles because of the brambles". In the event that public access is permitted to the site, our clients view is that there would be a reasonably foreseeable risk of members of the public or dogs being walked in the area suffering injury due to the nature of the site. Our clients have contacted P .C. Dale Logsdon (Crime Reductions Officer) requesting his professional opinion as to whether the site is likely to pose a hazard to members of the public especially children. If necessary, our clients will involve the health and safety executive. As you will no doubt appreciate, they are extremely anxious to avoid liability for loss or injury suffered by members of the public accessing the site which is in their ownership. In these circumstances, they will vigorously oppose any notice issued by Argyll and Bute Council requiring them to open the access to public access."

Mr Paterson and Mrs Osborne have owned the land since 2004, and its physical condition has remained fundamentally the same in recent years. The land has long been designated by Argyll and Bute Council as an Open Space Protection Area. It is covered by Tree Preservation Order, and recognised by Helensburgh Community Council as a Key Environmental Feature of the town. It sits within a well-established residential area that is home to young families as well as older people, making active and sensitive management of the land a legitimate expectation of both its immediate neighbours and the wider community. However, since the former woodland was felled in 2011, the owners have undertaken no significant work on the land other than to remedy breaches of planning control as directed by a series of planning enforcement notices, and to carry out some limited topping of rushes and other coarse grasses immediately adjacent to boundaries, although this appears to stop about 2/3's of the way along the site where the vegetation is now so thick it is impenetrable.

An earlier attempt by the local planning authority to secure the removal of the bund nearest the road failed on appeal in 2015, as the Reporter did not consider it to be visually incongruous or obtrusive. Irrespective of any arguments around the visual merits of the bunds, it is likely that an active management regime would by now have dispersed the tree stumps, roots, felled logs and branches contained within them around the site, or have removed much of this material altogether.

Whatever the owners' reasons for keeping the land in what they themselves consider to be a dangerous condition, and irrespective of their longstanding dispute with Argyll and Bute Council on public access, it is contended that their behaviour represents a fundamental breach of Principle 4 of the Scottish Government's Land Rights and Responsibilities Statement (Ref.1) which expects that "The holders of land rights should

exercise these rights in ways that take account of their responsibilities to meet high standards of land ownership, management and use. Acting as the stewards of Scotland's land resource for future generations they contribute to sustainable growth and a modern, successful country." The Statement adds "Those who own, manage or use land are responsible for the good stewardship of that land, and ensuring that, in line with sustainable development, Scotland's land and associated buildings and infrastructure are well looked after and, where possible, improved."

It might be argued that the land at Cumberland Avenue is regenerating of its own accord and requires no further management by its owners. However, such a view contradicts the specific advice given by Scottish Natural Heritage (SNH) on Woodland Condition (Ref.2). Under the heading 'Neglect or lack of management', SNH states "Most of Scotland's woods have been managed in some way during their lifetime -for timber, charcoal, grazing or other products and services. Their structure and make-up today result from centuries of interaction with people and livestock. The cost of management, and the low value of many woodland products, means that it's often not economically viable to continue to manage woods. This doesn't always lead to a decline in their value for wildlife, but it may do. Woodlands that aren't managed may:

- become more vulnerable to overgrazing or invasive species
- suffer the loss of ground flora species or decline of mature trees due to shading out or competition from the uncontrolled growth of young trees."

At Cumberland Avenue, invasive non-native species are now colonising the land, providing clear evidence of management neglect. These include Buddleia, Pampas Grass, and most worryingly, Himalayan balsam, which has begun to spread rapidly from the corner of Cumberland Avenue and Empress Drive.

The GB Non-Native Species Secretariat (Ref 3.) describes Himalayan balsam as a "Glabrous annual herb with stout succulent, reddish-translucent hollow stems to 2.5 m; leaves opposite or in whorls of 3, 5-18 cm long and 3-7 cm wide; flowers with short spur, helmeted upper petal, deep purplish-pink to white, strong balsam smell." Significantly, it is one of the five key plant species targeted by the Scottish Invasive Species Initiative (Ref 4.). This is a four-year partnership project costing £3.24 million and funded by SNH, the Heritage Lottery Fund along with in-kind support from partners and volunteers, which is seeking to control invasive non-native species in an area of 29,500 km² in Northern Scotland. In view of the national importance of controlling Himalayan balsam, it is especially worrying that the landowners have allowed it to spread at Cumberland Avenue.

Neither has any action been taken by the owners to prevent fly-tipping on the site. It is apparent that garden waste is now being regularly dumped on the land from Cumberland Avenue, which is likely to aggravate the problem of invasive non-native species colonising the land. Here, the land is also still scarred by metal remnants of the former fencing on to Cumberland Avenue.

Please see the attached report, 'Update on Site Condition November 2019' by Iona Hyde MSc, AA Tech. Cert., an Arboricultural and Environmental Consultant (Attachment 10.). She concludes "The value of the site as woodland habitat has significantly deteriorated since it was clear felled in 2011. Although not recorded on the Ancient Woodland Register because of its small size (less than 2ha), map evidence suggests that this site had been wooded for at least 160 years (and probably much longer) until it was felled in 2011. The disruption to the woodland habitat through felling and subsequent colonisation of the site

by inappropriate species combined with an absence of appropriate management and misuse of the area (e.g. by tipping), is leading to significant and rapid deterioration of the site as a potential native woodland. The more aggressive non-native, non-woodland plants that are colonising the site are likely to outcompete the woodland ground flora which has the ability to persist on the site and in the site seedbank for some time without woodland cover and should be controlled as soon as possible to allow restoration of the site. Further delay in restoration will significantly increase the costs of restoration and on-going management to eradicate invasive species. The success of the natural regeneration and replacement tree planting that has taken place provides a positive indication that the site can successfully regenerate and, with the correct on-going management recommended in the Cumberland Avenue, Helensburgh Public Consultation Report and Concept Plan 2017, has the potential to be restored to a diverse and valuable urban amenity woodland and important green space."

The land at Cumberland Avenue currently has no active use, but is held speculatively by the current owners (and has been since 2004) in the hope that they will eventually succeed in overcoming longstanding Council planning policy, which designates the land as an Open Space Protection Area.

Due to the closure of the land by the owners, the local community can no longer use the land. The current physical condition of the land suggests that significant work will be required across the majority of the site to make it suitable once more for public access.

In summary, it is argued that the owners' own assessment of the physical condition the land combined with the increasing encroachment of non-native invasive species and general lack of management provide very strong evidence of abandonment and neglect across the whole of the site. The lack of action to remedy this is particularly negligent given the location of the site within an established residential area and its long-protected status as urban greenspace."

The land owners views are:

"The fact of the matter is that the Owners have never at any point in time been contacted by residents whose properties abut the Subject Land (or by their local councillors) with complaints about "non-native species" of flora invading their back gardens. Neither have those residents (or their councillors) complained to the Owners about their neighbours tipping garden cuttings over their back fences into the Subject Land or about the Subject Land being "neglected." And at no point in time since they acquired ownership of the Subject Land in 2004 have they been contacted by Police Scotland regarding anti-social behaviour. Fencing is in place to reduce the risk of that happening No one had advised them either (nor could they possibly reasonably expect) that by explaining to residents and the Council why they had erected a fence along the southern boundary of their land in order to stop young children from trying to climb a steep embankment next to a play area and risking the danger of a fall, that that explanation would apparently in itself "provide very strong evidence of abandonment and neglect across the whole of the site" such as would entitle the Scottish Government to force them to sell their land to a third party at its existing use value regardless of its development potential. Article 1 of the First Protocol (Protection of Property) is engaged. See section G below.

Although it is noteworthy in itself that the Community Body has not been able to provide Ministers with any evidence of complaints being submitted by local residents concerning

the Owners' alleged neglect and mismanagement of the Subject Land, the timing of the complaints that have been sent in to the local Councillor in relation to the alleged neglect by the Owners is perhaps instructive.

Having seen the name and address of the resident who sent in this letter, the Owners are absolutely adamant that at no time have they ever spoken to him. They are also absolutely certain too that he has never written to them or phoned them to complain about these issues. It is, however, perhaps noteworthy that the resident reports a "steady increase" in rubbish being dumped on the Subject Land during the course of 2019 - which is essentially the same period during which the case of neglect against the Owners was being put together by the Community Body.

So far as the Owners are concerned, when these various factors are taken into account, it is self-evident that the Community Body's primary motive in promoting the Part 3A Application is not to bring about an improvement of the physical condition of the Subject Land but rather to force through its sale at a price that the Community Body can afford. The clear implication of the advice that Mr Adams gave to all those in attendance at the 12 September 2018 meeting in Helensburgh is that the Part 3A right to buy is seen by the Community Body as a better and more cost efficient way of stopping the Owners from developing their land for housing. But as the Guidance explains, that is precisely not what it was set up to do."

Community body's views on landowners views:

The damning evidence that demonstrates neglect is the continued unsafe condition of the site and the need to keep it closed to access. The owners closed the site on safety grounds in 2007. Prior to that local residents and the public used the site for access and recreation, as described in the letter submitted by a local resident to the Scottish Ministers: (Ref 12 - 10/2/2020) "before this section of land had been purchased and then fenced off I had enjoyed walking with my Wife and Sons, with their families, through this wooded area and then accessing the area surrounding the remaining tower of Ardencaple Castle." It is notable that the owners completely ignore the subject of site safety and public access in their response document from DLA Piper. They do not dispute that the land is unsafe. We would highlight again the letter attached as Attachment 9 in AB00001. The letter was sent from the owners' own solicitors (McArthur Stanton) to Argyll and Bute Council in the context of a long standing dispute with the local authority dating back to 2008 on whether public access should be reopened under the Land Reform (Scotland) Act 2003. The letter was sent in March 2017 and states: "We would make it very clear that our clients do not accept your assessment that the site is now safe and they remain of the view that there would be a significant risk to public safety should public access be allowed....Mr Paterson knows the area of land in question very well and indeed visited the site and entered the same as recently as 15th February this year. He describes the land as being treacherous under foot. He has explained to us that there are four bunds spread across the full site.....the bunds have started to decay and in our clients view this makes the site even more hazardous." No evidence has been put forward by the owners of any actions taken by them since March 2017 to make the site safe. It stretches the imagination beyond belief to think that the Council would have stopped the owners making the site safe, even if any permission had been required. Instead, it is our contention that the owners have deliberately kept the site in an unsafe condition to defeat the Council's successive attempts to ensure public access is restored under Section 1 of the Land Reform (Scotland) Act 2003. Far from stopping the owners taking action to make the site safe, the Council has

done its best to encourage them to do so. But it is now clear that it suits the owners' long-term strategy to deliberately keep the land in a state of neglect and indeed danger. This has become increasingly evident since 2011, when the bunds were created following action by the owners to fell trees that were deemed unsafe. Why nine years later has the site not been made safe? It was not the felling of the trees that left the site unsafe (they were felled on safety grounds), it was the lack of proper management after then which has left the site in a continuously unsafe condition ever since. If a proper management plan and strategy had been in place prior to and following the felling the site would be safe for access and would have recovered much quicker. The Council had tried repeatedly to try to get the owners site agent to engage in a constructive manner in managing the site in line with Tree Preservation Order requirements. An example of this is the email correspondence (Appendix 1) between the Council officers and the site agent Mr Dance, particularly between 9th to 17th June 2011. The long trail of enforcement and amenity notices and historic attempts to build houses on the land tells its own story. The Council's own policies require its officers to seek solutions through cooperation. The history of enforcement shows that this has not been possible. Please see "Chapter 3 Planning History" in the Council's Statement of Case Document from August 2015 (Appendix 2) regarding enforcement notices: "Due to the unauthorized actions of the landowners enforcement action has been taken on three separate occasions in respect of the site in the recent past, and appeals have been successfully fought to uphold two of these notices with a third appeal being withdrawn. On every occasion the appellants have considered the behaviour of the Council unreasonable and sought an award of expenses. On every occasion claim of unreasonable behaviour has been dismissed by Reporters." The owners have always had the opportunity to take positive action to care for the land and to interact with the local community, but have chosen not to. The Council has had to resort to enforcement for the most basic of responsibilities to be discharged. The most telling was the owners' refusal to carry out replanting in accordance with Tree Replanting Notice (TRN 11/00107/ENOTH2) which resulted in the Council having to take direct action to replant the trees with Police in attendance. The Council has continuously sought to engage with the owners in managing the site, but that has never happened because the owners have not shown any desire to support and promote the use of the site as an Open Space Protection Area. They made no attempt to discuss and agree how they would best manage the site in line with the Tree Preservation Order. The destructive nature of the tree-stump removal operations did not need to take place. Other options were available when preparing the land for replanting which would have maintained the integrity of the surface and which are normal forestry practice, even in less sensitive locations. No opportunity was given to the Council or local community to discuss this. Instead, the owners have chosen to leave the site in a neglected state. Making the condition of the site a problem rather than restoring this valued amenity has suited their aims in trying to overturn the long held planning policies that protect this site. This has resulted in a very significant administrative and legal burden on the local authorities and Government Reporters to uphold local policies, taking up hard-pressed public resources.

The unsafe condition of the site is the most telling aspect of neglect over the years and this has been driven by housing development aspirations, not by management of the site in accordance with its designation as an OSPA and under the TPO. Continued fly-tipping and failure to control invasive species provide further strong evidence of neglect. It is telling that the owners' response offers only excuses why they have never properly addressed these problems and does not set out any proposed actions to tackle them in the future. It is our contention that these further problems of neglect will get ever worse if the land remains in its current ownership because the current owners have no real interest in putting them right, For further details on the neglected state of the land, please see Annex 2 in

which we consider and provide a detailed response to the Rebuttal Response by the Owners consultant Mr Alan Motion. In particular please see our comments in response to 2.27 on the use of weed killer

Ministers views are:

It would not be unreasonable to say that, the residents or the community body on behalf of their members, could have taken steps to contact Ms Osborne and Mr Paterson (the owners) to try to have the fly tipping and invasive species issues resolved before deciding that a Part 3A application was the best way forward. The owners, as responsible landowners, could have ensured there was a land management plan in place and being undertaken on their land.

All information provided as part of the process for determination has been considered and as part of determining whether the land can be classed as wholly or mainly abandoned or neglected. It is required that regard is had to The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018 ("the Regulations"). Regard has been had to these Regulations in this case.

DLA Piper on behalf of the owner has stated that :

"Here all we are talking about is (i) the cutting back and treatment of some rhododendron bushes and some Himalayan balsom (ii) the removal of fly-tipped waste and (iii) the distribution of a letter to local residents asking them to dispose of their garden waste responsibly. The owners have put proposals to the Community Body. These proposals involve the putting in place of a scheme to manage the subject land and address the issues of alleged abandonment and neglect"

These are indeed issues identified by Helensburgh Community Woodlands Group and, as stated above, if they were addressed there would be little basis for this application. The owners have indicated that they have contacted the police to try to resolve the issue of fly tipping-. They have also indicated that they are willing to put a land management scheme in place for the site. Paragraph 3.1.2 of the owners views states that "they have committed to work with the community body to agree a plan for the future management of the subject land." It is hoped that the owners will continue to work with the community body which they have stated is their intention but failing that, it remains that the community body may look to further utilise options under community right to buy legislation should the owners not follow through with their intentions to meaningfully engage. It is also hoped that the Community Body will be open to any attempt by the owner to engage although it seems that this may not be taken forward by the community body until the application is determined as noted in their correspondence attached to their rebuttal of the landowners views.

The test for section 97H, as well as the tests in other sections, are high ones to meet. As the owners have started to take steps to address these issues, it is officials view that they should be given some time to **fully** resolve them now that they have been brought to their attention. The land cannot, at this time, be classed as **wholly or mainly abandoned** or neglected due to the owners actions being undertaken before a Ministerial decision has been made. As the owners have indicated that they intend to take forward a land management programme to maintain the site, they should be given a chance to do so.

The community body have provided a large amount of historical information showing what, in their opinion, is a pattern of neglect and abandonment of the land by the current owners over a 16 year period. This has been considered in line with regulation 3(1)(b) of the Regulations, with particular regard to the physical condition of the land. This information does paint a picture of what, in the community body's opinion, has/had not happened with the land over the years. However, Ministers must also consider the condition of the land at the time a decision is made. As the owners have addressed the issue of fly tipping by contacting Police Scotland and have indicated that they are willing to put a land management scheme in place for the site, it is officials view that the land cannot [presently] be classed as wholly or mainly abandoned or neglected.

Regulation 3(1)(c) of the Regulations requires that officials have regard to the extent, if any, to which the physical condition of the land is a risk to public safety, has, or is likely to have, a detrimental effect on adjacent land and whether it causes, or is likely to cause environmental harm. Ministers have considered the views of the community body that the physical condition of the land is a risk to public safety. It is Ministers view that the community body have not presented a strong case to prove that the land is a risk to public safety. It has been repeated by the community body that there is a safety risk but it is not clear enough what this risk is. The community body have provided an extract of a letter that seems to state the owners views that they have previously considered the land unsafe. Even taking this at its highest that the land remains as such, it is not clear enough why and what the risk is.

Ministers have considered whether any evidence has been put forward to make a case on any detrimental effect on adjacent land. It is noted that there are claims of flooding and invasive species issues mentioned in letters received in response to an invitation for contiguous land owner views but these lack evidence and in any event it is not clear that there have been any serious attempts to resolve these issues with the landowners. It is also noted there are concerns that further residential buildings could affect drainage but no evidence has been provided on this point.

In relation to whether the physical condition of the land causes or is likely to cause, environmental harm has been considered and the meaning of environmental harm has been looked at under section 17(2) of the Regulatory Reform (Scotland) Act 2014 as required by the Regulations. While not every consideration in section 17(2) is relevant, they have been looked at in line with what information has been provided. No evidence has been provided by either party in relation to harm to the quality of air or water but the community is of the opinion that the land is being harmed by invasive species such as rhododendron and himalayan balsam. It is Ministers view that the invasive species issues could be dealt with by the owners, now they have been made aware of the issue, when they consult with the community body to develop the land management plan for Cumberland Avenue. It is not clear that indiscriminate spraying of weed killer would fall within environmental harm but it is thought this would not but it seems this matter is now resolved and is unlikely to have a further effect.

In relation to other impairment of, or interference with, ecosystems the community body have stated that they have concerns that as the land is not currently being managed that it may become vulnerable to overgrazing or invasive species. As the owners have stated that they wish to work with the community to develop a land management plan this could be addressed now that the owners have been made aware of the issue.

Regarding the issue of offence to the senses of human beings, It is Ministers view that the community body have provided no evidence in their response to question 5.2 of their application to prove that there is offence to the senses of human beings. While aspects of the land could be seen as unsightly by decaying bunds or fly tipping for example, it is thought that the owners are seeking to resolve at least the issue of fly tipping.

In respect of damage to property, the community body have not provided enough evidence in their response of damage to property. If there was damage to property then sufficient evidence of this would be needed.

The harm to the health of human beings or other living organisms as well as impairment of, or interference with, amenities or other legitimate uses of the environment has been looked at. The owners have fenced off their property to avoid the public entering the property and being hurt in any way, they are also "extremely anxious to avoid liability for loss or injury suffered by members of the public accessing the site which is in their ownership". The community body feel that this site should be open to the public for the benefit of the community as they feel there is no other suitable location available for the community to use at this time. At present the owner is unable to open the site for the benefit of the community, but once a management plan for the land has been agreed by both the owners and the community body the land. It is Ministers views that there are parks available for the community to use within Helensburgh and that the community body have not made a strong enough case here.

Regard has been had to Regulations 4 and 5. The designation and classification of land and the use or management of the land has therefore been considered on the basis of information received. It is [accepted] that the area has been designated an Open Space Protection Area and it is stated there has been a Tree Preservation Order in place. Ministers are of the view that this currently will not impact the decision in respect of the right to buy application as the land currently maintains its designation which will be looked at in the context of any further planning decisions.

While there is no requirement that a case should be made for every Regulation, it would be expected a strong case is made with the Regulations in mind. A great deal of information has been provided in connection with this application and Ministers have taken account of all the other relevant matters raised, including those in the written responses to invitations both in favour and against the application, but it is found that none of these outweighs the considerations upon which the views are based.

Ministers **are not satisfied** that the application relates to eligible land. This requirement has therefore **not been met**.

6.2. Section 97H(1)(b)(i) of the Act requires that Scottish Ministers must be satisfied that the exercise by the Helensburgh Community Woodlands Group of the right to buy under this Part is in the public interest.

The community body's views are:

Helensburgh Community Woodlands Group considers that bringing the former woodland at Cumberland Avenue into community ownership will serve the public interest by bringing the following benefits:

1. Environmental and amenity benefits

 - We will regenerate a neglected former woodland, realising its amenity potential, promoting bio-diversity, and enhancing environmental sustainability. To achieve this, we will encourage native natural regeneration and planting. This will provide more light to the woodland floor in the winter and ensure greater environmental and ecological benefits, including native woodland flora and shrubs.
 - We would intend to provide safe paths within and through the land for all abilities to enhance the local environment and encourage exercise.
2. Social, educational and health benefits

 - Transforming this area will be achieved through practical collaboration and greater mutual understanding between local people involved in the project, which will generate local social capital.
 - We will promote the new woodland Woods as an educational resource, building connections with local schools and encouraging its use in environmental education. Please see the attached email dated 5th November 2019 from Mr Simon Henry a teacher and "Woodland Leader" at Hermitage Primary School in Helensburgh as an example of this.
 - We will also promote the woods as a outdoor workspace, enabling local people to develop practical skills in different aspects of woodland management through volunteering. Through our membership of the Community Woodlands Association and our proximity to Loch Lomond and the Trossachs National Park we have access to training on woodland management, strimmer use, control of invasive species, use of pesticides, chainsaw use, and first aid. Funding for these is available from a number of sources including the Scottish Forestry Communities Fund and the National Heritage Fund Scheme. Cormonachan Community Woodlands (www.cormonochan-woodlands.co.uk) are a very good example of how volunteers can be developed through these methods. As fellow members of the Community Woodlands Association we have direct access to advice from them on how best to organise and train our volunteers, and our volunteer plan will be developed from their experience.
 - We will place strong emphasis on realising the potential of the Cumberland Avenue land to improve the physical and mental wellbeing of local residents and visitors. In this context, it should be noted that the immediate area surrounding the land contains a significant elderly population for whom a walk even to Duchess Wood can be too far. Having an accessible and safe area of open space in immediate proximity will be particularly beneficial to this age group. We will work with Paths for All and liaise with local medical centres and practitioners to develop specific health walks, durations and frequencies to encourage more active lifestyles.
 - Jean's Bothy, a mental health and wellbeing hub in Helensburgh with over 100 members has expressed a desire to look at some partnership opportunities to deliver benefits to their members. (Please see Attachment 14. from Katrina Sayer, local Development Manager for ENABLE Scotland). We will be actively promoting use of the site at Cumberland Avenue for Branching Out activities, an innovative development supported by Scottish Forestry to deliver mental health improvement opportunities in Scotland.
3. Economic benefits

- Before the current landowners blocked off access, it was possible to climb up from the Cumberland Avenue land to Ardencaple Castle and thence to Castle Woods and beyond. We hope to restore this essential 'missing' link in the local footpath network, connecting the seafront, Duchess Woods and the countryside beyond, so helping to create an attractive circular visitor walk around Helensburgh.
- We would intend to use local contractors as well as community volunteers with appropriate skills or with the desire and ability to learn. We have carried out a detailed costing analysis of our restoration and development plans in conjunction with a professional woodland consultant (Mark Hamilton Landscape Services) and have estimated a project works cost of £46,000 if we implement all of the infrastructure improvements. We expect there to be some volunteer contribution to the work (e.g. removal of invasive species) but most will need to be contracted out. This will potentially create valuable economic activity and sustain local employment.
- Bringing this land back into beneficial use will have a positive effect on economic confidence in the area and will remove what has become a prominent eyesore, which serves as negative local externality in economic terms.

We therefore believe that transforming this badly neglected corner of Helensburgh into an environmental asset of significant benefit to the local community is clearly in the public interest, especially as such action is fully in accordance with relevant national and local planning policies. To elaborate this argument further, we refer in the table below to the Scottish Government's National Performance Framework (Ref 19.) and set out how our proposals relate to the intended National Outcomes for Communities, Economy, Environment, Health and Human Rights.

National Outcome	Key Message	Vision Includes	HCWG contribution at Cumberland Avenue
Communities	We live in Communities that are inclusive, empowered, resilient and safe	We believe that access to greenspace, nature and other leisure activities positively enhances our lives and health.	Transforming this area will be achieved through practical collaboration and greater mutual understanding between local people involved in the project, which will generate local social capital
Economy	We have a globally competitive, entrepreneurial, inclusive and sustainable economy	We regard the green economy and our rich ecological capital as a valuable development opportunity and actively progress advancements in these areas.	Bringing this land back into beneficial use will have a positive effect on economic confidence in the area and will remove what has become a prominent eyesore, which serves as negative local externality in economic terms.
Environment	We value, enjoy, protect and	We ensure all communities can	We will regenerate a neglected woodland,

	enhance our environment	engage with and benefit from nature and green space. We are committed to environmental justice and preserving planetary resources for future generations. We promote active travel, cycling and walking	realising its amenity potential, promoting biodiversity, and enhancing environmental sustainability. To achieve this, we will encourage native natural regeneration and planting.
Health	We are healthy and active	We are active and have widespread engagement with sport and exercise	We will better local opportunities for daily exercise, especially among the elderly and will work directly to encourage this
Human Rights	We respect, protect and fulfil human rights and live free from discrimination	We recognise and protect the intrinsic value of all people and are a society founded on fairness, dignity, equality and respect. We demonstrate our commitment to these principles through the way we behave with and treat each other, in the rights, freedoms and protections we provide, and in the democratic, institutional and legal frameworks through which we exercise power	HCWG believes strongly that it is now time to call a halt on 15 years of land speculation at Cumberland Avenue, and instead respect the longstanding wishes of the democratically-elected local authority and the overwhelming desire of local people to see the site retained and enhanced as urban greenspace

In summary, as an important area of protected open space within Helensburgh, it is essential that this land should be the focus of sustainable land management. However, there is no evidence that the current owners have any serious interest in achieving this. Without active community ownership and management, it is likely the land will continue to suffer, visually as well as ecologically. Early action to avoid this potential negative outcome through promoting a change of ownership is vital to secure the future of the land at Cumberland Avenue and restore local community confidence in the area.

The Owners views are:

"The owners hold strongly to the view that it would not be in the public interest for a party in their position to be forced to sell their land for the reasons put forward by the community body in its application. It would create a very bad precedent for Scotland if a landowner can be deprived of his or her land by the state simply because of sporadic fly tipping, the

presence of rhododendron and Himalayan balsam in a small area of their land and gravity led surface water run off during periods of heavy rain that causes a temporary minor flooding problem in an adjoining back garden (none of which either individually or collectively is causing environmental harm) then it is a sorry state of affairs.

Looked at objectively, the Part 3A right to buy is being used in this case "as a way to stop an owner from developing the land in any way". This is contrary to the guidance."

Ministers view are that the community body seek to create a community owned space and show intent to address community aspirations. The proposals could benefit the whole community and could positively impact on the social cohesion of the area. The proposed application will bring an area of land that is currently unused and inaccessible to the community, into community use, which in turn could benefit many people. Ministers consider that the volunteer training opportunities could help to support young people in the area, helping them to gain skills that could lead to employment. The project could also help to reduce social isolation as the community body intend to use volunteers of all ages to complete and maintain the project. This project could put the land into use for the benefit of the community around it. It could also provide an aesthetically pleasing area within the community for leisure and recreation and the knock on health benefits that come with an all ability walkway

The owners have previously submitted plans to Argyll and Bute Council that have been refused and subsequently appealed and refused again and state that they have had a "live application" with the council since 2012. The council has asked that the owners withdraw their application.

The owners intimated that they had set a date for a meeting with the Council's planning manager for the Helensburgh area to discuss "how the current impasse in the handling of the live application can be broken". To date, no further information has been provided to officials regarding the outcome of that meeting. It is Ministers view that as the council has asked that the owners withdraw their application that it would be difficult for Ministers to consider it a "live application". The fact that a Tree Preservation Orders exists and that the land has been designated as an Open Space Protection Area, in the local development plan, makes the likelihood of that status being changed and a planning application being approved very difficult to predict, although the local development plan for Helensburgh is currently under review, with an indicative proposed adoption date of October 2021. Any change to the local development plan would be taken into account should the community body wish to submit a future application.

Since the application was received by Scottish Ministers the owners have offered the land for sale to the community body, one of the conditions being that the community body does not object to any further planning applications and, if this was agreed, that they could have the remaining land. The community body has stipulated that the remaining land, once the properties were built, would be insufficient in size for their community needs.

The owners have also noted at a meeting held by the community body in September 2018 that "the community body was adamant that no housing development whatsoever would be acceptable to the community body on the subject land" this statement is not included in the minutes of that meeting. However, there is an offer from the owners for a part development and a free gift of 5 acres of land. This offer was made to the three attending Trustees from HCWG, Mr David Adams, Mr Gordon Greig and Mrs Kathleen Siddle. It

later transpired that this offer had not been put to the full membership to vote on but had been rejected by the trustees.

It is not the intention of the Act to allow community bodies to use compulsory purchase to take properties from owners who do not deal with sporadic fly tipping. It **is not** intended to be used as a means to block or blight developments on land. These concerns should be addressed through the appropriate channels. In this case the issue of planning blight has been considered and it is thought that it does not have a material impact on views formed for this case. The reasons for this are further explored in the next section.

It is the intention of Part 3A of the Act to allow compliant community bodies to apply to Scottish Ministers for the right to buy abandoned, neglected or detrimental land and put it back into productive use.

There is public interest in bringing land back into use but it is not clear from the information provided in the application of exactly what the evidence of need is. As this is a compulsory purchase Ministers would expect a strong case to be made by a community body showing that there were no suitable alternatives available for the community body to realise its aims and that there are no other areas in Helensburgh that could be used by the community for the same purposes.

As the owners state that they were unaware of the issues the community had, concerning their land, until they received the community body's application, it is Ministers opinion that they should be allowed some time to fully address the issues raised in respect of that land. The owners have started to address the issues by contacting the police about the fly tipping and willing to put a land management scheme in place for the site.

Ministers are **not satisfied** that the application is in the public interest. This requirement has therefore not been met.

6.3 Section 97H(1)(b)(ii) of the Act requires Scottish Ministers to be satisfied that the exercise by Helensburgh Community Woodlands Group of the right to buy under this Part is compatible with furthering the achievement of sustainable development in relation to the land.

The community body's views are:

"In their earlier representations on our successful application in 2016 to register a community interest in the land at Cumberland Avenue under Part 2 of the Land Reform (Scotland) Act 2003, the landowners mistakenly conflated the concept of 'sustainable development' with the much narrower definition of 'development' under the Planning Act. We therefore note that the Scottish Government supports the Brundtland definition of sustainable development as "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (see Scottish Planning Policy Ref.6).

The same document also confirms the Government's continued support for the five guiding principles, originally set out in the UK's Shared Framework for Sustainable Development, namely

- Living within environmental limits
- Ensuring a strong, healthy and just society

- Achieving a sustainable economy
- Promoting good governance
- Using sound science responsibly.

Taking this broad view of sustainable development, we note that in 2015 Scotland became one of the first countries in the world to UN's Global Goals for Sustainable Development (Ref 7.). We consider that five of these 17 goals are especially relevant to what we intend to achieve at Cumberland Avenue. These are as follows:

Goal 3: Ensure healthy lives and promote well-being for all at all ages

There is now widespread recognition of the value of urban greenspace to physical and mental health, as extensively demonstrated by research and best practice. We intend to provide an immediately-accessible and safe opportunity for daily exercise, right in the heart of the local community. While we are confident this will appeal to all ages, we are especially conscious of the growing elderly population in the immediate vicinity of Cumberland Avenue, for whom a walk to the nearby Duchess Woods is too far. With this in mind, we intend to participate in the Paths for All (Ref 8.) project to encourage regular walking, especially among the elderly population. The social benefits of providing such a local focus for day-to-day contact should also not be underestimated.

The delivery of this will be through setting up a Health Walk (Ref 9.) group. There are currently no Health Walks set up within the Helensburgh area and we intend to change that. Health Walks are short, safe, social, fun and accessible low level walks led by trained volunteers. The proximity of the site at Cumberland Avenue to the seafront esplanade and the Kidston Car Park means that woodland walks become more accessible to those that are only capable of short walks on low level terrain. Linking the site at Cumberland Avenue to the nearby Castle Woods and Duchess Woods will provide further development potential for the walking routes. Training is provided through the Paths For All project and; by coordinating with our local wellbeing hub (Jean's Bothy), the Helensburgh medical centre, and other local groups such as Grey Matters, we will ensure a joined up approach in promoting this service. We have initiated discussion with Colin Ward, the Paths For All development officer for our area, and we will take this forward once we are in a position to apply for grant funding and project support from Paths For All

Moreover, our plans for Cumberland Avenue will also contribute directly to the delivery of the first four outcomes of the 'A More Active Scotland: Scotland's Physical Activity Delivery Plan'(Ref 10.), published by the Scottish Government in 2016, namely:

- Outcome 1: We encourage and enable the inactive to be more active Supporting Paths for All to deliver our National Walking Strategy Action Plan
- Outcome 2: We encourage and enable the active to stay active throughout life
- Outcome 3: We develop physical confidence and competence from the earliest age
- Outcome 4: We improve our active infrastructure -people and places

Goal 4: Quality education

Local schools will be encouraged to use Cumberland Avenue as the focus for practical environmental education. We would intend to work closely with our schools, producing, for example, an educational pack for the woodland compiled by and for local teachers and children, achieving one of the many objectives under Curriculum for Excellence.

The process of transforming the land will also enable members of the local community to obtain new work skills, for example, in arboriculture, silviculture, and practical woodland skills

Please see the attached email (Attachment 12.) dated 5th November 2019 from Mr Simon Henry a teacher and "Woodland Leader" at Hermitage Primary in Helensburgh, in which he describes the woodland-based topics that he wishes to teach locally. He states "in any given week I take 400 children outdoors so establishing contact with you (HCWG) is very helpful for me to move forward with the activities and objectives that I will be focusing on." In relation to our application to take ownership of the site at Cumberland Avenue and the neighbouring Castle Woods he states "If these areas were to become community assets then we would like to utilise them in this way to enhance the teaching and learning of the children." Should HCWG gain ownership of the land at Cumberland Avenue, we will ensure that Hermitage Primary and other schools within the area have the opportunity to shape the development plan and management regime within the woodland.

The process of transforming the land will also enable members of the local community to obtain new work skills, for example, in arboriculture, silviculture, and practical woodland skills.

Through our membership of the Community Woodlands Association and our locality to Loch Lomond and the Trossachs National Park we have access to training on Woodland Management, Strimmer Use, Control of Invasive Species, Use of Pesticides, Chainsaw Use, and First Aid courses. Funding for these is available from a number of sources including the Scottish Forestry Communities Fund and the National Heritage Fund Scheme. Cormonachan Community Woodlands (www.cormonachan-woodlands.co.uk) are a very good example of how volunteers can be developed through these methods. As fellow members of the Community Woodlands Association we have access to direct advice from them on how best to organize and train our volunteers, and our volunteer plan will be developed from their experience.

Goal 11: Make cities inclusive, safe, resilient and sustainable

The importance of preserving and enhancing open space within settlements, and of the contribution they make to sustainable development, is widely recognised both within and beyond Scotland. This is reflected in the planning policies of the Scottish Government and the local planning authority. At a Scottish Government level, transforming Cumberland Avenue into a valued environmental asset, owned and managed by the local community will contribute to the aspirations of the National Planning Framework 3 (Ref 11.) to make Scotland both a successful, sustainable place (for example, through the creation of well-designed places that balance the built and natural environments), and a natural, resilient place (for example, through the protection of natural assets).

Moreover, we will also contribute to the delivery of the Scottish Government's Scottish Planning Policy, (Ref 6.) which states that: "Green infrastructure and improved access to open space can help to build stronger, healthier communities. It sees this as an essential part of our long-term environmental performance and climate resilience" (paragraph 219) and states that "Local development plans should identify and protect open space identified in the open space audit and strategy as valued and functional or capable of being brought into use to meet local needs" (paragraph 224).

We will specifically help to deliver the following policies in this document:

- Protecting trees covered by Tree Preservation Order (paragraph 216)
- Creating new woodland and planting native trees (paragraph 217)
- Supporting the Scottish Government's Control of Woodland Removal Policy, (Ref 12.) which includes a presumption in favour of protecting woodland (paragraph 218)
- Improving access to open space (paragraph 219)
- Protecting, enhancing and promote green infrastructure, including open space and green networks, as an integral component of successful placemaking (Paragraph 220).

At local authority level, we note that the importance of sustainable development is recognised within POLICY LOP STRAT 1 of the Argyll and Bute Local Development Plan (LOP - Ref 13.) 2015. Other important policies, which we will help deliver include SG LOP ENV 6 - Development Impact on Trees I Woodland and SG LOP REC/COM 2 on Safeguarding Sports Fields, Recreation Areas and Open Space Protection Areas

These policies are reflected in the designation of the land at Cumberland Avenue as an Open Space Protection Area, as well as its protection through a Tree Preservation Order. We applaud the Council's commitment and determination over many years to uphold these policies in the face of speculative land pressure. However, achieving sustainable development requires such resistance to be reinforced by positive action to transform the land at Cumberland Avenue, creating an urban greenspace that can be readily accessed by local people. We therefore intend to support the local authority's planning policies with practical action on the ground.

The result of the public ballot carried out within the local community area demonstrated that 90% of the respondents were in favour of a community acquisition of the open space at Cumberland Avenue. Successful delivery of this, along with the subsequent restoration and management of the land on behalf of the community will be a positive implementation of the policies described above.

Goal 13: Take urgent action to combat climate change and its impacts

We recognise that our plans to protect, manage and enhance the woodland at Cumberland Avenue are very minor in comparison with the global challenge of combatting climate change, but by providing an opportunity for local people to take local action, they make an immediate connection to part of what needs to be done at a far greater scale. We will contribute, for example, to the intention expressed in the Corporate Plan 2017-22 (Ref 14.) of the Scottish Environmental Protection Agency (SEPA) to "help establish Scotland as a global leader in successfully delivering environmental success in ways that also create economic and social success" (see page 10).

Goal 15: Life on land

We will contribute to achieving three key outcomes set by Scottish Natural Heritage in its Corporate Plan 2018-22, (Ref 15.) namely:

- More people across Scotland are enjoying and benefiting from nature
- The health and resilience of Scotland's nature is improved.
- There is more investment in Scotland's natural capital and its management to improve prosperity and wellbeing (see page 5).

By restoring the land at Cumberland Avenue in line with the Public Consultation and Concept Plan (Attachment 6.) we will be carrying out the principles of this goal in line with direct input from our local community.

Specifically, we will select planting species that are native to Scotland and enhance biodiversity. We will also provide opportunities through volunteering for members of the community to be engaged in an important local project, not only in its initial establishment but also in its long-term maintenance and management. As discussed in Goal 3. above, we will promote the use of the land for Health Walks through collaboration with Paths For All, and we will ensure this site becomes a key element within the developing paths network within Helensburgh. The geographical location of the site means that it will become a natural link between the seafront esplanade, and the woodlands at Castle Woods and the adjoining Duchess Woods. This will open up an extensive woodland path network. This will have a significant impact on enhancing social capital in the area.

Following the initial restoration and development of the site, including installation of robust high-specification pathways (see Attachment 6. Page 40), the future maintenance requirements will be relatively minimal. There has been woodland on this site for at least 160 years. The development plan that we will implement will result in a balanced native woodland ecosystem that will provide biodiversity, natural habitat and a peaceful green space for local residents and visitors to enjoy long into the future.

The Owners views are:

'As the Community Body's application confirms, since the year they were acquired both the Castle Woods Land and the Subject Land have been actively promoted by the Owners through the statutory planning process for housing development. This is evidenced by the fact that there are still live applications for planning permission before the local planning authority, Argyll & Bute Council ("the Council") in respect of both sites (see section 2A below).

If the Community Body is permitted to acquire the Subject Land compulsorily, it will take title to it from the Owners on a tantum et tale basis. The Subject Land extends to approximately 0.8 hectares. A copy of the Title Plan has been submitted with the Application. It is not the subject of a public right of way. This is because it does not lead from one public place to another public place - an essential legal requirement in terms of the establishment of any public right of way. The Community Body, however, proposes to create "a link path" leading from Cumberland Avenue south through the Subject Land and across an area of undeveloped land belonging to an undisclosed third party into West King Street at Fraser Avenue (see the drawing on page 26 of the appendix to the Application). The Community Body has not submitted a Part 3A application to Ministers in respect of that area of land nor is there any indication in the Application that it has knowledge of who owns it. It is not clear, therefore, how this integral "linkage" element of the Community Body's proposal can be achieved.

The Owners have put forward proposals to the Community Body for the sale of the Subject Land and the Castle Woods Land. They have committed to work with the Community Body to agree a plan for the future management of the Subject Land. A meeting has now been arranged with the Council with a view to working out a way to have the long standing impasse in respect of the existing planning applications resolved.'

Community Body's views on the Landowners views:

"In our application we put forward very detailed proposals for the sustainable development of the site at Cumberland Avenue, which have emerged from an extensive process of community consultation. The owners' own proposals in this regard are wholly dependent on breaching long-established planning policy. They have not addressed the issue of how their continued ownership of the site would be compatible with furthering the achievement of sustainable development if, as is likely, the local planning authority maintains its long-established planning policies".

Ministers views are:

Taking into account all of the information provided by both parties it is Ministers view that whilst the proposals of this project, and its goals are admirable and could benefit all of the community, this project will rely fully on grants and volunteers as there will, from the evidence provided, be no income generation element to it. While this alone is not a reason to fail the achievement of sustainability, Ministers are concerned that the community body has not provided enough detailed information in their application to fully explain the costs of the project both now and in the longer term. Whilst not a requirement under the Act, Ministers would expect, when considering a case for compulsory purchase, that the community body have detailed financial costings in order to help determine whether the project is financially viable. A detailed business plan will tend to provide evidence that a risk assessment had been carried out and assists the community body in knowing the risks involved in the purchase, development and on-going maintenance. The lack of a business plan and risk assessment highlights that the community body may not have considered the issues that could arise through acquisition. It is unclear who the community body intends to approach for the funds to acquire the land. If it is their intention to approach the Scottish Land Fund (SLF) from the evidence provided it is unclear, how they plan to fund the balance of the price of the land as the SLF can only award up to 95% and currently the average award is 80%. The community body has researched what support, in terms of funding and advice, is currently available to them for the development of the site. However, it has not been demonstrated what would happen if they were unsuccessful in any of their funding bids and the effect that would have on their ability to carry out the project as detailed in their application. There is insufficient information provided to give Ministers an idea on how many volunteers would be required to successfully run this project and what could happen if the community body did not get the required level of support both in the interim and the long term. The lack of financial information means that Ministers cannot fully assess the financial impact of whether the project is sustainable in the short and long-term.

Whether there is planning blight has also been considered and it is the views of Ministers that this is not an issue that affects the formation of the views as the application has been with Argyll and Bute Council for 8 years and the council has asked that the owners withdraw their application. The area of land is considered as Open Space Protection Area and has Tree Preservation Orders. This area of land is not included in the local development plan as being required for housing.

Ministers are not satisfied that the exercise of the right to buy by the community body is compatible with furthering the achievement of sustainable development in relation to the land for the reasons noted above. Consequently, Ministers are not satisfied that this

application meets the sustainable development criterion in **Section 97H(1)(b)(ii)** of the Act. This requirement has therefore not been met.

6.4 Section 97H(1)(c) of the Act requires that Scottish Ministers are satisfied that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner.

The community body's views are:

"The current owners, who were previously in business as local builders, bought the land in 2004 with the intention of building houses there. Although the land is designated by Argyll and Bute Council as an Open Space Protection Area, and is covered by a Tree Preservation Orders, and recognised as a Key Environmental Feature of the town, the owners have never shown any interest in managing the land as an urban greenspace and are unlikely to do so in future. Instead, they have fought a series of unsuccessful planning battles with the local authority, as set out below.

- 2005 Application 05/00514/DET for planning permission for 7 houses refused
- 2006 Application 06/01317/DET for planning permission for 6 houses refused. Owners appeal to Scottish Government's Directorate of Planning and Environment Appeals (DPEA).
- 2007 Application 06/02621/TPO to fell trees refused. Owners appeal to DPEA.
- 2007 Owners formally object to designation of land as Open Space Protection Area in draft Local Plan
- 2007 Public local inquiry lasting for four days into appeal against refusals on 06/01317/DET and 06/02621/TPO
- 2008 DPEA Reporter dismisses appeals on 06/01317/DET and 06/02621 /TPO
- 2008 DPEA Reporter rejects objection to draft Local Plan and upholds designation of land as Open Space Protection Area
- 2011 Owners controversially fell woodland on grounds of safety
- 2012 Application 12/00570/PP for planning permission for one house and formation of community woodland - this application still remains undermined
- 2013 Council serves Tree Replacement Notice 11/00107/ENOTH2 requiring replanting of 109 trees, alleged to have been removed, uprooted or destroyed in contravention of TPO. Owners appeal to DPEA. Subsequently, DPEA Reporter reducing number of trees required to be replanted to 28.
- 2014 Following refusal of owners to implement Tree Replacement Notice, Council enters land and replants 28 trees itself
- 2014 Council serves Enforcement Notice 13/00384/ENOTH3 requiring wooden fence on to Cumberland Avenue to be reduced in height to one metre
- 2014 Council serves Enforcement Notice 13/00093/ENOTH3 requiring removal of building materials unlawfully stored on the land. Owners appeal to DPEA.
- 2014 DPEA Reporter dismisses appeal against Enforcement Notice 13/00093/ENOTH3
- 2014 Council serves Amenity Enforcement Notice 14/00218/ENOTH3 requiring removal of stored log pile and bund nearest to Cumberland Avenue. Owners appeal to DPEA. Subsequently, DPEA Reporter dismisses appeal on stored log pile but uphold appeal on bund

These battles have consumed significant public resources both from the local authority and from the Scottish Government's Directorate of Planning and Environment Appeals.

Yet, despite the lack of success over the past 15 years in overturning the protective status of the land, the owners appear determined to continue to fight against well-established planning policy.

This became apparent in a series of discussions took place in the summer of 2018 between HCWG, the landowners and their representatives on the future on the land at Cumberland Avenue (along with that at Castle Woods). During the course of the discussions, the owners tabled proposals to build three houses on the frontage to Cumberland Avenue and offered to gift the land behind to HCWG. Following consultation with members, HCWG was unable to accept this offer as (1) it represented yet another attempt by the owners to breach longstanding planning protections on the land, and (2) the remaining land would be too small and too enclosed to function effectively as a community woodland. Subsequently, HCWG met with planning officers from Argyll and Bute Council who, while unaware of the owners' proposals, remained strongly opposed to any housing development at Cumberland Avenue.

During the course of the discussions with the landowners in 2018, HCWG offered to pay them open market value for the land at Cumberland Avenue, involve them in creating a community woodland there, and name the new area after them. This offer was rejected by the owners at a meeting on 12 September 2018. The minutes of the meeting note (see Attachment 13.) that "Mr Paterson replied that he was not interested and that he did not live in Helensburgh nor was he interested in the current open market value of the site", subsequently stating at the same meeting that "Planners and permissions could change." As this indicates, the owners' intentions appear to be to hold on to the land at Cumberland Avenue for however long it takes to overturn its longstanding planning status as a protected area of urban greenspace. This speculative behaviour is the main impediment to the achievement of sustainable development at Cumberland Avenue. If allowed to continue, it threatens to consume further public resources and undermine local community confidence.

Yet, despite the owners' intentions, a detailed analysis of the housing land supply shows there is no need, either now or in the foreseeable future, to use the Cumberland Avenue site, or any part of it, for housing development. The Argyll and Bute Local Development Plan (LOP - Ref 13.), adopted in 2015, sets out the housing land requirement for five and ten years ahead, both for the local authority area as a whole, and for its four constituent parts. For Argyll and Bute as a whole, the five-year requirement is provide land for 3,725 homes, while the ten-year requirement is for 7,450 homes. The respective figures for the Helensburgh and Lomond area are 600 over five years, and 1,200 over ten years (see page 22).

Within Helensburgh and Lomond, the plan identifies land for 967 new homes on ten major allocations (see page 65). It specifies that a minimum of 252 of these new homes will be required to be affordable to achieve the policy set out in the Supplementary Planning Guidance (Ref 16.), which specifies that 25% of units on development of eight or more homes must be affordable (see page 73). Alongside the ten major allocations, four more potential development areas are identified for mixed use development including housing, again with a 25% affordability ratio. The plan describes its overall level of housing provision as "effective, highly flexible and generous" and explains that "this level of new housing will help reverse the projected population decline forecast by the General Register Office for Scotland." It promises that "The scale of uptake and level of provision will be kept under annual review through an annual housing land audit with the aim of ensuring sufficient land

is identified to promote the sustainable growth of communities throughout Argyll and Bute" (see page 21).

Subsequent and successive housing land audits have cast doubt on the need for such an extensive local land supply. The latest 2018 Housing Land Audit (HLA- Ref 17.) shows annual completions over the nine-year period up to and including 2017- 18 to average 245 units for Argyll and Bute as a whole, and 31 units for Helensburgh and Lomond. The HLA is accompanied by three detailed sets of tables, setting out the capacity of every potential housing site in Argyll and Bute. On the basis of this information, the effective housing land supply in the Helensburgh and Lomond area is assessed as shown in the table below:

	2018/19 to 2022/23	Post 22/23	Total
Local Development Plan allocations	694	218	912
Potential development areas & windfalls on large sites	216	85	301
Windfalls on small sites	50	16	66
Total	960	319	1279

To set these figures in context, if the rate of new housing development in Helensburgh and Lomond were to continue at the established level of 31 units per annum, the current effective supply would last for just over 41 years. Even if optimistically, the local housebuilding rate could be doubled, the supply would still last for over 20 years. It is therefore not surprising to find that, as part of reviewing the Local Development Plan, Argyll and Bute Council reconsidered whether the scale of housing allocations made in 2015 was really justifiable. Specifically, the Main Issues Report (Ref 18.) for the next LOP, published in 2017, described the overall ten-year housing land target of 7,450 units set in 2015 as "unrealistically high" and states that "The current Housing Needs and Demand Assessment, even using a growth scenario sets a much more realistic ten year housing land target of 3,000 homes when compared with average completion rates" (see page 12). Rather than adding new sites to the housing land supply, it was proposed that the next LOP may actually remove some of the allocations made in 2015. In consequence, the draft Local Development Plan 2, approved for consultation by Argyll and Bute Council in September 2019 specifies a requirement for only 1, 143 new homes in Helensburgh and Lomond over the 2020-29 period, compared to the figure of 1,279 for the 2018- 23 period, contained within the above table. Significantly, the land at Cumberland Avenue is again retained as an Open Space Protection Area within the draft LDP2 and not included within the housing supply.

As this analysis shows, there is clearly no need to sacrifice the protected greenspace at Cumberland Avenue, or any part of it, for housebuilding. According to the 2018 Housing Land Audit, there are already 20 other housing sites in Helensburgh and Lomond, with capacity ranging from 5 up to 300 new homes, and around another 40 with capacity of less than 5 (see HLA Appendices 1-3 for detailed lists of all housing sites). The overall capacity of all these sites means that there's already more than enough housing land available in Helensburgh and Lomond to satisfy building needs for many years to come without encroaching on the Cumberland Avenue site.

In this context, HCWG contends that the achievement of sustainable development on Cumberland Avenue land will come about only through a change in ownership from those with a speculative desire to breach longstanding planning protections to a new owner committed to realising the potential of the land as urban greenspace.”

The owners views are:

“The owners have put forward proposals to the Community Body for the sale of the Subject Land and the Castle Woods Land. They have committed to work with the Community Body to agree a plan for the future management of the Subject Land. A meeting has now been arranged with the Council with a view to working out a way to have the long standing impasse in respect of the existing planning applications resolved.”

Ministers views are:

It is Ministers view that the information provided by the community body in response to this question mainly focusses on the owners wish to build housing on the site. The community body have detailed the failed planning applications and made reference to the local development plan for the area, where the land is zoned as Open Space Protection Area. The owners have indicated that the land is the subject of a live application for planning permission to erect one house and form a “community woodland” on the hinterland area. It is Ministers view that any decision with regards to planning is for the local authority to determine and not a matter for the right to buy process.

The community body’s proposals do not include housing. Ministers can see from their plans that if they were to acquire the land they have proposals that could, with further work, meet the sustainable development criteria. The owners had indicated that they had arranged a meeting with the council to discuss the existing planning application but have not provided any further information regarding the outcome of that meeting. The owners have indicated that they are willing to work with the community body to agree a plan for the management of the land and intend to address the issues raised by the community body in their application. This shows a willingness by the owners to work with the community body in relation to securing the future sustainability of the land. In considering the information submitted by both the landowners and community body it is Ministers view that, as the owner has indicated a willingness to work with the community, with regards to furthering the sustainable development of the land, the land continuing to remain under the current ownership may achieve the sustainable future of the land at Cumberland Avenue, Helensburgh, without the need for a compulsory purchase and transfer of ownership. If the owners and community body cannot work together to agree a plan to ensure the future sustainability of the land then the Community Body could consider re-applying in the future.

Ministers are **not satisfied** that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner for the reasons noted above. This requirement has therefore not been met.

6.5. Section 97H(1)(d) of the Act requires that Scottish Ministers are satisfied that the owner of the land at Cumberland Avenue, Helensburgh is accurately identified in the application.

A search was made at the Registers of Scotland on 22 October 2019 by David Robertson. Land Register Title DMB76106 was enclosed as annex 3 with the application

Ministers are satisfied that the owners of Cumberland Avenue, Helensburgh have been correctly identified. This requirement has therefore been met.

6.6. **Section 97H(1)(e)** of the Act requires that Scottish Ministers be satisfied that any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it is accurately identified in the application.

A search was made at the Registers of Scotland on 22 October 2019 by David Robertson. Land Register Title DMB76106 was enclosed as annex 3 with the application. No creditors were identified.

Ministers are **satisfied** that any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it has been accurately identified in the application. This requirement has therefore been met.

6.7. **Section 97H(1)(f)** of the Act requires that Scottish Ministers are satisfied that the owner is not a) prevented from selling the land or b) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 97N(3) of the Act) to sell the land otherwise than to the Part 3A community body.

The landowner has not advised Scottish Ministers of any enforceable personal obligations to sell the land otherwise than to the Part 3A community body. There is currently a registration under Part 2 of the Act on the property at Cumberland Avenue which prevents the landowners from disposing of the land to another party other than the community body. This registration has been in place since 2 November 2016.

Ministers are satisfied that the owner is not a) prevented from selling the land or b) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 97N(3) of the Act) to sell the land otherwise than to the Part 3A community body. This requirement has therefore been met.

6.8. **Section 97H(1)(h)(ii)** of the Act requires Scottish Ministers to be satisfied that the land is sufficiently near to land with which those members of the community have a connection.

Helensburgh Community Woodlands Group states in their answer to Q3.6 of the application form that the community's connection to the land to which this application relates is:

The land is close to a large 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. Here, Helensburgh Rugby and Cricket Clubs occupy a large area on the north side of Rhu Road Higher (into which Cumberland Avenue itself connects) 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. The area between Rhu Road Higher and Castle Woods to the south of the road is occupied by the new Lomond School Sports Hall and associated all-weather sports pitch. 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.

Duchess Woods, which are heavily used by members of the community for informal recreation, wrap around and extend well beyond, these formal sports facilities. As one of only two Local Nature Reserves in Argyll and Bute, Duchess Woods is estimated to have over 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 (on which HCWG is making a similar application) 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 1860s.

The Cumberland Avenue land is also close to several other local landmarks, with which members of the community have a strong connection. These include the local Kidston Park less than five minutes away to the south, with its improved play facilities and cafe, the frontage of the Clyde itself, and the listed and recently renovated Ardencaple Tower. This last remaining structure from the former Ardencaple Castle is highly visible just to the south. In the past, people could enjoy walking from Kidston Park alongside the Clyde, up Cumberland Avenue, through the land, then climb up to Ardencaple Tower and onwards to Castle and Duchess Woods and beyond.

It is Ministers view that HCWG provides evidence that the land is sufficiently near to land with which those members of the community have a connection. Ministers are **satisfied** that the land is sufficiently near to land with which those members of the community have a connection. This requirement has therefore been met.

6.9. Section 97H(1)(i) of the Act requires Scottish Ministers to be satisfied that the community have approved the proposal to exercise the right to buy.

Section 97J(1) of the Act provides that a community are to be taken as having approved the right to buy if a ballot of the members of the community has been held during the period of six months which immediately preceded the date on which the application was made on the question of whether the Part 3A community body should buy the land. In the ballot, at least half the members of the community must have voted, or if fewer than half have voted then a sufficient proportion so as to justify the Part 3A community body buying the land. The majority of those who have voted must have voted in favour of the proposition.

Helensburgh Community Woodlands Group held a ballot on 30 September 2019 on the question of whether they should buy the land. 2,138 were eligible to vote in the ballot and 931 (43.5%) voted. Of those who voted, 840 (90%) voted in favour of the proposition that the Part 3A community buy the land.

The owners have raised concerns in respect of the ballot and I quote “The owners question whether the proportion of the members of the community who voted for the community body’s proposal is sufficient to justify the community body’s proceeding to buy the subject land”. The owners also have raised a concern that the “result of the ballot is not disclosed nor are the terms of the proposition.”

It is Ministers view that as stated in section 97J of the Act, fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 3A community body's proceeding with an application to buy the land, and that the majority of those voting have voted in favour of the proposition that the Part 3A community body proceed with an application to buy the land. The figures detailed above comply with the requirements of section 97J of the Act. Regulation 9 of The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 states that the Part 3A community body must, not later than 14 days beginning with the ballot deadline, publish the result of the ballot in a digital or paper edition of a newspaper circulating in the area where the community is located.

The result of the ballot was published in the Helensburgh Advertiser on 10 October 2019.

Ministers are **satisfied** that the community have approved the proposal to exercise the right to buy. This requirement has therefore been met.

6.10. **Section 97H(1)(j)** of the Act requires Scottish Ministers to be satisfied that otherwise than by virtue of this Part, the Part 3A community body has tried and failed to buy the land.

Helensburgh Community Woodlands Group instructed Harper MacLeod to write to the owners, Ms M Osborne and Mr T Paterson, on 20 June 2019 offering to buy the land at Cumberland Avenue, Helensburgh for £45,000, giving a deadline for a response to this offer of 5 July 2019. A letter acknowledging receipt of the letter was sent by the owners on 25 June 2019. No further correspondence was received by the community body.

The owners have stated in their response "that when the offer was received by the owners neither it nor anything else in the covering correspondence made any reference to the prospect of the subject land being compulsorily acquired under Part 3A of the Land Reform (Scotland) Act 2003 on the grounds that it was abandoned or neglected. The simple fact of the matter is that when they received the offer, the owners had no understanding of its potential legal ramifications in terms of demonstrating apparent compliance on the part of the community body with the requirements of section 97H(j) of the 2003 Act.

Had they been alerted to the fact that an application to register an application to acquire their land compulsorily on the grounds that they had allegedly abandoned or neglected it, they would have taken immediate legal advice and made it clear (as it is evidenced by the submission of draft head of terms) that they would have been prepared to treat."

Section 97H(J) of the Act stipulates that otherwise than by virtue of this Part, the Part 3A community body has tried and failed to buy the land. It does not state that the community body must inform the owners why they are approaching them to buy their land, only that they make the offer. If the owners had been willing to sell the land at the time of receiving the offer, as has been indicated by the owners agent, they could have engaged with the community body during the 14 day period they had to respond before the Part 3A application was submitted to Scottish Ministers.

Ministers are **satisfied** that otherwise than by virtue of this Part, the Helensburgh Community Woodlands Group has tried and failed to buy the land. This requirement has therefore been met.

The landowners have raised issues not covered by any part of the Act that Minister feel they should respond to which are "It will be noted by Ministers that the Community Body's

representatives at that meeting were led by Mr David Adams. Mr Adams is a professional expert on community right to buy legislation" and later state that he is a Scottish Land Commissioner.

Ministers view is that while they acknowledge that Mr Adams is indeed a Scottish Land Commissioner, he has no input at all in the processing of any applications received by the Community Land Team, nor is advice ever sought on any applications received, by the Scottish Government, from the Scottish Land Commission. Ministers would like to make it clear that there has been no "potential bias" as has been insinuated by the owners. The experts on community right to buy legislation are the Community Land Team of the Scottish Government. Whatever actions Mr Adams undertook, as a member of the community body, were exactly that, as an individual who resided in the community and a member of a community body, not as a Scottish Land Commissioner.

Under section 2.34 of the owners comments an issue is raised that "to determine the application in accordance with the law set down in Part 3A of the 2003 Act. Ministers may require guidance on its interpretation. The body charged by the Scottish Government with responsibility for providing Ministers with that guidance is the Scottish Land Commission" This is not factually correct, should Ministers have any issues regarding an interpretation of any part of Section 97 of the Land Reform (Scotland) Act 2003 they could consult with other government officials.

Another "critical point" raised by the landowners is that "Mr Adams explained that the Community body would not be able to afford to pay the owners a price for the subject land and /or the Castle Woods that was based on its development value"

Ministers view is that a valuation required for any approved Part 3A application would be carried out in compliance with Section 97S of the Act. The value to be assessed is the market value of the land as at the date when Ministers consented to the application made under section 97G relating to the land. Any planning over the land at that time, would be taken into account by the independent valuer appointed by Scottish Ministers.

- International Covenant on Economic, Social and Cultural Rights

In reaching their decision under section 97G(2) 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 as in force in relation to the United Kingdom for the time being.

Effect of Scottish Ministers' Decision

Any owner, creditor or other person authorised to transfer, or take any action with a view to transferring, the land that forms the subject of the application for consent is prohibited from taking such action from the date that the application appeared as pending in the Register of Applications by Community Bodies to Buy Land.

Exceptions to the prohibition can be found under regulation 12 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.

Any right of pre-emption, redemption or reversion otherwise exercisable over the land that forms the subject of the application and any right or interest in land conferred under Part 2 of the Act (the community right to buy) is suspended from the date that the application appeared as pending in the Register of Applications by Community Bodies to Buy Land.

The prohibition and suspension referred to end on the earlier of:

- the day after the expiry of the time period specified in section 97V(6) of the Act (appeals) for lodging an appeal against Ministers' decision on an application under section 97G of the Act, but only if no appeal is lodged within the appeal period; or
- the day on which the sheriff issues a decision in an appeal under section 97V of the Act, but only if the outcome of the appeal is that the Part 3A community body is refused consent to exercise the right to buy land.

*A Part 3A community body may, by virtue of section 97V(2) of the Act (appeals), appeal to the sheriff against a decision by Ministers not to consent to an application to exercise a right to buy abandoned, neglected or detrimental land.

An appeal under section 97V of the Act must be lodged within 28 days of the Decision Date.

*Any person (other than a Part 3A community body) who has incurred loss or expense in complying with the procedural requirements of Part 3A of the Act, where consent has not been granted is, by virtue of section 97T(1)(a) of the Act (compensation), entitled to compensation from Ministers of such amount as Ministers may determine.