

T:
E: crtb@gov.scot

Mr M Moir
Woollcombe Square Residents' Association
1 Woollcombe Square
Scone
PH2 6PN

Our ref /Ar faidhle: AB00003

Date 21 January 2021

Dear Mr Moir

NOTICE BY THE SCOTTISH MINISTERS UNDER SECTION 97M(1) OF THE LAND REFORM (SCOTLAND) ACT 2003: DECISION ON THE APPLICATION BY WOOLLCOMBE SQUARE RESIDENTS' ASSOCIATION FOR CONSENT TO EXERCISE RIGHT TO BUY LAND AT WOOLLCOMBE SQUARE, SCONE, PH2 6PN

Case Number: AB00003

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

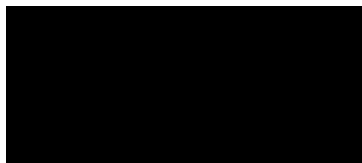
The Scottish Ministers have considered the application by Woollcombe Square Residents' Association to apply for consent to exercise right to buy land at Woollcombe Square, Scone, PH2 6PN. Scottish Ministers have decided **not to grant** consent to Woollcombe Square Residents' Association to exercise the community right to buy abandoned, neglected or detrimental land in relation to the land at Woollcombe Square, Scone, PH2 6PN.

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 landowner, Blinshall Street Limited, 10 Douglas Street, Dundee, DD1 5AJ, 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 Woollcombe Square Residents' Association for consent to exercise the right to buy land at Woollcombe Square, Scone, PH2 6PN 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 Woollcombe Square Residents' Association to exercise a right to buy in relation to the land that forms the subject of the application. The decision is dated 21 January 2021 ("the decision date"). This notice states the reasons for that decision.

5. In Ministers view, Woollcombe Square Residents' Association is a community body in accordance with section 97D of the Act, and this application appears to meet the criteria set out in section 97D(3) of the Act. The main observations of this case are as follows:

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

5.1 **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 97 of the Act: Community Bodies

5.2. **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 Woollcombe Square Residents' Association, a **SCIO**, which satisfies the requirements under **Section 97D(1)** of the Act. The governing document of Woollcombe Square Residents' Association is their **constitution** which include provision for the matters required by **Section 97D(3)** of the Act. The requirement of the Act has therefore been met.

5.3. **Section 97D(9) of the Act** requires the community to be defined by reference to 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 unit PH2 6PN and will comprise the persons resident in that postcode unit 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.

5.4. **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 6.5 of the community body's governing document makes such provision. This requirement has therefore been met.

5.5. **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

7.4 of the community body's governing document makes such provision. The governing document also contains a provision at Clause 7.6 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.

5.6. **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 7.5 of the community body's governing document contains such provision. Ministers have scrutinised the membership list provided by Woolcombe Square Residents' Association as part of the application, and are satisfied that this requirement has therefore been met.

5.7. **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. Clause 7.1 of the community body's governing document provides for **three** categories of membership – Ordinary Members, Associate Members and Junior Members. Only Ordinary members are eligible to vote at any general meeting (Clause 33.1 and 33.2). The board of Charity Trustees is accountable to the Ordinary Members who have ultimate control of the community body. The Board will, in terms of clause 40 of the community body's governing document consist of up to 7 Elected Charity Trustees and up to 3 Co-opted Charity Trustees. Clause 40.1 of the community body's governing document provides that only Ordinary Members of the company can be appointed as an Elected Charity Trustee.

Under clause 60 of the community body's governing document, the board is only quorate where, at any board meeting, Elected Charity Trustees (i.e. Ordinary 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.

5.8. **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 84 to 90 of the community body's governing document makes such provision. This requirement has therefore been met.

5.9. **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. Clauses 74.1 and 74.2 of the community body's governing document makes such provision. This requirement has therefore been met.

5.10. **Section 97D(3)(i)** of the Act requires the community body's governing document to include provision that any surplus funds or assets to be applied for the benefit of the community. Clause 76 of the community body's governing document makes such provision. This requirement has therefore been met.

5.11. SCIO'S are provided for under the Charities and Trustees Investment (Scotland) Act 2005. The Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011 provide for the dissolution of a SCIO and require that where a SCIO applies for dissolution such application must be accompanied by a resolution of

the members that, subject to consent from OSCR, the SCIO 'transfer any surplus assets after settlement of all outstanding debts and liabilities to another named body (or bodies) which has purposes which are the same as or which resemble closely the purposes of the SCIO set out in its constitution'. Scottish Ministers are not required to approve this and it is not a requirement under the community right to buy abandoned, neglected or detrimental land

5.12. **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.

5.13 Scottish 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

6.1. **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 if 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;

The land has been abandoned since April, 2016, when the then owner, erected a metre high fence around the area of land at Woolcombe Square to prevent the residents from cutting the grass. Prior to April, 2016 the residents had cut the grass at their own expense for the previous three years. Since the land was sold in 2011 none of the owners has made any attempt at looking after the ground. The land was sold to Blinshall Street Ltd in August 2016. Since that date no attempt has been made to look after the land in any way. Please see enclosed photographs of the grass area, showing the grass over half a metre high, with substantial weed and bush growth. No attempt has been made to cut the grass over the past three summers.

The Landowners views are:

The application is without merit as the land in question is not "eligible land" within the meaning of Section 97C(2)(a) of the 2003 Act ("wholly or mainly abandoned or neglected"). The statement at section 5.1.1 of the application form is incorrect.

In determining whether land is wholly or mainly abandoned or neglected, Section 97G(4) requires Ministers to have regard to prescribed matters. Those matters are contained within the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018/201. In turn, regulation 2 of those Regulations directs Ministers to regulations 3, 4 and 5 for the detailed guidance. It is necessary to consider those three regulations in order. Regulation 3 – Physical condition of land

The following matters are specified and our comments are added in square brackets after each:

(a) the physical condition of the land and any building or other structure on the land; [**Comment:** the land is grass and some trees protected by Tree Preservation Order. There are no buildings. Amongst other incorrect statements, the application states that the land “has not been attended to, in any form, since April 2016” and that “the land is dilapidated and derelict” Neither statement is true. Our client acquired the land on 4 August 2016 and has had the grass cut every year. Four photographs taken on 12 June 2020 and two taken today are attached to this email. It is obvious from these that the land is being attended to and is not abandoned or neglected.]

(b) the length of time that the land, building or other structure have been in that condition; [**Comment:** the land has been grassed for many years. This fact, by itself, is neutral.]

(c) the extent, if any, to which the physical condition of the land or any building or other structure on the land—

(i) is a risk to public safety; [**Comment:** there is no risk to public safety and none is claimed by the applicants]

(ii) has, or is likely to have, a detrimental effect on adjacent land; [**Comment:** the land does not have, and is not likely to have, a detrimental effect on adjacent land and none is claimed by the applicants]

(iii) causes, or is likely to cause, environmental harm. [**Comment:** the land does not cause, and is not likely to cause, environmental harm and none is claimed by the applicants]

Community Body’s Views on the landowners views:

We believe the land in question is “eligible land”. We have pointed out in our application that we consider the land to be wholly or mainly abandoned or neglected but even if that were not the case, which is denied, land is “eligible land” if it is being used or managed such that it results in or causes harm directly or indirectly to the environmental wellbeing of a relevant community. We consider that the use or management of the land does cause harm to the environmental wellbeing of our community in that it has an adverse effect on the lives of persons comprising the relevant community.

Scottish Ministers views are;

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.

Scottish Ministers are not persuaded by the community body’s view that, as the landowner has not been cutting the grass as regularly as they would like, that the community body should be granted a compulsory right to buy. The owner has stated that the grass is cut annually, as this is a compulsory purchase there is a high test to meet and Scottish Ministers would expect strong reasons to be provided by the community body as evidence to why the land should be classed as wholly or mainly abandoned or neglected. Whilst the grass may not be cut as often as the community would like, it is proof that the landowner has not abandoned the land and, as WSRA have confirmed in their comments, the landowner has cut the grass since application was submitted.

WRSA, in their application form, stated that the land was wholly or mainly abandoned or neglected. In the community body's response to the landowners views, they have stated that the land causes harm to the environmental wellbeing of the community. This is not a relevant consideration under the abandoned and neglected category of Part 3 of the Act as the community body did not select that option in their application.

It is Scottish Ministers view that the landowners were within their rights to erect a fence around the land that they own and ask that the residents not use the land. The fact that previous owners had not, in the community body's view, made any attempt to look after the land has no bearings on these proceedings as we are looking at what actions the current owners, Blinshall Street Limited, have undertaken since purchasing the land in 2016. These are applying for planning permission, appealing the refusal, erecting a fence and cutting the grass annually. The current owners have provided dated, photographic evidence, that the grass was cut on 31 July 2020.

As mentioned above, regard has been had to the regulations;

Regulation 3 requires that the physical condition of the land is considered and in particular, (a) the physical condition of the land and any building or other structure on the land, (b) the length of time that the land, building or other structure have been in that condition and (c) the extent, if any, to which the physical condition of the land or any building or other structure on the land (i) is a risk to public safety (ii) has, or is likely to have, a detrimental effect on adjacent land and (iii) causes, or is likely to cause, environmental harm.

Scottish Ministers do not feel that the reasons stated by the community body would meet the high standard for what would be a compulsory purchase. A dispute over the length of grass or how often it is cut would not merit this land being classed as eligible and whether the condition of the land has possibly led to weeds in others gardens. It would appear from the information supplied by both the landowner and the community body that there has been some efforts to cut the grass. No clear case has been made that the physical condition of the land is a risk to public safety, has, or is likely to have, a detrimental effect on adjacent land or is likely to cause environmental harm. Although it is stated that large branches have fallen into gardens it is not clear whether this represents a risk to public safety and this remains a live issue or whether it has a detrimental effect on adjacent land.

Regulation 4 requires regard is had to the designation or classification of land. This includes (a) whether the land, or any part of the land, is or forms part of a nature reserve or conservation area (b) whether the land, or any part of the land, is a special site (c) whether any building or other structure on the land is a listed building or scheduled monument (d) any policies or proposals in a local development plan or associated guidance relevant to the land or any part of the land (e) any policies or proposals in a strategic development plan or associated guidance relevant to the land or any part of the land and (f) any policies or proposals in the National Planning Framework 3 relevant to the land or any part of the land.

In addressing this regulation, the community body have stated that, "The land is a designated green open space in the current Perth and Kinross Local Development Plan. Whilst there is no building or other structure on the land which is listed or scheduled the trees on the land are subject to a Tree Preservation Orders which is an analogous scheduling". While the points in this regulation are not overly relevant to this application it is acknowledged what the land owner and community body have said about the being designated as open space and that there are Tree Preservation Orders.

Regulation 5 requires regard is had to the use or management of land. This includes (a) how the land and any buildings and other structure on the land are currently used or managed including (i) the extent to which the land, buildings or other structure are used or managed for lawful public recreation or leisure activities and (ii) the extent to which the land is being held for the purpose of preserving or conserving the natural, historic or built environment, (b) whether the land or any building or other structure on the land is being used or managed for the purpose of an activity that requires a permit or licence and (c) the length of time that the land, buildings and structures have, as the case may be (i) been used or managed as identified under (a) and (b) above or (ii) not been used or managed for any discernible purpose.

The community body and land owner have stated that the land has been held for development purposes. The land owners stated this continues to be the case. The community body state the planning applications have been turned down and Tree Preservation Orders are in place but a Part 3A application is not the place to decide on the likelihood of any future application being made or granted. The community body feel that use of the land can no longer continue for them given a fence was erected and the owners have stated the land is private and subject to lawful public rights. It is not clear how the use or management of the land here is relevant to the statement by the community body that it is to the detriment of the other owners in the area with regard to maintenance of gardens and the unkempt look of the land.

In considering all the information available when having regard to the regulations, it is not felt that there has been a strong case put forward to make a case for the land to be classed as eligible land.

Scottish 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 Woolcombe Square Residents' Association of the right to buy under this Part is in the public interest.

The community body's views are:

This area used to be played on by children of all ages in the area. They have been unable to do this since the fencing was erected and the area allowed to become overgrown. There is a clear community need for this land to be better managed and utilised for the many who live in the area and not for the land bank of a private owner. The public interest is quite clear – A Residents Associations wish to purchase the land to enable the community to benefit from it. The current owners have no desire to use the land and have made no effort to manage the land throughout their ownership.

Social, Environmental & Economic Advantages of Community Ownership

1) Social Benefits

The association would regenerate an area that has been neglected and would bring it back for both residential and community use, at a time when the green spaces within Scone are under considerable pressure. There are currently over 150 housing units – houses and flats – being constructed in Scone, with no provision of any green open spaces. There is

further provision within Perth and Kinross Council's Local Development Plan for a further 700-800 houses, again with little provision for green open spaces. Whilst the area in question is not large, it will provide an area of potential usage by many members of the community.

A green open space with seating will provide an area of calm and tranquillity for the physical and mental well-being of both residents of the square and members of the wider community. The space will provide the means to improve the physical and mental well-being of local residents and the wider community of Scone and will provide volunteering opportunities for residents and others throughout the year.

2) Environmental Benefits

The Association will ensure that the trees receive the professional work they require and will ensure that the area becomes a wildlife haven in line with the Scottish Government's Biodiversity Strategy and Pollinator Strategy. This will include getting professional advice on what the best planting would be for the area.

3) Economic benefits

The Association is small and the planned purchase and investment are relatively small amounts. However, the active management of the land will provide some local employment and will ensure that the benefits of the site are for all in the area not just for one owner.

The landowners views are:

It would not be in the public interest for Ministers to consent. This is because the land is not eligible land and therefore there is no basis for consenting.

Community Body's Views on the landowners views:

It would be in the public interest of Ministers to consent to the application to turn the current neglected land into an asset for the community of Scone.

Scottish Ministers views are:

That it is not in the public interest to grant this application because, in the community body's opinion, that a landowner does not cut the grass often enough, or that they decided to fence off the property and the residents of Woollcombe Square no longer have access to it. There is park, woodland and greenspace, within walking distance of Woollcombe Square, and, as stated by the community body in their application, "All members have large gardens which are looked after in such a manner as to give confidence in looking after a grassed area for community use".

Little detail has been provided by the community body to show exactly how it will provide the benefits they have listed above.

There is public interest in bringing land back into use but it is not clear from the information provided with the application exactly what the evidence of need is. The community body could have provided evidence with their application to give information in respect of the number of people expected to use the land. Whilst the application included letters of support for the purchase there was no indication given of the number of people that would wish to use the proposed area. If a survey had been conducted in Scone, that would have given an idea of the need within the village. As this is a compulsory purchase Scottish 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 Scone that could be used by the community for the same purposes. WSRA have repeatedly stated that the area of land that they wish to purchase

will be for the benefit of all of Scone, as the ballot was conducted in one street in Scone, Scottish Ministers are unsure how other areas of Scone feel about the community body's proposals or that that they are aware of the application.

Scottish 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 Woolcombe Square Residents' Association 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:

The land is currently not being cared for, as can be seen from the photographic evidence (see Annex 7) and does not contribute to the economic, social or environmental health of the area at present. The proposals outlined in section 8.1 would ensure the land was used sustainably for the people who live and work in the local community and contribute to their well-being which is a key Scottish Government outcome and is reflected in the National Performance Framework. This land transfer would contribute to 4 key outcomes in the National Performance Framework – Communities, Health, Environment and Children and Young People and would directly contribute to the national indicator around access to green space. In addition to the information in 8.1, the residents at Belmont Park – a new development of 13 houses immediately adjacent to Woolcombe Square (built on previous green space) will significantly be enhanced and work has recently started on a further 42 houses to the immediate north of Woolcombe Square, (please see map Annex 9) without any provision for community space. At present, the work has stopped due to current restrictions, but the date set for the completion of this work was originally set for Spring 2021. Again this new development will benefit.

The importance of ensuring the continued availability of green open spaces to local communities and the contribution they make to the mental and physical well-being to the local population is widely recognised as an important factor in everyday life.

This is reflected in the National Performance Framework, National Planning Framework and in is a key part of the Public Health Outcomes for Scotland.

Locally the importance of green and open space is reflected in the Local Development Plan of Perth and Kinross Council, which recognises the Woolcombe Square area as a green open space.

This plan has four main aims, identified in Scottish Planning Policy, which are 1) A Successful, Sustainable Place 2) A Low-Carbon Place 3) A Natural, Resilient Place 4) A Connected Place. Our aim is to ensure that these four objectives are achieved by the work of the association in relation to the area. This is in direct agreement with the Scottish Government's Scottish Planning Policy which 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."

The WSRA will ensure that the area promotes the idea of well-being for all ages by the provision of a green space for recreational and leisure use.

The local school – The Robert Douglas Memorial School – has indicated that its Autistic Unit will make use of the area and the association will ensure that planting will take place of items of assistance to the unit, commensurate with the area, that can be utilised by pupils of the unit.

The importance of an open green space cannot be over emphasised, reflected in the planning policies of the Scottish Government, where “ improved access to open space can help build stronger, healthier communities.” (Scottish Planning Policy)

The result of the ballot carried out within the area showed that there was 100% support for the community acquisition of those who voted, on a 92% turnout. Those who did not vote were not resident in the area at the time of the ballot.

The association will ensure that the trees within the area will continue to be protected and maintained under the existing Tree Preservation Orders. We will be improving access to green open space and we will be protecting and enhancing green infrastructure.

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The association will ensure that the trees within the area will continue to be protected and maintained under the existing Tree Preservation Orders. We will be improving access to green open space and we will be protecting and enhancing green infrastructure.

The Landowners views are:

Section 97G (5)(c) of the 2003 Act requires the application to include or be accompanied by information about the matters specified in Section 97G(6). Section 97G(6)(a)(ii) requires the body to explain why its proposals for the land are compatible with furthering the achievement of sustainable development. Section 8.2 of the application form is provided for this explanation but no reasons have been given in Section 8.2. The omission of mandatory information renders the application invalid.

The community body’s views on the landowners views are:

The proposals in section 8.2 shows how WSRA would develop the area and sustain it for use by the community.

MacRoberts second comment under Paragraph (f) is to the effect that we, as a community body have not explained how our proposals for the land are compatible with furthering the achievement of sustainable development. We believe that paragraph 8.2 of our application form provided detail of this and the fact that all of that detail may not have been provided in the correct box of the application form does not negate the fact that the detail was given and that the proposals of our community group are compatible with furthering the achievement of sustainable development.

The nearest green space to the land is at the Scone Recreation Park and that is three quarters of a mile away and is not in proximity to the land.

The response from MacRoberts LLP relates to the period of ownership of their client Blinshall Street Limited. We would respectfully point out that we, as residents of Woollcombe Square have experienced the site being wholly or mainly abandoned and neglected and furthermore the use and management of which has resulted in or caused harm to our environmental wellbeing since the land was sold off on 18th of March, 2011. As can be seen from the series of photographs attached Woollcombe Square formed an important area of amenity ground for our community and since the fence was erected in 2016 the community has effectively been excluded from using the same.**(Annex C)**

Scottish Ministers views are:

Taking into account all of the information provided by both parties it is Scottish Ministers view that whilst the proposals of this project, and it's aims, from the evidence provided, could potentially benefit 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, Scottish 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.

The owners have stated that no reason has been given under section 8.2 of the application why the project is compatible with furthering the achievement of sustainable development in relation to the land. Scottish Ministers opinion is that the community body did provide information regarding this matter in Annex 10 of their application.

A detailed business plan will tend to provide evidence to Ministers 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%.

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. There is also no evidence of development costs associated with the project for Scottish Ministers to consider and 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 Scottish Ministers that this is not an issue that affects the formation of the views. The last planning application submitted by Blinshall Street Ltd to Perth and Kinross Council was refused on 13 June 2018. 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.

Whilst the information provided in the community bodies Part 2 application in respect of sustainability was sufficient to grant the Part 2, the information required for a Part 3A or Part 5 application is required to be far more detailed and robust as they are compulsory purchases.

Scottish 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, Scottish 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 owner, and the previous owner, since 2011, have shown no interest in utilising the land for the community of Scone. The current company did submit a planning application, knowing that a previous application had been turned down and that there were no changes in planning policy since the previous application (the area was denoted as green space). The application was turned down by Perth and Kinross Council.

Under the current ownership, the land is dilapidated & derelict and in much worse condition than when it was looked after by the residents in previous years. The land has not been managed by the current owner at any point.

The current owner has shown no interest in pursuing a policy of sustainable development and has consistently ignored letters from the residents as to the future of the land. Since no reply was received to any of these letters, it was considered a waste of time to pursue the matter further, and the letter which was eventually received from the current owner in response to our offer, indicated to us in April 2019 that the land was not for sale and we have no reason to believe that this has altered.

Owners Views are:

This is not a relevant point. Part 3A is concerned with the acquisition of abandoned or neglected land for the purposes of furthering sustainable development; it is not for the current owner to use or manage the land for sustainable development.

Community Body's views on the landowners views:

The owner appears to have misunderstood the purpose of this clause. It is entirely for the owner to prove that their continuing to own the land would be compatible with furthering the achievement of sustainable development and if they are not able to do so then we, as a community body, who are able to develop the land in a sustainable way should be allowed to purchase the same in order to do so.

The owner has already had a planning proposal turned down and since there has been no material change in the circumstances pertaining to land, there is no reason to believe that planning permission could be granted in the future.

Scottish Ministers Views are :

The land in question has, from the information provided by WSRA, been an area of grassed land with couple of trees on it for many years and that during that time the residents of Woollcombe Square were able to use and look after the land. The landowners, since purchasing the land have fenced it off and the residents no longer have access. The owners had applied for planning permission to develop the site which was turned down, appealed and the appeal was rejected. The land in question is, at this time, designated as green space. The current landowners are, it would appear, hoping that the designation will change in the future and that they will then be able to develop the land. At present the owners are cutting the grass annually, but not using the land for any particular purpose. Although maintaining the land, they do not appear to be furthering the sustainable development of the land. Within the owners views they have stated that they do not feel that they have to justify a plan for the future sustainable development of the land. The plans produced by WSRA for the land were found to be not compliant for reasons stated in 6.3 above. Ministers do note however, that the plans that WSRA currently have would utilise the land better in terms of sustainable development for the benefit of the whole community, than the current owners plans. The owners have stated in their response that they do not think they are required to use or manage the land for sustainable development. The owners are incorrect in this assumption as the fact that the landowners are not currently using the land is a relevant point and is something that Scottish Ministers do take into consideration when deciding whether the achievement of sustainable development, in relation to the land, would be unlikely to be furthered by the current owner. As the owners, in their response to the application, have not produced any evidence of any future plans for the land in relation to sustainable development, 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.

6.5. **Section 97H(1)(d)** of the Act requires that Scottish Ministers are satisfied that the owner of the land at Woollcombe Square, Scone is accurately identified in the application.

Woollcombe Square Residents Association conducted a title search on ScotLis on 6 May 2020 which showed Blinshall Street Ltd whose Registered Office is at 10 Douglas Street, Dundee, DD1 5AJ as being the owners. There are no heritable creditors identified in the search.

The owner has not provided any other information in relation to the ownership details and therefore Scottish Ministers are satisfied that the owner of land at Woollcombe Square, Scone has 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.

Woollcombe Square Residents Association conducted a title search on ScotLis on 6 May 2020 which showed Blinshall Street Ltd whose Registered Office is at 10 Douglas Street, Dundee, DD1 5AJ as being the owners. There were no creditors in a standard security over the land or any part of it with a right to sell the land identified in the search.

The owner has not provided any other information in relation to 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, therefore, Scottish 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 provided comments or documentation that would indicate that Section 97H(1)(f) is applicable in this case.

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. This requirement has therefore been met.

6.8. **Section 97H(1)(h)(iv)** of the Act requires Scottish Ministers to be satisfied that where the Part 3A community body is a body mentioned in section 97D(1)(b) of the Act, the land is in or sufficiently near to the area of the community to which the body relates.

The Community Body's view is:

The land is surrounded by the houses of the residents of Woollcombe Square, Scone. On the west side of the land, two houses border directly on to the land and on the other three sides, the road runs round the square and the land borders directly on to thirteen houses in the square. The land subject of the application is located within the defined community.

Scottish Ministers are **satisfied** that where the Part 3A community body is a body mentioned in section 97D(1)(b) of the Act, the land is in or sufficiently near to the area of the community to which the body relates. 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.

Woollcombe Square Residents Association held a ballot on 9 December 2019 on the question of whether they should buy the land. 26 people were eligible to vote in the ballot and 24 people, which equals 92% of the community, voted. Of those who voted, 24 (100%) voted in favour of the proposition that the Part 3A community buy the land.

Scottish Ministers are **satisfied** that the community have approved the proposal to exercise the right to buy under section 97H(1)(i). Scottish Ministers are also satisfied that Section 97J(1) has been met by way of the ballot. 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.

Woollcombe Square Residents' Association wrote to Blinshall Street Limited on 15 April 2019 offering to purchase the land at Woollcombe Square, Scone for £5,000. On 25 April 2019 Blinshall Street Limited responded stating that the land was not for sale. Woollcombe Square Residents' Association have provided evidence of the offer made and the response from the owner to that offer.

Scottish Ministers are **satisfied** that otherwise than by virtue of this Part, that Woollcombe Square Residents Association has tried and failed to buy the land. This requirement has therefore been met.

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.