9th January 2013

Dear Dave Thomson,

This submission is being submitted on behalf of the Holmehill Community Buyout Group of Dunblane. Details of our group can be found on http://www.holmehill.org/HolmehillCampaignHistory.html and will not be repeated in this submission.

As a group we have had practical experience in seeking to make use of the provisions of the Land Reform (S) Act 2003, which we hope you might find useful and possibly illuminating.

This submission is structured to try to illustrate four issues that have arisen during the course of our eight year existence, in the context of your remit. In each case there is a brief description of the facts and a description of the impact on the group. (Further details are available on the website referenced above.)

1) Initial Application – Requirement for timeous application

When the "For Sale" sign was erected on the Holmehill site in December 2004, with a clear reference to "development opportunities" a group of individuals who lived near to and/or used Holmehill held a meeting a resolved to use the then new legislation to seek to register a "community right to buy". This was progressed and a formal application submitted together with the required number of petitioners. Eventually this application was rejected on the grounds it was not timeous i.e. it was submitted after and not BEFORE the land was put up for sale (Section 39). This was the first application to be rejected on these grounds.

Our **observations** are that the requirements of the Land Reform (S) Act 2003 are unrealistic in the context of smaller community land/building opportunities. The Act (Section 38) requires 10% of the designated community to sign a petition, and completion of the proscribed registration document is in itself quite an onerous task. In our experience it is unlikely that any community will be able to seek to register all the land it may believe would be usefully taken into community ownership, and renew that application every five years.

Moreover seeking to make such a registration in advance of any potential sale could be divisive in many communities and not conducive to developing a well functioning and supportive society.

Our **recommendation** is that this timeous requirement is removed to permit communities to respond to opportunities as they arise.

2) Initial Application – "trying to thwart the planning process"

This was the second grounds for refusing our application, which we consider to have been ill informed and incorrect. At the time of sale, and right up to the present time, the whole of Holmehill was designated in the local plan as public open space.

Our **observations** are that we realised that the best way to continue to provide this open space, and to enhance it so that it became a much greater asset to the whole community was through ownership, which seemed to us to be a guiding principle of the Land Reform legislation. Our view is that only through community ownership could Holmehill fulfil its potential as designated public open space and we were supporting the planning process. In practise it was the purchaser who has been (and still is) trying to change the use of the site by applying for various forms of built development. The Holmehill Group has been actively engaging with the planning process to retain the site as public open space. Moreover land ownership is not a requirement of a planning application.

Our **recommendation** is that Planning issues are specifically noted as not having any bearing on the Registration process and that planning is left to Local Authority Planning processes.

3) Appeal against the rejection of our registration

Subsequent to the rejection of our registration the Group felt considerably aggrieved and sought to appeal against the decision. This appeal was made, and heard at Stirling Sheriff Court. It was refused and costs were awarded against Holmehill Ltd.

Our **observations** are that going to court is a seriously big step up for an appeal, and out of the reach of most groups. The initial decision to reject was made by an official, and there is no administrative method of appeal other than through the court, where the decision is already pre-ordained as the refusal was based on precedent that Sheriffs "do not interfere with decisions made by Ministers".

The action was taken against Scottish Ministers, but we were surprised to find that we were also facing the land owner (Hilton Hotel) and the local Council (Stirling Council). Stirling Council took no part in the action, but Hilton employed a QC. In end costs were awarded against use – of the order of £40,000. As this was way beyond the assets of the Group (who are a limited liability company) Hilton did not make any claim against us, and Scottish Government took all the remaining company assets leaving a few pounds to enable us to continue as an ongoing operation.

This did not feel like a fair or just system, designed to encourage the development of community activity.

Our **recommendation** is that there needs to be a more appropriate form of appeal against officials' decisions than recourse to the Courts, where only the big operations have access to the money to support action

4) Subsequent Application for Registration and "Options"

Following this appeal we were encouraged to reapply for registration which we did. This was accepted by Scottish Government officials and we were anticipating a registration when the new owners (Allanwater Developments) stated that they had granted an "option to sell" on the land which therefore nullified our potential registration (Section 39 1 ii b).

Our **observations** are that we were not able to see this option, have no idea to whom it was granted (it may be a technical option to another company associated with the owner), the terms of the option (such as once planning permission has been granted) or even whether it is still in existence. It effectively prevents any possibility of any further registration, thus negating the Land Reform legislation. At this point the group gave up on seeking a registration and have sought to use the planning processes to protect the land from built development, and to raise the use of the land by the local community by such means as registering and supporting the core paths. However the land is deteriorating through neglect and is a much less valuable community resource than it could be.

Our **recommendation** is that any "option" that is taken into consideration in this legislation has to become a public document so that the details (accepting that some such as price might be commercially confidential and be redacted) are available for all to see. Should the option cease then this should be advised to the body that was seeking the registration.

In addition the whole issue of "options" needs to be reviewed so that they should not be possible to be applied before or during the registration process as a means to thwart the intentions of community right to buy. No sale should be permitted other than to the option holder without permitting the community the right to seek registration, and the existence of options should be sufficient justification for accepting a "late" application.

In **summary** our experience with the Land Reform Act 2003 was that its vision of the "Right to buy" provided the stimulus to establish the Holmehill Community Buyout Group, but thereafter it was a useless waste of time, money and effort, which failed to deliver even as much as a registration. The evidence presented above shows that the current Land Reform Act 2003 did not help us in our goal and the drafting and application are unsuitable for the circumstances in which we found ourselves.

However, in spite of this experience, we still believe that community ownership would provide a much improved, valued and used community asset contributing to the life of the town and we are continuing to campaign to protect and ultimately take control of Holmehill.

We consider that there is scope for an amended version of the Land Reform Act and the new Community Empowerment and Renewal Bill to help us and communities in the same position to take control of their environment and develop it to the benefit of the wider community. But there is also a need to ensure that other procedures and legislation is also aligned with the emerging views on increased control of community assets by communities. One particular concern is the land valuation procedure which needs to be defined to avoid speculation artificially driving up the costs of community resources.

Should you wish for further dialogue, as outlined in your Call for Evidence, we are willing to assist you, either in writing or in person.

David Prescott

Acting Vice Chair
Holmehill Community Buyout