

**Neilston Case Study**  
**by Pauline Gallacher**  
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*From Rabbin Burns to St Andrew's Day – the itinerary of a perilous journey in the company of a unique, if thorny, piece of Scottish legislation.*

**PREAMBLE**

This case study is the third in a series being published by the Caledonia Centre for Social Development as part of the “Popularising the community right to buy provisions of the Land Reform (Scotland) Act 2003” project.

This case study is written by Pauline Gallacher who is a member of the Neilston Development Trust.

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**INTRODUCTION**

This case study documents the progress of a late application under the community right to buy (CRtB) provisions of the Land Reform (Scotland) Act 2003. The applicant was Neilston Development Trust and the land concerned was the former Clydesdale Bank branch in Neilston, East Renfrewshire, a small town (population around 5,000) on the southwestern fringes of Glasgow.

The case was unusual as being in being the most urban community to have invoked the provisions of the Act to date at that time. These two characteristics have rendered the case significant beyond the confines of Neilston, potentially signalling a new wave of registration and asset acquisition by communities in larger settlements (population up to 10,000) provided for in the Act. Of course this was scarcely part of our thinking as we embarked on our quest in January 2006. With the new commitment to asset acquisition embedded in public policy, and significantly, in The Big Lottery's *Growing Community Assets* grant programme, our encounter with CRtB came at a propitious time; but it could so easily have been one of the great projects that failed to prevail, victim of one of the many twists of fate that have bedevilled the process for so many other community bodies

## THE AUTHOR

My name is Pauline Gallacher, and I have been a resident of Neilston for 33 years. The background to my current involvement is described below. In this narrative I will depart from the habitual style of report writing in which I and many of my readers expect to write, partly because I hope the story will make a more interesting read in this way, but also because it became such an important part of our lives for a year and beyond. It made a change in my life, but more significantly, it has transformed a part of Neilston's destiny; it is as big a thing as that. So, trying not to over-personalise, I welcome you to our story.

## BACKGROUND TO THE APPLICATION

### **Bank branch closure**

When, in November 2005, the Neilston customers of the Clydesdale Bank received a letter informing them of the decision to close the branch, the community erupted. The branch of some 100 years – the only bank in town, was to go, with the nearest bank (a different one) a bus ride away. At the same time it became clear that the local Leisure Centre and Library were vulnerable to reduced services: the thin end of the wedge in many people's estimation. A campaign got under way. Meanwhile *Neilston: Space to Live*, our organisation that had quietly worked for two years for cultural and spatial renewal in the village was busy preparing for a major workshop involving visiting Danish designers. We, of course, sent letters to support the bank campaign, and attended public meetings to show solidarity. But the struggle at that point was led by others.

### ***Neilston: Space to Live; ready for battle (almost)***

*Neilston: Space to Live* was already registered as a company limited by guarantee with charitable status, and had as an overarching mission the regeneration of Neilston, starting from the basis of spatial and cultural renewal. We had ambitions much bigger than our modest means allowed us, and were keen to attach ourselves to the growing development trust movement. Angus Hardie of DTA Scotland had already briefed us on the work of his organisation and the general scope of CRtB, and we had quietly filed this away for future reference, perhaps as a tool in pursuing spatial projects once our plans were better developed. Little did we know how soon. This prior awareness of the Act, our track record of work in our community, our company status and the general scope of our work placed us in quite a strong position to negotiate the challenges of what was to come; but no-one had any working acquaintance with the Act. That of course was to change overnight.

On 25 January 2006, at a meeting between the *Save the Bank* campaign and the Clydesdale Bank, closure was confirmed as inevitable. *Neilston: Space to Live* tabled a letter at that meeting requesting discussions with the Bank to establish whether a direct sale to the community would be possible. The building, we were then told, was already advertised; we were clearly not capable of making an open market offer, so at that point CRtB became the only way forward, assuming that the community wanted this to happen.

## PROCESS OF MAKING THE APPLICATION

From our meeting with the Bank (February 2) we had secured an undertaking that the closing date for offers would be held until the end of March; we had not, of course, given any indication of our intention to pursue a CRtB. The clock was already ticking; could we, from a standing start, beat this deadline? We were fairly confident, from what little we knew of the legislation, that *Neilston: Space to Live* was constituted in terms roughly consistent with its community-wide development and sustainability requirements.

A rapid referral and response from the Scottish Executive Environment and Rural Affairs Department (SEERAD) however indicated otherwise. We were advised that tweaking our Memorandum and Articles of Association (M&A) to SEERAD requirements might take longer than incorporating a new company. At this point we made the decision to rename the organisation, since by embracing CRtB, the organisation would be positioning itself in a role, which would express the integrated goals of the development trust movement. A new M&A was drafted, submitted – and rejected on a legal technicality (7 March).

Meanwhile the process of gathering signatures on the petition, checking signatures to confirm eligibility, matters relating to title, post coding and mapping details were being progressed. For various reasons I was free to devote large swathes of time to this exercise; our secretary spent hours in the library checking names against electoral registers, while others collected signatures with a certain degree of subterfuge in case the Bank heard and foreclosed on the sale. Nevertheless some 700 signatures were collected; more could have been obtained had we known how long it would take to obtain legal clearance for our M&A.

On 4<sup>th</sup> April, 4 days after the closing date for offers, I delivered the application to SEERAD by hand. It pleased me greatly to see the officers checking the application and ticking the boxes for compliance with the submission requirements. I was then asked for a copy of the electoral register. (*‘How else can we check the petition?’*). This is best described as ‘a difficult moment’, since there is no requirement in the legislation for this and no obligation on a community body to supply such a copy with the application. A digital version of the published roll was purchased remotely from our very helpful contacts in our local Registration Office, and composure re-established.

The prohibition was duly served (by standard mail, as far as I am aware – another heart-stopping process; would it get to the right person in time?). But, at last, the Bank heard of our intentions and made a formal, if ineffectual, objection through their solicitors. (Once this was out of the way, and it was clear we meant business, the Bank was actually totally straightforward, even helpful, in their dealings with us).

The next hurdle was the verdict of Scottish ministers on the matter of late registration, which, we had been warned, was a minefield. Approval of our application could set a precedent for late applications for property all over the country – for how else might useful (as opposed to redundant) buildings be acquired, if not after advertisement? We had not avoided this issue our argument – in fact it was pivotal to our claim.

Why had the community body not submitted a timeous application? Because a timeous application **could not have demonstrated public support and public interest**. The bank was in use, serving the community. An application for registration would have signalled uncertainty at a time where there was absolutely no indication for closure. It would therefore not have been in the public interest to seek registration and such a proposal would certainly not have secured public support. As we stated in our application,

*“In such circumstances, the petition for registration would have to have read as follows:*

*‘In the event that the bank closes in the future, would you be interested in the community acquiring the building?’*

*or in similar terms.”*

*While superficially straightforward as a proposition, in practice, we ask, what mature community organisation would willfully stir up this hornet’s nest in its own locality? And what would it do for the reputation of a supposedly responsible and responsive community body? And what business, whether bank or drycleaners, would not take exception to such a petition when they are struggling to provide a service to local people? And, on the ‘no smoke without fire’ precept, how would such a proposal have been reported?”*

*In the case of the bank, moving to registration in advance of the closure crisis would have been synonymous in local perception with moves to register the health centre or the library while services in these buildings were proceeding as normal.*

*(Extract from CRtB application)*

Our prior knowledge of the legislation and its fit with the general scope of *Neilston: Space to Live* also gave substance to the fact that this was no knee jerk reaction to obstruct other development, but a genuine move to build on the achievements of the previous two years’ work.

I have focused on this issue as opposed to others in the late application regulations (significantly greater public support, strong indication of public interest) because there seems here to be a genuinely difficult issue, both for communities and for those administering the Act as it stands. The fact that it

took Scottish Ministers 7 weeks instead of the indicative 30 days to return with a positive decision suggests that there were bigger issues than Neilston's bank at stake. It is easy for us, with a positive decision under our belt, to be generous in our interpretation of this delay. It was a new type of CRtB case, it would create an interesting precedent (i.e. of late applications for buildings already on the market) and would possible stimulate a rash of similar applications.

Had the decision gone the other way, or if the delay had caused us to miss the closing date, we would clearly not have been so indulgent. After all, we, a band of volunteers, had had to measure up (and more) to the stringent requirements of the Act. Would we honestly feel able to recommend to others to embark on the journey, when at the very end, the whole endeavour could be compromised by forces unseen?

### **Timeline of important dates**

	Progress	Notes
November 2005	Neilston: Space to Live joins campaign against branch closure	
25 Jan 06	Neilston: Space to Live intimates interest in buying if Bank insists on closure	Already aware of CRtB legislation and considering it as possible instrument for future development. Thus ready to proceed if necessary in this case.
2 Feb	Bank confirms property already on open market and unwilling to make direct sale to community, but agrees to closing date of end March to allow community to assemble bid. Neilston: Space to Live takes immediate steps to initiate right to buy. Burness solicitors instructed	
	Neilston: Space to Live Memorandum and Articles submitted to SEERAD	
9 Feb	SEERAD rejects M&A	
	Decision to incorporate new company rather than amend existing M&A to fit legislation	
13 Feb	Gathering of signatures on petition begins - considerably more than 10% (500) required	Correct wording and referencing of petition essential
	Checking of petitioners' names against full register of electors	This only possible at library – 700 names, in volunteer time, during library hours
	Preparation of documentation for submission – titles, maps, postcode checks	Massive amount of work – SEERAD helpful in clarification, but fact that other communities had applications failed on technicalities bred great anxiety about the smallest detail

21 Feb.	Submission of M&A for new company, Neilston Development Trust	
7 March	SEERAD rejects M&A	
27 March	New company, Neilston Development Trust, incorporated to enable Community Right to Buy	Calculated risk on advice of solicitors that any remaining amendments could be made by written resolution
30 March	Closing date for bank offers	
3 April	SEERAD response to amended M&A – another change needed	M&A altered in 24 hours by written consent of all members
4 April	Application delivered by hand to Scottish Executive (700 name petition).	Application checked for completeness – copy electoral register missing (not thus far requested). Digital version procured (with difficulty) over phone and emailed to SEERAD
6 April	Application accepted. Executive places prohibition on sale. Exec response due in 30 days (8 May)	
25 May	SEERAD response. NDT's application entered into register of community interests in land.	6-month 'window' for completion of sale begins. Funding applications with associated business planning and feasibility work have to be made and granted within this time Ballot: NDT has 6 weeks to arrange, publicise, give formal notice of ballot to whole population (including arrangements for proxy voting), conduct, analyse results, and make formal application to activate right to buy.
3-5 August	Community Ballot.  28% turnout, of whom 97% in favour (26.9% of registered voters)	Personal rather than postal ballot - 3 days to optimise vote. Novel 'yellow bus' polling station in front of bank. Advice from deputy returning officer – difficulty of verification emerges – 20% of population not on edited register; mechanism for checking full register exceptionally agreed. Presiding officers, privacy arrangements - scrupulous attention to detail required.
7 August	Application to activate CRtB made to SEERAD	Reinforcement of arguments relating to sustainable development and public interest, plus justification of ballot turnout.
29 August	Scottish Ministers consent to purchase proceeding.	
13 September	Big Lottery Application; business plan, technical feasibility	Land Fund tech assistance grant supported preparation of business plan, ballot and legal costs

15 –20 November	Clydesdale Bank confirms £15,000 price reduction as part of matched funding. Big Lottery confirms support.	
30 November 06	Keys handed over	

## THE DECISION MAKING PROCESS BY SCOTTISH MINISTERS

As described above, the indicative period for ministerial response was exceeded by some time (decision due 8 May, received 25 May). Clearly, the Neilston case was unusual – a late application, which demanded particular scrutiny on that basis alone; plus the fact that the CRtB purchase of a commercial building, of obvious interest to the private sector, was a new test for the Act (so far as we are aware).

But there was also huge potential for similar cases in other communities, (i.e. of registration only being sought after advertisement), which in principle could create significant ripples in the property market in small towns throughout the country. With 30% of Scotland’s population living in settlements of up to 10,000, the threshold for CRtB, there was at least the theoretical risk that many such cases would find their way to SEERAD and that late applications would more and more become the norm. If timeous registration – clearly the much preferred and manageable route – was simply not feasible in many such situations, this had clear implications for all concerned, not least those charged with promoting the spirit of the Act as well as its letter. To our untutored minds this much was clear; no doubt there were other precedents and implications for the whole land reform agenda of which we were ignorant.

Was, for instance, the margin by which we succeeded in demonstrating community support a factor? Despite the 97% vote in favour, we have always been candid in acknowledging to all concerned that a shower of rain could have lost us the vote. It was that close, in terms of the sheer base-line turnout required to qualify for the discretionary consideration given to communities who have not achieved the 50%+ turnout.

The summer holidays, as we know from local traders, take about 25-30% of their custom out of the village – a massive hole in the voting population. Additionally, Neilston had a bigger population than any other CRtB community until that point, creating additional challenges for the inevitably small group at the centre of the bid. So the bigger the place (after all, Neilston’s population for CRtB is only 5,500 – the Act allows for places nearly twice as large), the harder it will be to achieve that crucial minimum.

Similarly, it’s well known that in places of social disadvantage, voter turnout at elections is not high. Irrespective of the special circumstances surrounding a CRtB ballot, it will be more difficult to generate the requisite statistics in areas where – potentially – the benefits of community ownership might be most powerfully felt. This is not to say, however, that community support for a

purchase should not be convincingly demonstrated. We did provide that evidence, and the result was in our favour. But the fact remains that our result lay at very edge of the provisions of the Act, strictly interpreted. An application could have been rejected (in letter if not in spirit), given the clearly stated requirement for 50%+ turnout.

The observations above speak of our concerns about the final stages of the process – the point at which ministerial involvement and policy-related judgments take place. We return to this below. Perhaps even more frustrating, because they lie outside the substance of the Act's provisions, are the bureaucratic delays and irritations in the earlier stages of the process, including the scrutiny by government solicitors of the Memorandum and Articles of Association. The response time in this is dependent on overall workload in the government's legal division, and this in a process in which a day can doom an application to failure, given the relentless deadlines of closing dates and CRtB requirements.

Delays can happen anywhere, and it is important to remain reasonable in what we ask of any system - cue memories of frantic calls to SEERAD on a daily basis (and, on this point, do make sure to keep an eye on your own solicitor's response times). But when the process is entirely outwith your control, then come the sleepless nights. I refer to our experience; in the months since our application in mid 2006, processes may well have been streamlined.

## **LESSONS LEARNED AND ADVICE FOR OTHERS**

Risk and uncertainty are the hallmarks of the late application process, at least as we experienced it. There is no automatic 'Proceed to Go'. As I see it, very many buildings-related applications will be 'late'; buildings, that is, that represent a real asset for the acquiring community, rather than the burden of a redundant property in the wrong place, or a failing facility being passed on for the community to worry about. If indeed these marketable buildings are legitimate objects for community aspiration, the Neilston experience looks like repeating itself; communities being faced with mountains to climb under huge pressure of time, with the sense that one slip can send them tumbling down, perhaps damaged for future adventures.

### **What would our advice to other communities be?**

- Acquaint yourself with the Land Reform Act NOW. Get hold of an Application Pack and consult websites such as [www.landreformact.com](http://www.landreformact.com). If you are not in a position to register interest in land, record your awareness of the Act and its provisions in the context of your work as a community environmental group or local action group. Note the requirements relating to constitution and area of operation, and, if it suits, think about revising your constitution to accommodate the Act; this will enable you to consider its implications for your organisation coolly and calmly. It may be the wrong time for your group to think in these terms, but a prior awareness of the Act and how it relates to

your aims and objectives is a crucial piece of evidence in making the case for a late application. It makes sense; if you have considered CRtB as a possible course of action but have no possibility of pursuing it, it will make a more credible argument for late registration when in fact a suitable property becomes available.

- The process is hugely time-consuming and demanding – the arguments in justification of a late application really have to convince, so key members of your group will find themselves having to become world experts on a couple of paragraphs in a couple of sections of a relatively obscure piece of Scottish Law! AND organise a transparent public ballot, AND become a community marketing expert. The argument goes that in order to shape up to the responsibilities of asset ownership, communities have to prove themselves robust and organised, and that point is well made. But there are limits...
- You need a legal adviser who knows the Land Reform Act and SEERAD processes.
- Speak to other communities, but remember that your situation will always be different from others; be ruthlessly critical of your own arguments, but hang on to the evidence that makes your application work. Also - and this may come strange from a volunteer who has spent years in building our particular community organisation with support and advice from so many people – in speaking to other communities, be respectful of their hard won knowledge and the fact that they will inevitably still be working extremely hard to make their project work. In drawing up your budgets for technical assistance, include some provision for making a contribution to these other community bodies in exchange for this gold-dust advice. You will understand my point soon enough!
- Enlist your political representatives, especially your MSP. Ours, Ken McIntosh, was extremely helpful and was sufficiently concerned at our experience to ask Parliamentary Questions and arrange a meeting with Sarah Boyack, then convener of the Scottish Parliament Environment and Rural Development Committee who, with her civil servants, listened to many of the comments made above. (This was of course after our successful outcome.)
- Enlist your Council. Make sure relevant departments know of any plans you have; they can be of enormous assistance, e.g. in the organisation of the ballot.
- Enlist the civil servants! Despite having to administer a system that clearly had significant flaws, SEERAD officers were unfailingly helpful and even-handed during the whole process, a difficult role given their obligation to deal with both sides fairly. That was our experience.

- Think strategically. Our final point should be our first, but it is made almost as an afterthought, since it is perhaps too much to ask of groups confronting the challenges set out above. Besides, it presupposes a degree of awareness and engagement on the part of local authorities that is probably not in place. But it has the feeling about it of an idea which, once understood, could become the touchstone of good practice.

The suggestion is this: that all potential community land acquisitions be part of a strategy which

- considers the future of a given settlement; its physical presence as well as its social, economic and cultural future and
- the ownership of land within that settlement and
- the roles of all parties – local authority, public agencies, private sector and community interest in the realisation of the strategy.

With this in place, we might begin to realise the true scope and opportunities offered by community land ownership. What it encourages us in the movement to do is to see ourselves as key players in the arena of planning and development for our towns and villages (as we should be).

For local councils and other agencies, it requires a change of attitude, which is comfortable with community asset ownership as a positive tool for achieving social goals. For our part, it requires a move away from the more or less opportunistic pursuit of individual assets towards a more measured attitude to the opportunities and risks involved. But in the long run, it could enhance sustainability of our assets and confidence in dealing with landowners.

If this suggestion has any validity, it needs more than these somewhat throwaway remarks to explore its potential and its pitfalls; I am aware of the vulnerability that exposure by community groups to such unequal forces might involve. But the thought is there; and as evidence of its realism – at least in some situations - we have the masterplan brief now jointly agreed between East Renfrewshire Council and the Neilston Village Regeneration Group, and jointly framed by NDT and council officers, which asks the consultant specifically to include the further community ownership of land/buildings among the outputs of the masterplan.

## **CONCLUSION**

Neilston was lucky but this does not detract from our achievement. We played the game well and worked ferociously to buy the bank.

The Scottish Land Reform Act is an astonishing piece of legislation and it offers real transformation for communities. Its impact has yet to be felt in 'urban' communities, where the issues of land ownership have expressed themselves differently from the Highlands and Islands. If it is to become a force for change in these urban areas, especially in places where there may not be the same skills mix found in more remote communities, then the process needs to become more manageable and supported.

At the same time, we recognise that the allure of asset ownership is such that communities may find themselves embroiled in a CRtB bid when their best interests may lie in less high profile projects. This signals the need for communities themselves, and those charged with supporting them, to take a strategic view of asset ownership, making it part of a wider plan for development. Admittedly this is difficult in the late-application scenario we imagine will characterise many urban registrations, but this only reinforces the need for policy makers to look hard at what they can reasonably expect CRtB, asset ownership and community management to deliver in hard-pressed areas.

Inevitably a piece of legislation as radical as this needs to have checks and balances for the protection of everyone, not least the communities themselves, and the Act in real life no doubt has behaved very differently from the creature conceived in the pages of statute. But the prize is worth us all hanging in there. 'We have won the land', proclaimed the Assynt Crofters at the end of their epoch-making campaign. An old bank may not have quite the symbolic appeal of an island, or highland estate, and the strategic issues will surely be different.

But it may come to the same thing; the sustainable development of the land, and the sustainable development of the community – those values are actually the bedrock of the Right to Buy and they have scarcely been mentioned in all this talk of process and procedure. If that is really what drives all of us, then we are only at the beginning of a story that is being written as we speak, by groups of people who feel a turning tide and are willing to test themselves on it.

Assynt may have won the land; in Neilston, we just bought the bank.