

Seton Fields Case Study

by Abbie Marland

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PREAMBLE

This case study is the first 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 Abbie Marland who was the Chairperson of Seton Fields Community Company when it made its application under the Act in October 2005.

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INTRODUCTION

Seton Fields is located between the villages of Port Seton and Longniddry in East Lothian. The map appended at the end of this case study (and which was to take on some significance) shows the location.

The story really began in 2001 when residents of Longniddry founded a local Biodiversity Group with the support of East Lothian Council, their Biodiversity Officer and Ranger service, and with funding from Forward Scotland. The Group (of which I'm a member) flourished and took on the management of Dean Wood which forms the western boundary of the village.

At that time, the adjacent farmland was leased to a tenant farmer. It had previously been the subject of failed planning applications for a golf course with associated housing. In order to improve the woodland (which was sycamore-based and confined to the banks of a narrow burn) and to help with access, we asked the landowners in December 2001 whether they might consider selling a small strip of the boundary field. However, despite a repeated enquiry about the possibility, we had no reply. Similar requests for ownership or management agreements for a tract to the west were also disregarded. Meanwhile the land changed ownership twice.

In 2004, the fields both sides of Seton Mains suddenly went out of agricultural production and the tenant farmer was removed. This was perplexing to the surrounding communities, but offered huge potential for the amenity, recreation and green space that was so sought after. The long-remembered

paths were walked and reclaimed, and the two urbanised villages of Port Seton & Cockenzie and Longniddry started to regain a real sense of connection. But by the summer of 2005, the fields were still out of commission, were full of rank overgrowth and had become a fire hazard and biker territory. No management plans were publicly available. Longniddry Community Council eventually succeeded in getting the fields cut to avoid further potential for fire-raising.

So in May and June 2005, the Biodiversity Group decided to call open meetings to explore how the local community felt about the issue. Residents came from both east and west, and we floated the idea about trying to register an interest in the land in order to give the community an option to buy if it ever came on the market. This involved the new Land Reform (Scotland) Act 2003 - a hugely complex piece of legislation which had barely been used outside the Highlands and Islands. The meetings were very well attended, representing a wide cross section of both communities. It was swiftly evident that a formal structure would be needed to manage everyone's input – this was new territory to many people who had never taken part in such a venture, and the community was large. So the Seton Fields Steering Group was constituted to take the process forward and I was asked to take on the role of Chair, which I accepted.

Obviously, only a proportionately small number of people had been able to attend meetings, and we needed to consult the wider community. Our first effort was to produce a questionnaire, setting out a range of the ideas which had been chosen. The response was immediate and positive. We found ourselves on the brink of an enterprise which obviously captured the communities' energy and sense of place. Furthermore, and during subsequent meetings, it was emphasised that the two villages wanted to ensure it was a joint effort - quite something for an ancient settlement based on mining and fishing, compared with a younger dormitory which was busy exploring its rootedness. This was the subject of much discussion. At the top of their list for "real" sustainable development were new woodlands and wetlands, open and all-ability access, community-supported agriculture, education and a safe link between the villages. This was proper stewardship and a bid for the future. A key task was therefore to "define" the community by postcode and draw up maps for the area. This was eventually achieved, but with difficulty, as postcodes were not easily mappable. Our area is a mixture of dense urban settlement with dispersed outlying but connected rural land and dwellings.

One of the core tasks in any application to register interest is to gain 10% support from the defined community. A group of volunteers took on the venture, and in a matter of only ten days, over 900 local people had signed up to support the venture, constituting 12.5% of the total population. We contacted the Rural Stewardship Scheme and facilitated direct links with businesses and agencies (such as the John Muir Trust) and voluntary groups. Business advice starting flowing.

The following months saw a vast amount of work. The Seton Fields Community Company (SFCC) was set up and incorporated in October 2005. The SFCC engaged Andy Wightman to undertake landownership searches and to complete the necessary cartography and he prepared maps to an exceptionally high quality and accuracy (see Annex I). We gained support and financial input from Highlands & Islands Enterprise, and were in constant touch with the Land Reform Branch at the Scottish Executive Environment and Rural Affairs Department (SEERAD). Careful checks (including using the Freedom of Information service) with the local authority clarified that there were no planning applications live or pending for the fields in question. We specified – probably with more detail than was sought – how SFCC’s plan would meet the community’s aspirations, and how it met the criteria of public interest and sustainable development.

We finally submitted our application to register interest in October 2005. It was accepted as a competent application for consideration by the Ministers, and appeared on the Register of Community Interests in Land (RCIL). A Prohibition Order was duly raised and served upon the landowner pending a decision. During the subsequent 63 days (the time allowed for the Scottish Ministers' decision), there was a response from the landowner, a counter-response from SFCC and a portfolio produced by East Lothian Council (ELC), SNH and Historic Scotland in support of our application. This was completely new territory for ELC, who consider that community registration of land is of deep significance. I can only praise them most highly. We also received backing (and small grants) from the two Community Councils and the new community cluster group (schools, police and youth justice).

The response made by the landowner’s agents, Turcan Connell, arrived on the last day of the allowable 21 day period. It constituted a ferocious attack upon the application itself on grounds of lack of public interest and sustainable development and questioned the competency of SFCC. Furthermore, it referred to negotiations which had apparently been in process between the landowner and the local authority. However, no actual planning application had been applied for, or could be inferred. The tone of the letter was certainly intended to intimidate those members of a lay community group not used to legal language. However, the actual substance of the objection was weak. We replied to all the solicitor’s points, making a robust response, and returned our documents to SEERAD in conjunction with the supporting portfolio. This exercise increased our own legal costs, since the draft of our response was considered by SFCC’s own solicitor.

The last working day of the 63 day period fell on December 23rd. Seeking guidance as to whether SEERAD would give us a decision before Christmas, or whether they wished to defer until after the holiday period, we phoned twice in the preceding days to check the position. We were informed that a decision would be cleared by Christmas. On the morning of December 23rd, I received a phone call from SEERAD to say that our application would be rejected on technical grounds – a matter of cross referencing a map which was attached to the form (See Annex I). This was astonishing news. The

maps were professional, accurate, contained details (in writing) of the land to be registered, and had not been the subject of any previous query or objection by either SEERAD or by the landowner. After a lengthy conversation with two members of SEERAD staff (Margaret Rankeillor and Richard Frew), I received the clear impression not only that our application was considered to be exceptionally good, but that the difficulty lay rather more in how the application might possibly lend itself to any future legal challenge, rather than any fault in how our paperwork met the current technical criteria for submission. We were also advised that it was SFCC's right to submit a fresh application, and encouraged to so.

Though appalled and upset, SFCC made the tiny change exactly as requested by SEERAD, and I travelled to Edinburgh and hand-delivered the amended documents to a security guard at SEERAD (after prior arrangement with Richard Frew) on Saturday afternoon, Christmas Eve. We had been unable to obtain legal advice. On December 29th, we were notified by phone that the new application had been accepted and a new prohibition order was to be served by courier to the parties involved. This duly arrived. However, the next morning, I received another call from SEERAD to say that they had been in conversation with the landowner's agents and as a direct result had changed their minds about the completeness of our paperwork. Thus, the prohibition order had been cancelled, and SFCC was asked to make new amendments (previously unsought) both to the maps and to the manner in which the list of postcodes were attached to the main form. We were not informed that there was any right to appeal this decision.

Again SFCC was left in an impossible and vulnerable position and again we were not able to secure legal advice at such short notice. Following a telephone conference among the executive members who were available, it was agreed that Lucy Bryden (acting secretary) and I would go back into SEERAD on the afternoon of December 30th to meet officials and try to sort out the emerging chaos. We duly gathered with Colin Gray and Margaret Rankeillor and made a strong verbal protest about both the process and manner by which this was being conducted. Mr Gray produced a new set of mapping references which SEERAD wished included. Lucy and I stated that – given New Year – we intended to re-submit our application immediately. Mr Gray agreed that this was good and sensible. We re-emphasised the importance of swift action. However Mrs Rankeillor declined to undertake any further processing with our completed application. We left SEERAD on the understanding that the latter would be attended to immediately after the public recess.

We received notification – by post – on January 6th, that indeed, a new prohibition order had been raised on January 4th and sent to the landowner and their agents. However, in mid January, SFCC was contacted as a matter of highest urgency by the chairman of Longniddry Community Council, to say that he had just been informed by Longniddry Developments Ltd., that a sale of the land had been concluded over the New Year period.

We contacted SEERAD, who confirmed that they had been similarly informed that missives had been concluded. Inexplicably, the prohibition order had been sent using the ordinary Royal Mail postal system, instead of being delivered by courier and the landowner claimed that they had not received any notification until after the sale. SEERAD stated that they would be enquiring into the situation and exchanged the limited available information by fax. Our frustration and anger was huge.

We also felt disempowered. But by now many other agencies and individuals had discussed our rejected applications and it was clearly the case that some sort of action was needed. No-one – including the solicitor from our local authority – could see good grounds for the rejection and no-one could give definitive guidance about the status of the land sale. We sought advice from numerous places and let SEERAD know we were so doing. They promptly stopped communicating, which was deeply unhelpful.

We realised that – although such a previous course had not been considered or could have been realistic under the pressured circumstances – we could appeal the Scottish Minister's decision to reject our first application. But the time was too short and we did not have the resources. Eventually, we were directed to further legal advice from a QC, who immediately advised us to seek appeal against rejection of the second application whilst the full legal situation was tested, explored and clarified.

The subsequent weeks were, quite frankly, a terrible ordeal for our community group. Court proceedings were started and then suspended when it became clear that no Sheriff's decision could overturn or revoke the sale. Winning any such action would merely be a pyrrhic victory. Litigation was not the reason for our existence. The landowners' agents applied very heavy-handed tactics in their pursuit of the case and eventually tried to put pressure upon the group to lift the third application which was still pending a decision. This was immoral, represented rank interference with the process and was resisted.

The trail of damage was marked not merely by financial cost (limited by no-claims court agreements), but by the effect on SFCC members and on the anger which arose from within the community. We shared some of these feelings with MSPs and Councillors who had been following the course of events, and a large public meeting was held on February 9th 2006 attended by many elected officials and others. A storm of protest and despair turned into a unanimous resolution, carried from the floor, that the affair should be taken to Parliament in the name of social justice. The community condemned the action of the landowner, made shame of those whose duty lay in properly administering the legislation, and vowed to re-submit new applications of interest. Shortly after the meeting, news came through of a grant to SFCC from East Lothian Council in support of our work for the community.

On March 7th 2006, SFCC finally received official notification from SEERAD that the Scottish Ministers had "no option" but to decline our third application under section 37(11) of the Land Reform Act. Although the Community Body's

application had been lodged with officials on December 30th and a prohibition orders raised on January 4th, the latter was not acknowledged as received by the landowner until January 10th. The landowner stated that the missives for sale and settlement of the transaction took place over January 5th and 6th whilst no prohibition under section 40(1) was in force.

It should be noted that the “no option” decision by Ministers relates directly to lack of provision within the legislation for appeal times to elapse. It is SFCC’s opinion that this is completely unacceptable.

There followed in depth contact between our constituency MSP, John Home Robertson, and Rhona Brankin MSP, the Minister with responsibility for Land Reform and in whose name all these decisions have been made. Great regret at the outcome was expressed. We are told that “lessons will be learned” about the experience.

SFCC submitted two fresh applications (one each for each new landowner) on 12 May 2006 and a registered interest was finally confirmed and entered on the RCIL on 3 July 2006.

It may be helpful here to reproduce the text of an email I sent to John Home Robertson MSP after he had met Rhona Brankin and SEERAD officials.

Our community bid was indeed overtaken by a pre-emptive sale, but ONLY because SEERAD created the opportunity. It is unacceptable for the officials involved to claim that the application was "thwarted" by "minor but apparently significant flaws".

- 1. It took 63 days to determine that a mapping reference should be changed. What were SEERAD officials doing during those 3 months - drying their nail varnish? That particular decision was unsound, because it does not form part of the criteria by which a Ministerial rejection may be made. The application had been accepted by SEERAD and placed into the public domain as valid (i.e. competent and complete), had not been subject to objection by either the landowner or the Land Reform Branch on those grounds, and had then travelled the entire process of response and counter-response. It pioneered a scoping exercise with the local authority, linked community with all relevant agencies and interests and was praised by Richard Frew himself for being of "outstanding quality". The cartography was carried out by the person recommended by SEERAD.*
- 2. Furthermore, officials took into account the likelihood of a future legal challenge by the landowner - again a consideration that they are not entitled to under the legislation. If they do take it into account in their discretionary decision making, they must apply it equitably across all applications. An official made it explicitly clear to me on December 23rd that their decision to request an alteration in the mapping was influenced by a current appeal case, but the resulting hesitation on groundless*

anxiety proved fatal to our application. Similarly, another member of staff came under intense pressure from the landowner's agents just before New Year. Perhaps the Executive could get to grips with exactly who is in charge of the legislation - themselves or whoever seems most terrifying?

- 3. The mapping on our first application has been shown to numerous individuals, including two solicitors and a QC. Without exception, their reaction was that the grounds for rejection were absurd and scandalous. I have also had sight of an application by another Community Body, whose identical referencing protocol (but a truly pathetic map) was accepted by SEERAD. The second rejection on grounds of incomplete application was simply wrong.*
- 4. The debacle over serving the prohibition order was, of course, the final straw. But the key issue is that our application was dealt with in an incompetent matter, and an exceptionally fine community bid was ruined. It is highly questionable as to whether such complex legislation should be administered by the officials presently tasked with it. The pressures are enormous, and potential for conflict huge. We had to start appeal proceedings against the Scottish Executive in protest at the second rejection and in order to test whether the sale was irrevocable! Access to justice and financial support for legal advice must be introduced as a matter of urgency, because the power and influence exerted by landowners is completely disproportionate to the resources available to small communities. The land reform legislation needs this balance to be addressed.*
- 5. We deeply appreciate your intervention, but also feel that our voice has not yet been properly heard, and would request that SFCC meet with Rhona Brankin or that at least she is provided with all the facts. A partial version of events is not adequate. We do NOT accept that our application was flawed, NOR will allow any such statement to form part of a formal response from the Minister. That would be hogwash (if not whitewash). The fault lay with inconsistent and uncertain administration of flagship legislation. The community knew how high the stakes were, and did all that was humanly possible to help SEERAD. This affair has had a profoundly negative effect on community body members, and we do not have confidence that the Scottish Executive is currently capable of delivering the legislation properly. Spirit may be desirable, but competent authority is essential. Someone at the highest level now needs to take political responsibility.*
- 6. Our Directors' group captured the aspirations from the community meeting on February 9th, and have been in discussion. There is no simple path to re-application. It is costly, complex, effortful and the likelihood of any re-sale is remote. The action by Longniddry Developments Ltd. to dispose of the fields was taken with full knowledge of the community's wish to register interest, was deliberately aggressive*

and still remains questionably legal, though irrevocable. We shall not be letting the matter rest. The situation is aggravated by the fact that East Lothian is presently subject to blanket option bids by English real estate speculators, which puts land out of reach of the new reform legislation (let alone anything else which could be remotely justified as sustainable development). Seton Fields Community Body will be meeting again very soon, and will decide what to do about re-application. In the meanwhile, you should perhaps know that the local authority still remains stoutly behind us, and has just awarded us a grant. I have no doubt SEERAD officials are upset. It pales into insignificance when compared with what the community has suffered, but we need to find a way of moving forward.

In conclusion, the Community Body considers that our experience has been thoroughly negative, but offers the following list of suggestions

- Better guidance could be offered by the Scottish Executive throughout the process.
- A Community Land Unit for the South of Scotland should be established.
- The 63 days should not include holidays and weekends - perhaps 40 working days.
- More help could be provided on the postcodes/mapping by the SE.
- Consistency of approach by the SE should be paramount.
- Community bodies need access to properly funded legal assistance.
- Land subject to a prohibition order on it should not be able to be sold until after the 21 day appeal timetable.
- The issue of landbanking needs attention in the context of the new land reform legislation.

**SCOTTISH EXECUTIVE**

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Our ref: ZLA 15/1/27

23 December 2005

Dear Ms Clark

NOTICE BY THE SCOTTISH MINISTERS UNDER SECTION 37(17) OF THE LAND REFORM (SCOTLAND) ACT 2003: DECISION ON APPLICATION TO REGISTER AN INTEREST IN LAND AT SETON FIELDS

Case number: CB00027

Notice under section 37(17) of the Land Reform (Scotland) Act 2003 is enclosed. The Scottish Ministers have considered the application by Seton Fields Community Company to register an interest in land at Seton Fields, near Longniddry, East Lothian and have decided that the interest should not be entered in the Register of Community Interest in Land. The enclosed Notice sets out the reasons for the Scottish Ministers' decision.

In accordance with section 37(17) of the Act, a copy of this letter is being sent to the landowner, Longniddry Developments Ltd, and to the Keeper of the Register of Community Interests in Land.

Yours sincerely

Margaret Rankeillor

MRS M H RANKEILLOR
On behalf of Scottish Ministers

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

The Scottish Ministers have considered the application by Seton Fields Community Company to register an interest in land at Seton Fields, near Longniddry, East Lothian and have decided that the interest should not be entered in the Register of Community Interests in Land for the following reason:

Q4 of the application form provides only one OS grid reference number (NT425755) covering the area of land to be registered and the accompanying map indicates, with a '+', the location of that grid reference. While the map also identifies an area of land coloured orange, the application itself makes no reference to the land to be registered being shaded orange on that map. The result of this is that the area subject to the application appears to be an area at the point marked with a '+'. The application therefore does not provide an adequate description of the land to which the application relates. Scottish Ministers therefore have no option but to reject the application.

NOTES

As a result of Scottish Ministers' decision not to enter your community body's application on the Register of Community Interests in Land, the provisional registration will be removed from the Register and the temporary prohibition placed on the land is removed from the date of the covering letter to this notice. However, refusal to register an interest at this stage does not prevent your community body from re-applying to register an interest at any time in the future.

A community body, or an owner of land, may by virtue of section 61(1) or (2) of the Act, appeal by summary application to the sheriff against a decision by Scottish Ministers to register or refuse to register an interest in land.

A person who is a member of the community, as defined in section 34(5) of the Act, or who has an interest in the land giving rise to a right which is legally enforceable by that person may, by virtue of section 61(3) of the Act, appeal by summary application to the sheriff against a decision to register an interest in land.

4 Details of land in which interest is being registered

ANNEX I - EXTRACT FROM APPLICATION

Number of maps/
drawings enclosed

2

County

EAST LoTHIAN

Postcode details

E H 3 2 O P 6

OS grid
reference numbers
covering land to
be registered

N T 4 2 5 7 5 5

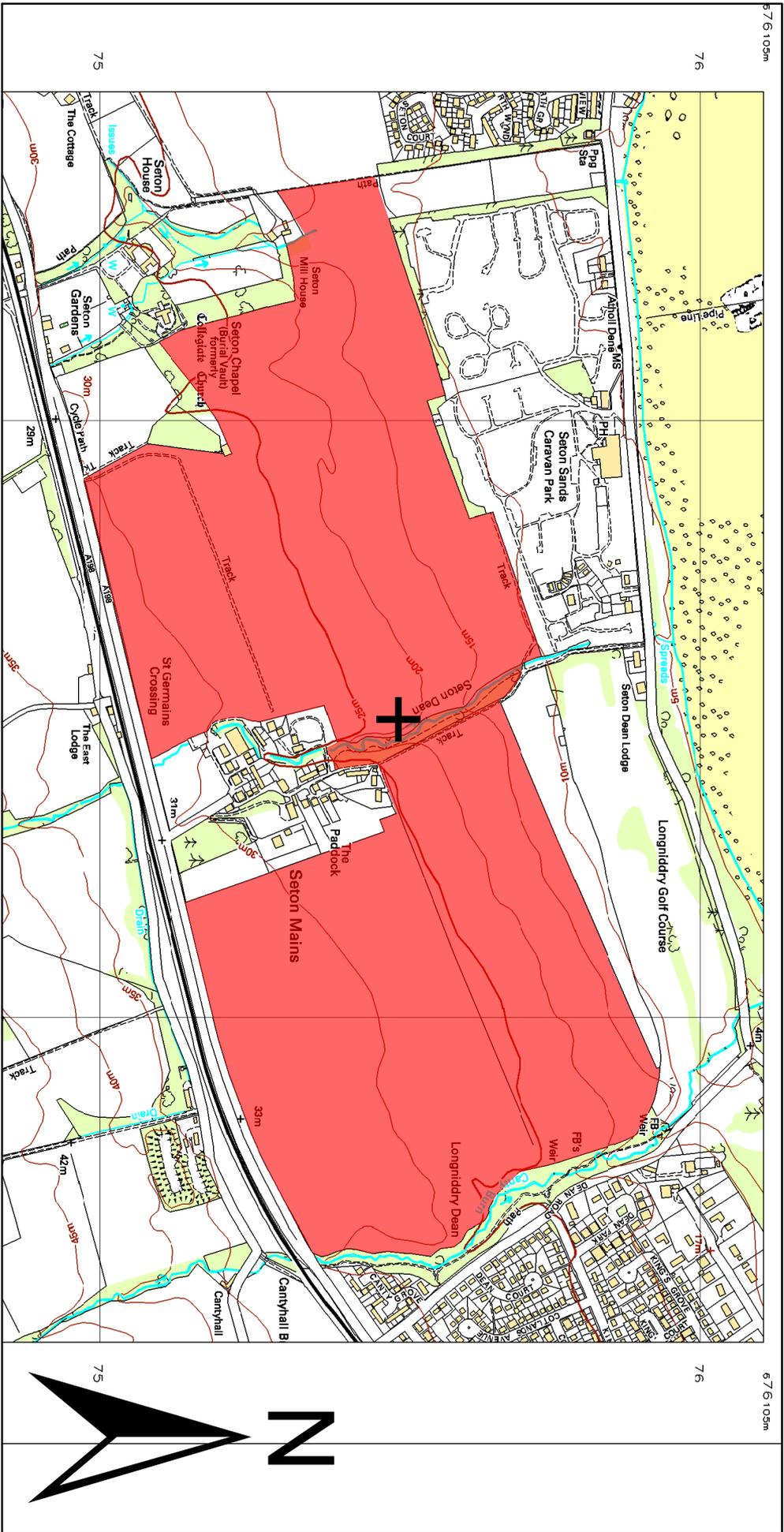
Written description of land in which interest is to be registered (complete on a separate sheet if necessary).

LARGE PROPORTION OF THE AREA HAS, UNTIL RECENTLY, BEEN IN CEREAL PRODUCTION. THE REMAINDER HAS BEEN LEFT AS ROUGH UNCULTIVATED GRAZING, AND HEADLANDS.

A SMALL CENTRAL STRIP (SETON DEAN WOODLAND AND BURN) IS WOODED AND IS CURRENTLY UNDER THE MANAGEMENT OF THE WOODLAND TRUST.

NOTE

Any map or plan supplied must conform to the requirements in the Community Right to Buy (Specification of Maps) (Scotland) Regulations 2004.



Map 1 Seton Fields
Scale 1: 10,000
 + National Grid Reference NT 425755

LEGEND

Seton Fields

This is the map relating to the application by The Seton Fields Community Company to register an interest in Seton Mains Fields under the terms of the Land Reform (Scotland) Act 2003. Prepared 5 October 2005.

This map is taxative and not demonstrative only.

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