

# **Community Empowerment Bill**

## **Witness Paper**

### **Holmehill (Dunblane) Community Buyout Group Written Submission**

#### **The purpose of this written submission**

This submission has been written to set out the experiences of the Holmehill Community Buyout Group in their quest to purchase Holmehill in Dunblane.

#### **Key points:**

##### **Positive**

- **The Land Reform Act was extremely important for the Holmehill group. Without the catalyst of the, then recent, Act it is unlikely that the Group would have been formed at all.**
- **Once the Group was formed, it sought to buy Holmehill, but on failing to achieve that, it has since, so far successfully, engaged with the planning process to protect Holmehill against inappropriate development. This involvement with the community has led to much greater dialogue and involvement in the wider planning processes in Dunblane.**

##### **Points to consider for change**

- **The requirement to pre-register for a right to buy is unrealistic in most circumstances, as the community needs are often generated by unexpected change, such as land being advertised for sale**
- **The requirement in terms of the effort required to renew every five years is unrealistic in most communities.**
- **There does not appear to be a viable appeal process**
- **The use of an “Option to sell” effectively negates the aim of the “Right to Buy” legislation, if the owner wishes to frustrate the registration**
- **If the “Option” is to remain valid there needs to be transparency on the nature of the options (The Scottish Executive only provided a very heavily redacted version, removing the identity of the third party.) and whether it continues to exist. This might be resolved by a requirement to record Options on the Land Register.**
- **Planning enforcement needs to be much stronger to give confidence that the community’s interests are being protected and that developers and land owners cannot just run roughshod over land that is important to the community.**
- **The planning process needs revisiting as it is stacked against the community and in favour of developers, who only need to win once, whilst communities often have to react to serial planning applications.**

## **Background Information**

Holmehill is a 13 acre green space in the centre of Dunblane, which overlooks the 12<sup>th</sup> century Cathedral, and is within the Dunblane Conservation area.

The site currently supports mature policy woodlands, as well as open areas of grass land and scrub. A well-used path (now designated and signed as a Core Path) runs through the site and links the community on the east of Dunblane with the town centre. The trees, and the hill on which they sit, are a prominent and important landscape feature of the town, providing an important sense of place with a number of large mature trees dating from the construction of Holmehill House in 1820. The diverse habitats on the hill support a wide range of bird species as well as other wildlife.

Holmehill has been owned by the Templeton family and then by Mrs Donaldson of the shipping line family, who gave part of the site (not that subject to the buyout) to the children of Dunblane in the 1940s.

Built in the 1820s, Holmehill House was the Donaldson family home (ship-owners and proprietors of The Donaldson Line) before being sold in 1962 to Stakis PLC, the then owners of the Dunblane Hydro Hotel, which is across the Perth Road from Holmehill.

Holmehill House was demolished in 1980 and the whole site was sold to Hilton Hotels in 1999. So for some 30 years the hill remained untouched apart from the building of Holmehill Court (privately owned sheltered housing) and individual houses on the west side of Smithy Loan in the 1990s (a total of 43 dwellings). A Section 75 Agreement was agreed between Stakis Ltd and Stirling Council accepting no further development on the remaining 13 acres, except possibly on the site of the demolished Holmehill House.

Thus Holmehill became established as public open space, a status acknowledged in the 1999 Local Plan. Most Dunblane residents understood it was a preserved green space, and that no further development could take place. It was, and still is, used regularly by local primary and nursery schools, as well as the wider public.

In December 2004 notices were erected on Holmehill advertising it for sale as a potential development site, taking the whole community by surprise. Hilton Hotels sold the Hydro hotel to the Stardon Group in 2005.

## **Getting Started**

A public meeting was held in Scottish Churches House on 3<sup>rd</sup> January 2005 and was attended by over 100 people. It was resolved to seek to register a community interest in Holmehill under the Land Reform (Scotland) Act 2003, with the aim of buying the hill for the benefit of the local community. Holmehill Ltd was formed in February 2005, as required by the legislation. It is a company registered in Scotland No 279947 and also a Scottish charity No SC036988.

## **Application for a Right to Buy Registration**

Our first application was submitted in March 2005. This application was a considerable task. The Group had and still has a number of ideas for proposed use; including local food production, a spiritual dimension, linked to Dunblane's significant ecumenical role as well as providing space for wildlife and quiet open space for all to enjoy. The ideas were developed through community consultation.

The Application was quickly refused, in spite of securing the signatures of more than 10% of the Dunblane electoral roll population on the supporting petition.

## **Rejection Decision**

Our first application was deemed to be a 'late application' because it was submitted after the land was put on the market. In order for a successful registration in these circumstances, applicants have to satisfy three additional tests to those of a timeous application (that is one received before the land is put up for sale). These tests are contained in Section 39 of the Act and are (paraphrased):

(a) that there were good reasons why the applicant did not secure a timeous application

(b) that there exists significantly greater support for the application among the community (compared to a timeous application)

(c) that the application is even more in the public interest (compared to a timeous application).

Scottish Ministers refused Holmehill's application on the grounds that the reasons given in (a) were not good reasons and because they asserted that the applicant was using the Act to 'thwart the planning process' and thus the test at (c) was not satisfied. This was the first rejection of a "late application", although not the first "late application" to be submitted by other buyout groups.

## **Using the Appeal process**

Holmehill appealed the decision to the Sheriff Court on the basis that the reasons at (a) were indeed good ones and that at (c) it was in the public interest since, among many things, the site was already designated as green space in the Stirling Local Plan 1999 and that in any event, a registration under the Act cannot 'thwart the planning process'.

The appeal process involved going to Court, a daunting process at the best of times, and even more so to find we were facing three adversaries: Scottish Ministers, Hilton Hotels and Stirling Council, although the latter took no part in the proceedings.

Sheriff McSherry refused the appeal and awarded costs against Holmehill Ltd. The appeal was refused not because of the merits or otherwise of the decision that Scottish Ministers had taken, but because the Sheriff concluded (based on precedents in other cases) that he should not interfere with the decisions of Scottish Ministers. As the decision was made by officials, in the name of Ministers, this

suggests that there is no realistic appeal process, and thus no way in which decisions can be challenged.

In Court Holmehill members were surprised when it emerged that officers making this decision had not consulted the Stirling Local Plan to determine the planning status of Holmehill.

The award of costs was stressful, and many members of the Buyout Group had to fulfil financial pledges that they had made at the start of the Appeal process. Hilton Hotels waived their £20,000 legal bill, and Scottish Minister recovered only about a quarter of their legal costs, leaving the Buyout Group with a very small sum to ensure that they survived.

### **Second Application for a Right to Buy Registration**

The Scottish Executive encouraged us to reapply after the sale to Allanwater Developments was concluded. This revised application was lodged in March 2007, after a second set of signatures had been collected. This second application had cleared all the procedural hurdles when we were advised that it had to be refused.

### **Option and rejection**

The grounds for refusal were that the new owners, Allanwater Developments Ltd, had taken out an Option Agreement with a third party and, according to the Scottish Executive, 'section S39(5) of the Act applies'.

### **Subsequent Applications for a "Right to buy Registration"**

The group took a decision not to attempt any further applications, because:

- a) It is not possible to find out if the "option" still exists, or if there is another Option in place
- b) Even if there was no Option in place Allanwater Developments could quickly create another one.

This ended our practical interest in the Land Reform legislation and we sought to protect Holmehill in other ways.

Both of our applications and the associated correspondence and decision letters can be viewed on the Scottish Executives RCIL website.

### **Subsequent Campaign History**

Allanwater Developments have lodged two separate Planning Applications for different parts of Holmehill. The Buyout Group was active in opposing both applications, which were contrary to the Stirling Local Plan 1999.

The first application (11/00788/FUL) was withdrawn, whilst the second (12/00788/FUL) was refused. Both were the subject of a significant number of local objections.

Immediately after the refusal of the second application Ian and David Stirling, (respectively former and current Managing Directors of Allanwater Developments) cut down all the naturally regenerating trees on the top of Holmehill in a single day at the end of June 2013. This was without any prior notification and contrary to the Conservation Order, which is understood to treat all trees in the Conservation area as if they are protected by a Tree Preservation Order. These trees were also one of the reasons why the planning application 12/00788/FUL was refused.

Community action by Holmehill members and supporters has forced the Council into some actions, including the belated introduction of a Tree Preservation Order for the whole of Holmehill. A Tree Replanting Order, which has been significantly watered down from the original tree replanting plan agreed with Allanwater Developments in response to their illegal actions, has been enforced, and planting was finally completed in early November 2014.

Temporary Heras fencing has been in place for over a year, restricting public access. A lot of site clearance has taken place, which looks suspiciously like the preparation for construction activity, and may have damaged any archaeology that exists on this site above the Cathedral.

The Holmehill Group are bracing themselves for another planning application, possibly for one or two large houses on the top of Holmehill.

Dunblane Community Council and some Dunblane councillors have been supportive of our efforts.

### **Local Planning Processes**

In parallel to these planning applications the Holmehill Group has actively engaged in the Stirling Local Planning process. We have succeeded in maintaining the “public open space” designation for the whole of Holmehill in the face of Allanwater Development’s pressure to secure a designation for housing. The Government Reporter’s decision strengthens the designation as it weighed up the merits of housing against open space and came down in favour of the open space.

The Group were unsuccessful in preventing the designation in the Local Plan of a small corner plot adjacent to Holmehill, which was gifted by Mrs Donaldson to the children of Dunblane in the 1940s, and where there was once a Scout hut, as suitable for social housing.

However the Holmehill Group are now actively participating in a design programme for a small group of houses for elderly or disabled Dunblane residents to be built on this site. They are to be built by Forth Housing Association using charitable funds which are required to aid the elderly and disadvantaged of Dunblane.

### **The future**

The Holmehill Group is celebrating its tenth anniversary on 3 January 2015. It will continue to pursue options that could secure community ownership of this important green space in the heart of Dunblane.