

Agriculture, Food and Rural Communities Directorate
Food, Drink and Rural Communities

T: 0300-244 9754 F: 0300-244 9990
E: Heather.Holmes@scotland.gsi.gov.uk



Mr C Whittle
121 High Street
Forres
IV36 1AB



Your ref/Ur faidhle:
Our ref /Ar faidhle: CB00146
27 September 2012

Dear Mr Whittle

NOTICE BY THE SCOTTISH MINISTERS UNDER SECTION 37(17) OF THE LAND REFORM (SCOTLAND) ACT 2003: DECISION ON THE APPLICATION BY MOSSET PARK PROTECTION COMPANY LIMITED TO REGISTER AN INTEREST IN LAND KNOWN AS THE MOSSET PARK FOOTBALL GROUND, LEA ROAD, FORRES, MORAY IV36 1AU

Case Number: CB00146

Notice under section 37(17) of the Land Reform (Scotland) Act 2003 ("the Act" is enclosed.

The Scottish Ministers have considered the application by Mosset Park Protection Company, to register an interest in land known as the Mosset Park Football Ground, Lea Road, Forres, Moray IV36 1AU. Scottish Ministers have decided that the interest should be entered in the Register of Community Interests in Land.

The enclosed Notice sets out the reasons for the Scottish Ministers' decision. Your attention is drawn to the notes contained in the Notice which provide information about the effect of registration and on rights of appeal against the decision by Scottish Ministers.

B1 Spur, Saughton House, Broomhouse Drive, Edinburgh
EH11 3XD
www.scotland.gov.uk



In accordance with section 37(17) of the Act, a copy of this letter is being to the landowners, Moray Council, High Street, Elgin IV30 1BX and to the Keeper of the Register of Community Interests in Land.

Yours sincerely

Heather Holmes
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 Mosset Park Protection Company Limited to register a community interest in land known as the Mosset Park Football Ground, Lea Road, Forres, Moray IV36 1AU, in terms of Part 2 of the Land Reform (Scotland) Act 2003 (“the Act”). They have decided that the interest should be entered in the Register of Community Interests in Land for the following reasons:

- MPPCL is a community company limited by guarantee and its Memorandum & Articles of Association meet the requirements of section 34(1)(a) to (h) of the Act. It is therefore a “community body” in terms of section 34 of the Act.
- Section 34(4) of the Act requires Ministers to be satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development. Ministers are satisfied that such provision is made in Article 4 of the company’s Memorandum & Articles of Association.
- The land is registrable land and not “excluded land” within the meaning of section 33(2) of the Act. This meets the requirements of section 38(1)(a) of the Act.
- As the land is wholly located within the defined community, it is our view that the criterion in section 38(1)(b)(i) of the Act (that a significant number of members of the community defined under section 34(1)(a) of the Act have a substantial connection with the land has been met. The criterion in section 38(1)(b)(ii) of the Act (that the land is sufficiently near to land with which those members of the community have a substantial connection) does not apply in this case.
- The Scottish Ministers are satisfied that the provisions of section 38(1)(c) of the Act do not apply in relation to this application as no salmon fishings or mineral rights are involved.
- Sections 38(1)(d) and 38(2) of the Act set out the level of support required for registration. MPPCL indicates that 1,125 signatories, representing 14% of the 7,834 members’ resident and entitled to vote at a local government election, support the application. After scrutinising the petition list against the Edited Electoral Register, Ministers were able to identify 701 out of 1,125 signatories, which equates to 8.9% of the eligible voters in the community area. Ministers then carried out a spot check with the local Electoral Registration Office (ERO) of 20 names (out of the 424 names not found). The names were selected at random and checked against the Full Electoral Register. A total of 15 of these names were found to be eligible. Grossing up this figure of 15 out of 20 (15/20 multiplied by 424), indicates that 318 out of the 424 signatories of those not found may have been found to support the CB’s aims. If the 318 signatories are added to the figure of 701 initially found, Ministers arrive at

a figure of 1,019, which equates to 13% community support. Ministers are satisfied that the level of support meets the requirements of sections 38(1)(d) and 38(2) of the Act, i.e. the requirement of a minimum of 10% support has been met.

- Section 38(1)(e) of the Act makes provision that registration should be in the public interest. This is addressed in MPPCL's responses in Q.14 to Q.18 in Part B of the application form. MPPCL believes that the public interest criterion is met because:
 - MPPCL notes that the land has been used as a football pitch for Forres Mechanics Football Club since 1897, making it a site of historical and social importance to the community. Forres mechanics F. C. has existed and participated in the Highland League for more than 100 years and has become an important feature of the town playing a major role in its image. Currently Forres Mechanics are the Highland League title holders and this success on the pitch has been reflected in a 20% increase in attendances at matches to a regular attendance of 300 to 500 spectators (making the Mosset Park a vibrant centre of the community). The quality of provision, both in a playing context and also in comfort of surroundings, has led to the approximate 20% increase in attendance. The main use of the Mosset Park is for Forres Mechanics F. C. Senior Team fixtures but the Youth Development Under 13s, 15s and 17s teams play occasional matches there, as do the Forres Academy teams. Apart from matches, the pitch is used twice weekly by the Senior team for training, which the Youth Development Under 17s squad are invited to participate in. The Mosset Park has also been used for occasional musical events, which would be encouraged by the MPPCL.
 - MPPCL will encourage the use of the gravel area surrounding the Stand as a location for market fairs and fundraiser events and local groups during and outwith the football season.
 - MPPCL will continue with the existing activities and achieve sustainable development by improving the existing site with development on a limited scale determined by its use as a football pitch.
 - MPPCL's ownership of the ground, with the purpose of maintaining it as a football pitch, would allow MPPCL to upgrade facilities (such as increased safety and comfort of both players and spectators, such as a "new build" Casualty Room for use by both, additional shower and toilet facilities for both Home and Away team dressing rooms) in order to meet Scottish Football Association rules. Failure to meet these rules would result in forfeiture of SFA Membership and seriously threaten the future of Forres Mechanics playing in Senior football.
 - MPPCL proposes that members of the public using the Mosset Park outwith the football season would be able to use the new and improved facilities.
 - MPPCL suggests that the land would generate income through match day admission charges, raffles, sale of food (franchises) and beverages and the match day programme. The payment received from

advertising, by sponsors utilising the pitch side walls and specially constructed frames on raised areas, is and will be a highly important source of income. The proximity of the Mosset Park to the by-pass and railway line is a major factor in the economic viability of the Mosset Park and Forres Mechanics F. C. which underlines the importance of the current location. Any income generated would be reinvested into the ground with any surplus being given to the Forres Common Good Fund.

- MPPCL's intention is to improve the Mosset Park further and secure its position in the future of the town. MPPCL seeks to represent the community and present it in as favourable an image as possible, in the context of senior football, to an extent consistent with the size of the local population.
- MPPCL notes that the continuing investment and development in the Mosset Park is linked to having security of tenure, which would be secured by ownership being with MPPCL.
- MPPCL suggests that the development proposals would ensure that the land would be used for the existing and future planned purposes with an enhanced environmental visual impact. The community would also benefit from the sense of cohesion brought about by community ownership of the venue.
- MPPCL suggests that the loss of Forres Mechanics's presence would be incredible detrimental to Forres socially as not only would it mean the loss of the match day events but also the community would lose the sense of identity Forres Mechanics F. C. helps to create. The community has a sense of ownership of the Club that greatly strengthens the sense of identity in the town, which would not be replaced if Forres Mechanics F. C. were to lose its place in Senior Football.
- MPPCL suggests that Forres Mechanics F. C.'s presence in the town centre encourages visitors and spectators to the town on a regular basis, enhancing the economic viability of businesses on the High Street and the surrounding area. The Mosset Park also provides an advertising platform for local businesses and contributes to the local businesses viability. Feedback from advertisers indicates satisfaction with the Mosset Park as a platform for projecting local businesses and groups. This would not be replicated in another area outside of the town centre and is under threat from the continuing possibility of Moray Council selling the land for retail development.
- MPPCL suggests that the loss of the Mosset Park as the Forres Mechanics FC.'s pitch would have a negative effect on many businesses. Local shops, taxis and pubs are busier on match days and there is a sense of increased vitality. Also, the loss of prime advertising space, which is visible from the A96 and by rail, would be highly detrimental to local businesses as no other area offers the same level of exposure to people passing the community. The Club itself provides employment in the form of turnstile operators, produce retailers, grounds men, stewards and cleaners, laundry-workers, sign writers and decorators. From time to time all of the local traders are required for care and maintenance and development projects.

- MPPCL notes that the present location of the ground is a reminder to everyone passing the town, by road and rail, of the relationship between football club and town.
- MPPCL notes that the land has defined boundaries and is of a proportionate size to the area in which it is located.
- MPPCL considers that the development of the land would not seek to over-develop, but to improve the existing site in a way proportionate to the size of the plot and the characteristics of its surroundings.
- On the impact on neighbouring communities and the wider community, MPPCL notes that the economic and social impact would be the continued attraction of large crowds of community members and visitors to the areas surrounding the Mosset Park. This would continue to enhance the economic viability of businesses on the High Street and surrounding area, and bring a vibrant social atmosphere to the town centre.
- MPPCL states that hotels and recreational facilities such as golf courses, bowling green and tennis courts report that visitors have considered the Moray Firth area for holidays as a result of having heard of Forres Mechanics. MPPCL's proposed increased use of Mosset Park for musical events, markets and other local groups' events would increase tourist expenditure in the area and increase the trade of local businesses, hotels and bars. We would play a part in promoting the area as a whole and would look to advertise Forres and Moray as a whole, as a holiday destination to visiting supporters and passing trade.
- MPPCL observes that Forres Mechanics F. C. has a considerable travelling support who bring business to neighbouring communities on "away days". However, the sense of identity with the town is essential and it would be destructive to even consider moving away from the town centre location. The current location is a constant reminder of the existence of Forres Mechanics F. C. and presenting the club attractively in every sense reflects not only on the football club but on the town as a whole. Any other location would diminish the Club and the community's image.
- On public interest, MPPCL suggest that the land is a site of historic and social importance to the community.
- MPPCL states that the main use of the Mosset Park is for Forres Mechanics F. C. Senior team fixtures but the Youth Development Under 13s, 15s and 17s play occasional matches there, as do the Forres Academy teams. Apart from matches, the pitch is used twice weekly by the Senior team for training, which the Youth Development Under 17s squad are invited to participate in. Currently there is no other area in Forres that would be suitable for this use.
- MPPCL notes that the public clearly expressed their opinion that the Mosset Park be retained as the pitch of Forres Mechanics F. C. when consulted independently by Moray Council in 2009. The majority view of the public was to retain the Mosset Park as the football pitch of Forres Mechanics F. C. rather than allow it to be sold for retail development. Forres Mechanics is considered to be an integral part of

the town and contributes to the feeling of worth that the community enjoys.

- MPPCL considers that there is a continued threat that Moray Council will seek to sell the land for retail development. As the land is part of the Forres Common Good it would be in the public interest for it to be kept in the community by way of the Community Right to Buy process.
- MPPCL considers that granting of the application would ensure the continuation of its existing community functions and allow for the required improvements to be made to the development. Also, it would be a step towards increased local community responsibility for managing its own welfare and community assets.
- MPPCL wish to see the football club to be part of a vibrant future for the town. Sport has something to offer to all age groups, we wish people to identify with Forres Mechanics whether playing or spectating and even those not interested in football per se to have the feeling that we are projecting a vibrant image of Forres not just for the immediate area but also to the rest of the country.
- MPPCL's aim is to be part of the pathway for youngsters to enjoy sport in a structured, enjoyable way and to identify with a group who wish to sustain and develop their home area and make them feel proud to be part of it, projecting a wholesome and constructive image benefits all aspects of society.

In considering the issue of public interest at section 38(1)(e) of the Act, it is for the community body to satisfy the Scottish Ministers that it is in the public interest to register the application. There are reasonable grounds for Ministers to refuse an application if they are not satisfied on the balance of public interest considerations.

On 27 July 2012 the landowner, Moray Council as Trustees of the Forres Common Good Land (by recorded delivery), was invited to provide comments on the application by 17 August 2012. Views from Legal and Democratic Services, The Moray Council, Council Offices, High Street, Elgin IV30 1BX, dated 10 August, were received on 15 August. On 15 August 2012, the landowners' views were copied to MPPCL for comment by 5 September 2012. Views were received from R & R Urquhart LLP, Solicitors and Estate Agents, 117-121 High Street, Forres IV36 1AB, agents for MPPCL, on 4 September 2012, on the comments from Moray Council.

From the information provided, it is our view that:

- If a landowner wishes to develop their land for purposes which are subject to the planning process, these are matters for the planning authority to determine and not for the community right to buy process. A registered interest in land does not affect the way a landowner develops their land, subject to the planning and any other process.
- The planning and right to buy processes are entirely separate and are in no way related. The existence of an application to register a community interest in land will not affect Ministers' consideration of any

planning matter which may subsequently come before them for determination in terms of relevant planning legislation.

- While the MPPCL and the Moray Council both provide extensive evidence of an independent consultation, commissioned in early 2011, with the people of Forres on the land at Mosset Park, and helpfully, highlights the community's view on the future use of the land, the consultation process is a separate processes from the community right to buy and does not influence whether Scottish Ministers should approve or reject this application to register a community interest in land.
- On the wall and ground, this is a matter between the landowner and the tenant.

The Act provides opportunities for rural communities to take control of and develop land with which the local community has a connection. Ministers believe that, if successfully delivered, MPPCL's proposals should contribute positively to the sustainable development of the land and the local community of Forres through the provision of sport and recreation facilities and promote the general and economic well-being of the community. Approving this application could provide an opportunity for MPPCL to address the aspirations of the local community thereby delivering the intentions of the legislation. Consequently, Ministers are satisfied that this application meets the public interest criterion in section 38(1)(e) of the Act. Consequently, Ministers are satisfied that this application meets the public interest criterion in section 38(1)(e) of the Act.

As the Scottish Ministers are satisfied in all the circumstances that the requirements of section 38(1) of the Act are met, they have decided that the community interest in the land should be entered into the Register of Community Interests in Land.

NOTES

Where a community interest in land is registered or where that interest has been re-registered, the owner of the land and any creditor in a standard security having right to sell the land, is prohibited from transferring the land, or any part of it, or from taking any action with a view to transferring it. The exemptions to these prohibitions are contained in section 40(4) of the Act.

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/re-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/re-register an interest in land.

Where the owner of the land, in respect of which a community interest is registered, proposes to transfer that land, the owner shall notify the community body and Scottish Ministers in the prescribed form, under section 48(1) and regulation 5 of the Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009.