

Exploring Barriers to Community Land-Based Activities



PEOPLE, COMMUNITIES AND PLACES

Exploring barriers to community land-based activities

Report for the Scottish Government

Deborah Roberts and Annie McKee

Social, Economic and Geographical Sciences Group

The James Hutton Institute, Craigiebuckler, Aberdeen

Contact: deb.roberts@hutton.ac.uk

Funding: R101917 – PAWSA Support

This work was funded by the Scottish Government. However, the views expressed in this report are those of the researchers and do not necessarily represent those of the Scottish Government or Scottish Ministers.

28 August 2015

Contents

Executive Summary	3
1 Introduction	6
2 Research Approach	7
3 Insights from previous studies	9
4 A classification of land ownership barriers.....	13
A Ownership unknown or unclear.....	16
B Ownership rights divided	16
C Assembly of different ownership or user rights required.....	17
D Unacceptable terms	18
E Unwilling owner.....	19
F Structural barriers facing communities	19
G Community constraints and decisions	20
5 Other issues arising from the analysis	22
5.1 Differences in barriers by community activities.....	22
5.2 Rural urban differences	22
5.3 The influence of land owner types	23
5.4 Resolution mechanisms	25
References	26
Appendix A: Key informant interviewees	27

Executive Summary

This report presents the findings of a Scottish Government-funded project looking at the land ownership barriers to community land-based activities.

There are numerous different community activities which require access to land and each community will have its own particular priorities. Each type of activity will, in turn, require different property rights. While the land reform debate has to date been dominated by the advantages and disadvantages of (outright) community land ownership, this report considers barriers associated with the distribution of all types of property rights and responsibilities between land owners and communities.

Aim of project

To develop a classification scheme of barriers to community land-based activities and to use this scheme to examine the nature and significance of each type of barrier for different:

- types of community activities (e.g. affordable housing schemes, cycle paths, renewable energy schemes, community gardens),
- types of land owners (public versus private; passive versus active), and
- geographical contexts (e.g. urban versus rural areas).

Where possible, the report also highlights the types of strategies that have been used to resolve conflicts between land owners and communities when they arise.

Research approach

Research was conducted in two stages. The first stage was a desk-based literature review including a review of the range of community land based activities that are typically proposed by community groups. Based on this, a draft classification scheme of ownership barriers to community activities was developed.

Stage 2 tested the robustness of the classification scheme and, where appropriate, amended its categories based on interviews with key informants from a range of organisations associated with community land activities. The interviews provided a large number of case studies from which the nature and significance of different types of barriers in specific contexts could be assessed.

The classification scheme

The classification scheme splits land ownership barriers to community activities into four sets relating to: the nature of the land market; the strategies and decisions of land owners; (external) constraints on communities; and finally (internal) community characteristics and decision making. Some are

thus barriers to the supply of land (from land owners) others are barriers on the demand for land (by communities). An alternative perspective is that some barriers are structural in nature, others behavioural. Table 2 in section 4 of the report provides a summary of the classification scheme.

The research confirmed the existence and importance of all four types of barriers. Often more than one barrier was found to constrain community activities from being developed. As a result, it often takes considerable time for a community to secure the required land rights. This in itself represents a barrier in so far as it increases the probability of the development failing at some point in the development process through either a loss of community momentum or the increased likelihood of an alternative use or user being found in the interim period.

Differences between community activities

Some barriers were found to be particularly significant for certain community land based activities. For example, multiple ownership is a particular problem for footpaths or cycle paths in rural areas while gaining sufficient community funding was found to be a particular problem for community housing developments. A reoccurring issue in the case studies related to planning. In particular, while not a direct barrier, extant planning permission can significantly increase the value of a property to the landlord and can place it out of the reach of funding available to the community regardless of the intended activity.

Differences between rural and urban areas

Within as well as across urban and rural areas, the significance of barriers varies as a result of patterns of land use and land tenure, culture and the attitudes of key stakeholders. Having said this, there were a number of specific barriers that were considered to be more of a problem in urban areas than rural areas regardless of type of proposed activity. These included barriers associated with land owner identification, divided ownership rights (securities and real burdens), multiple ownership, constraints associated with planning and higher community liabilities (associated with higher use and potential vandalism etc.). It was also suggested that reaching acceptable terms may be more problematic in an urban context as a result of higher land values, greater competition for land use and a narrower range of alternative sites on which communities can site their activities than in rural areas. Finally it was suggested that urban communities may be more likely to suffer from a lack of capacity although this was noted as a potential issue for some rural areas as well.

Differences between types of land owners

Apart from differences between public and private landowners associated with the regulatory and funding framework, there was limited evidence that certain barriers were associated with certain land owner types.

There was some suggestion that, compared to public sector or charities, private landowners can be easier to deal with as they have a tendency for more direct decision making. However, the key informants also highlighted that negotiations with private landowners can be unpredictable and with a higher level of risk, due to potential disagreement, trust and partnership issues. The role of advisors to private landowners was also noted as significant.

Scale of landownership was also identified by some interviewees as a factor which influences the likelihood of landowners agreeing to sell or lease land to community groups however the pattern was unclear and no overall trend was identified. For example, some argued that individual private owners of small landholdings are more cautious in engaging with community land-based activities. A key issue is that whilst in many cases there may be a possibility of finding alternative land for the community activity, a lack of engagement by a single large scale land owner in a locality can lead to disproportionate impacts.

There were clearer messages in relation to differences in the barriers associated with public and private landowners. The former tended to be viewed as more risk averse yet supportive of community initiatives and also progressive in terms of developing lease agreements.

Resolution mechanisms

The existence of barriers to community land-based activities is a potential justification for government intervention. Each category of barrier identified in the classification scheme arises from a different source and thus may require a different resolution mechanism.

Many of the structural barriers facing communities could in theory be overcome by changes in existing funding regulations and/or improvements in advisory services. Similarly, changes in planning regulations could potentially help to overcome any unintentional impacts of planning on land values or behaviour. Elements of the Community Empowerment (Scotland) Act 2015 were expected by interviewees to be helpful in addressing several of the issues identified in relation to community capacity-related barriers, especially in urban areas.

More generally, the case studies highlighted several different resolution strategies which had been used to overcome land ownership barriers to community activities. On some occasions this involved helping communities find alternative locations for their activities. In other cases external mediation and consultation processes had been effective in overcoming problems between particular landowners and communities, allowing activities to proceed. The classification scheme described in this report provides a basis for better understanding some of the barriers that can occur in developing community land-based activities and thus effective ways of resolving issues should they arise.

1 Introduction

This report presents the findings of a Scottish Government-funded project looking at the barriers to community land-based activities.

The Land Reform Review Group (2014) noted that in some instances the scale or pattern of land ownership, and the decisions of landowners, can inhibit community land-based activities. There are many different types of community activities that require rights to land. Such activities range from housing developments to community gardens, renewable energy installations to local paths. While there is anecdotal evidence of situations where communities have failed to secure property rights from existing landowners, the nature and extent of the problem remains unclear and difficult to measure. On the one hand, the evidence that is available may be biased towards negative cases (where there has been a problem) with positive cases (where community activities have gone ahead) under-reported. On the other, the presumption of landowner barriers may mean that communities do not propose (or even consider) certain land-based activities suggesting observable evidence may underestimate the scale of issue.

Against this background, the **aim of the project** was:

To develop and test a classification scheme which distinguishes between different types of land ownership barriers to community land-based activities, and to better understand the nature and significance of these barriers through case study analysis.

The report considers how the barriers to community land-based activities relate to different types of land owners and/or types of land-based activities. It also explores whether there are differences in the significance of barriers across rural and urban areas and, where possible highlights potential resolution strategies.

While the land reform debate has, to date, been dominated by the advantages and disadvantages of (outright) community land ownership, communities may require or be looking for lesser property interests to allow their land-based activities to proceed. Thus the report considers barriers associated with the distribution of all types of property rights and responsibilities between land owners and communities, and is not just confined to the case of outright community land ownership.

The project was conducted by staff based in the Social, Economic and Geographical Sciences group at the James Hutton Institute and builds on initial work done by one of the authors (Roberts) while she was on secondment to Scottish Government in February 2015.

2 Research Approach

Research was conducted in two stages. Stage 1 focussed on the development of a draft framework for categorising different types of land ownership barriers to community activities. It also reviewed existing classifications of types of landowners.

Stage 2 involved testing the robustness of the framework and where appropriate, amending and supplementing the categories of barriers through interviews with key informants. In particular, data collected from the key informants was used to identify the significance of different type of barriers by type of community activity, type of land owner, and geographical (rural–urban) area. The interviews provided a number of case studies which could be used to understand better the nature and relative significance of the problem in different contexts.

The research methods used in each stage were as follows:

Stage1:

This stage was based on a review of previous literature. Much of the literature was related to either rural or urban areas, or particular types of developments (e.g. brownfield sites or renewable developments). Thus, to make sure that all relevant aspects for the project were covered, a review of typical land-based activities proposed by communities was also undertaken, focussing on their particular requirements for land rights and responsibilities. Section 3 summarises the main findings from this stage of the project.

Output from stage 1 took the form of a draft framework of ownership barriers to community land-based activities which drew heavily on the framework proposed by Adams et al. (2001). In particular it distinguished between barriers associated with the nature of the land market and those associated with land owner behaviour. However the framework was extended to also incorporate aspects specific to community -led developments and rural as well as urban contexts.

Stage 2:

The second stage of the research was based on 20 semi-structured interviews with key informants involved in community land based activities. The key informants were selected on the following criteria:

- Type of organisation
 - providers of support to community groups;
 - project funders
 - community representative bodies
- Geographical coverage
 - urban;

- rural;
 - both urban and rural
- Expertise in particular types of community activities

The final list of informants is given in Appendix A.

In advance of the interview, a summary of the framework developed in stage 1 of the project was sent to interviewees. During the interview, the interviewees were asked to suggest specific case studies where community land based activities had been constrained by one or more barriers to the acquisition of land property rights and to reflect on the extent to which they recognised the different categories of barriers provided in the draft framework. The interviewees were asked their views on the frequency with which different land ownership barriers occur and inter-relationships between the underlying barriers. Additional questions focussed on the mechanisms and approaches adopted by different actors to overcome the barriers including, for example, actions such as mediation and consultation processes, partnership working, shared equity schemes/shareholding and community buy-out. The interviews were conducted over the phone and typically lasted for between 50 and 150 minutes. A number of interviewees sent the research team further thoughts and case study examples following the interview. As a result an extremely rich qualitative dataset, consisting of 75 case studies, was gathered within a short timescale.

It is recognised that the case studies identified by the informants disproportionately relate to areas where communities have been most active in proposing land based activities (it is possible that different types of barriers may exist in other areas of Scotland). They also exclude situations where the barriers are such that community activities are not proposed. However, while both these issues are acknowledged, this does not diminish the usefulness of the findings. Given the sensitivity of the topic area, details of individual case studies are not included in this report. Instead the results are presented in a form which preserves anonymity while highlighting the nature of the barriers identified.

A thematic analysis of the compiled data was conducted, focussing on the significance of different types of land ownership barriers, rural/urban variation, types of community activities affected, and the mechanisms in place/currently missing for barrier resolution. In large part, the classification scheme was found to be robust however some additional market-based and community-related barriers were identified and a number of changes were made to the terminology to make it more applicable to Scottish Law.

The results of this stage of the research are presented in section 4 in the form of a table summarising the various categories of land ownership barriers and a detailed description of each barrier. Section 4 also describes overarching findings from the interviews.

3 Insights from previous studies

Differentiating between structural and behavioural barriers

Whether or not a community can use a particular piece of land for a particular purpose depends on decisions made by those who hold the rights to that land. These decisions, in turn, are made within the context of the land tenure system, that is, the set of rules and regulations which define how land is held, used, and transferred including associated responsibilities and restraints. Given this, several authors suggest that, when trying to understand the nature of barriers to community activities, it is useful to distinguish between those which relate to 1) the system of tenure (structural issues) and 2) the motivations of those who hold land (MacGregor, 1993; Adams et al., 2001).

In particular, Adams et al. (2001) in their analysis of the re-development of brownfield sites categorise land ownership constraints into those which relate to 1) deficiencies in the extent of ownership rights in the potential development land, and 2) the strategies, interests and actions of those who hold such rights. The former includes, for example, cases where the power of the owner to sell land with immediate vacant possession is restricted by one or more lesser rights on the same piece of land. The latter reflects the various factors which influence land owner behaviour which, as many previous authors have stressed, extend beyond the economic rational typically assumed to explain land use patterns at an aggregate (national) level.

What property rights do communities need?

Table 1 illustrates the type of activities frequently included in Community Action Plans. Each community will have its own particular priorities as reflected in the types of activities proposed and each type of activity will require different areas and combinations of land and buildings and, critically, different levels of property interests. In some cases, for example a community music festival, the requirement may be to use land in agricultural use for a short period. Apart from negotiating liabilities and responsibilities with the landowner for the duration of the event, no further transfer of ownership rights is required or demanded. In other cases the community may wish to become the outright owners of the land and associated property either because this is a requirement of external project funding, because of broader community ambitions, or because of the permanent nature of the proposed development (for example community affordable housing developments).

Some land based activities such as footpaths or cycle paths in rural areas are likely to require assembling property rights from more than one land owner. This places additional demands on communities as it requires agreement from all owners. Adam et al.s' analysis of constraints to commercial brownfield

developments suggests this may also be a major problem for urban community proposals. However it is equally possible that in some rural areas, a single large-scale land owner may have influence across more than one type of proposed community activity in which case his/her behaviour is of critical importance. Related to this, a key issue in determining the significance of land ownership barriers is the extent to which a development is restricted to a particular site or whether the community has a degree of choice in terms of where it is located or on whose land it falls.

Table 1: Examples of community land-based activities

Infrastructure

- Village halls and community centres
- Community shops
- Affordable housing
- Renewable energy installations
- Business centres
- Harbour improvements and developments
- Car parks
- Petrol stations

Access

- Local paths
- Cycle paths

Enhancing the village environment

- Community parks and play areas
- Community gardens and allotments
- Community recycling
- Sports pitches and facilities
- Community woodland

Heritage

- Hosting music/ arts/drama festivals
 - Historical buildings
-

Active versus passive landowners

Focussing specifically on landowner behaviour and its impact on land development, Adams (1994) argues that it is useful to distinguish between active and passive landowners. Active landowners are those who develop their own land, may enter into joint ventures or make land available to others to develop. In contrast, passive landowners refuse offers from potential developers and retain land without development even though they may plan to do so in the distant future.

Some authors have argued that, in the long run, passive ownership behaviour is less important and will be addressed by increases in land prices (Ball et al., 1998). However, not all passive land owners are susceptible to monetary compensation and there are clearly costs associated with short run

disequilibrium in markets illustrated, for example, by the presence of derelict land. Thus, in relation to community land-based activities, both types of land owner behaviour are relevant and should be included in the framework. The active versus passive distinction is applicable in relation to the transfer of lesser land rights required for a community-land based activity to proceed.

Alternative classifications of land owners

There has been limited recent academic research attempting to categorise landowner behaviour. Massey and Catalano (1978) differentiated between three types of private landowners on the grounds that they may respond to similar market signals in different ways. The first category, “former landed property” owners consists of the church, the crown and landed gentry. Here land is retained not for investment or income purposes but largely for social reasons (either private or societal) such as to protect its amenity value, preserve a historical connection or to make it available to others to use. Depending on the context it may also be a means of minimising tax liabilities.

The second category, “industrial landowners” includes those who need land as a factor of production. In an urban context, it includes manufacturing firms or service providers that need space to produce their goods/services. In a rural area it includes those in the primary sectors such as farmers who need land for agricultural production. Whether or not industrial landowners are willing and able to surrender existing property rights will depend on their current and future production plans as well as regulations (e.g. farm tenancies). Thus production-related issues including sector prospects, the cost of relocation and the ability to substitute space with other factors will influence their land-ownership decisions.

The final category of private land owners are “financial landowners” who, as their name suggests, are motivated mainly by the investment potential of land and property. They include property companies, pension funds and insurable companies but also individual private speculators in the land market. Differentiating between types of landowner in this way, even if not directly incorporated into the final classification of barriers, is a useful extra complement to the broader passive and active behaviours identified by Adams et al. (2001) and may help to identify alternative resolution strategies in situations where barriers arise.

Separation of rural and urban contexts

The review of previous studies highlighted that research on land ownership barriers has tended to focus on either a rural or urban context with a lack of cross fertilisation of ideas and findings across the two bodies of work. This is surprising as the issues facing developers and community groups in both types of area are common even if their relative importance and appropriate resolution mechanisms may vary. Reflecting the wider ethos of the current

Land Reform Bill, this report proposes a classification of barriers to community land-based activities which is applicable across the whole of Scotland.

4 A classification of land ownership barriers

This section presents a classification of landownership barriers to community land-based activities within which there are seven distinct categories. These relate to deficiencies in ownership rights (two categories), land owner behaviour (three categories), external factors affecting communities (one category), and finally internal factors affecting the behaviour of communities (one category).

The classification scheme draws heavily on the framework proposed by Adams et al. (2001) but is extended in three ways. First, as discussed above, community land based activities may not require outright ownership but lesser rights being transferred from landowner to community. This is reflected in the framework. Second, the classification scheme is intended to reflect ownership barriers in both rural and urban contexts as opposed to the urban regeneration context in which Adams et al.'s framework was developed. Finally, the scheme recognises that there may be barriers arising from a community's lack of desire and/or capacity to secure land or land rights even if they are available. An overview of the classification scheme is provided in Table 2. Each type of barrier is described in detail below. Again the description of the barriers relies heavily on Adams et al., (2001) but links the discussion to the wider land reform agenda.

Although each barrier is distinct in nature, it was clear from stage 2 of the study (based on interviews with key informants) that community developments could be constrained by more than one barrier, sometimes sequentially, but often simultaneously. Indeed in 40 of the 75 case studies, more than one barrier to community activities was identified. For example, a lack of information on ownership was often an initial barrier, but overcoming this barrier did not then mean that other barriers did not subsequently arise. Similarly, there were obvious links between certain categories of barriers with, for example, owner unwillingness to sell or lease land often conflated with issues of ownership rights being divided. Likewise, community concerns in relation to liabilities were often a direct result of characteristics of the land tenure system. Despite this complication, we consider the classification scheme as a useful means of highlighting distinct constraints to community land-based activities, each of which may require different means of resolution through negotiation, regulation or policy.

The conflation of different barriers means that it often takes considerable time for communities to secure land rights. This in itself can be a barrier to developments as it increases the risk of a reduction in community capacity for any particular development and also it increases the likelihood of a sale to an alternative buyer. However there is a counter argument that time helps to

ensure that the rights that are transferred are appropriate and the transfer takes place in a manner which meets the needs of all parties.

Table 2 Classification of alternative land ownership barriers to community activities (adapted from Adams et al., 2001)

Categories of barriers	Sub-categories	Underlying cause
Deficiencies in ownership rights	A. Ownership unknown or unclear	A.1 Information on title deeds are incomplete, missing or difficult to access A.2 Ownership in dispute A.3 Owner lacks legal capacity (including executors/administrators)
	B. Ownership rights divided	B.1 Land held in Trust [functionality of Trust] B.2 Land subject to leases or licences [or subordinate real rights] B.3 Land subject to mortgages or other securities B.4 Land subject to restrictive Title conditions/real burdens B.5 Land subject to servitudes or rights of way B.6 Land subject to options or conditional contracts
Landowner behaviour	C. Assembly of ownership required	C.1 Ransom strips C.2 Multiple ownership
	D. Unacceptable terms	D.1 Restrictive terms of conditions of sale/transfer of lesser rights D.2 Different valuations
	E. Owner unwilling to sell or lease land	E.1 Retention for continued current use (includes for occupation/investment/making available to others on non-profit basis) E.2 Retention for control or protection/conservation E.3 Retention for subsequent own development E.4 Retention for subsequent sale (due to indecision, postponement, uncertainty or speculation)
External factors affecting communities	F. Structural barriers facing communities	F.1 Inability to raise funding F.2 Regulations and limitations to advisory support F.3 Lack of legitimacy
Internal factors affecting communities	G. Community constraints and decisions	G.1 Potential liabilities of ownership disproportionate to community benefits G.2 Differing community aspirations G.3 Lack of community capacity G.4 Lack of willingness to engage with landowner

A Ownership unknown or unclear

Information on land ownership in Scotland is available in the General Register of Sasines, but the information held is often highly complex and costly to access. The Land Register provides another source of information on ownership and property boundaries, but it is a relatively new initiative with properties only included if a transaction has taken place since 2003¹ or information has been provided voluntarily. To date, 58% of properties in Scotland are registered with these properties accounting for just 28% of Scotland land mass (Land Reform Consultation document, 2014). The Scottish Government, acting on the recommendations of the Land Reform Review Group (2014), has a commitment to complete the register within a 10 year time frame, starting with registration of all land in public ownership. However, some argue that the information will still fall short of that required and available in some other countries in the form of cadastral maps.²

While the lack of information on land ownership is problematic for all potential purchasers and/or land users, it creates particular difficulties for community groups who may not have an experience in the land market. In particular it can create uncertainty and a feeling of disempowerment. It is thus a clear barrier to community land-based activities and may inhibit actions being progressed past their very early stages of conception. However, whilst this was a frequently mentioned barrier by key informants and appeared in several case studies, it was often surmountable given appropriate time and support (e.g. legal advice, financial support, expert help with land registry search, etc.).

B Ownership rights divided

Land ownership is in effect the ownership of a bundle of rights and entitlements in relation to the use of land. Each of these may be traded separately. As a result a community land-based activity may be inhibited by an inability to acquire a particular property right.

The division of land rights and associated barriers comes in various forms. Land may be held in trust (with all trustees having to agree to any proposed change in rights), or may be subject to leases or licences which inhibit any transfer of rights until the lease or licence is surrendered or expires. Case studies described by the interviewees included delays encountered whilst agreement was sought from all members of a landowning Trust, as well as the delay imposed on community land acquisition by leases. Interestingly, in the urban context, Adams et al. (2001) found that leases and licenses were the most prevalent form of disruption to the development of brownfield developments but that, in this context, their impact was limited due to their short term nature and/or the fact that tenants were often willing to surrender their rights in return for cash payments.

¹ The registry was rolled out geographically over time, so some property transactions before this date may be included depending on location.

² There may be opportunities for additional information being supplied on a voluntary basis.

The case studies highlighted several other types of barriers within this category including: pre-existing options on a piece of land (from other potential developers) which can stop a transfer of rights taking place; land may be subject to servitudes (for example, rights of way or rights of light); mortgage agreements or legal charges that serve as loan collateral or, finally, land may be subject to title conditions or real burdens put in place by an original vendor which restricts the type of use that can take place. Such conditions can restrict, for example, commercial or industrial use of land in a scenic or residential area, effectively prioritising a particular type of land use over any other.

In the context of the land reform debate, real burdens have been highlighted as a potential barrier to several rural community land-based activities on land owned by charities. For example, in their response to the LRRG's call for evidence, the National Trust for Scotland pointed out that the Trust is responsible for overseeing Conservation Agreements, put in place by owners to safeguard aspects of natural or cultural heritage. These agreements transfer with the property. Similarly, the RSPB's submission to the same call noted that, as a charitable organisation, "it is a requirement of charity law that assets (including land) are managed for the furtherance of the charitable objectives. Environmental protection or improvement, as well as education, science and volunteering are all charitable purposes recognised by Scottish charity law."

C Assembly of different ownership or user rights required

Depending on the nature of the proposed community-land based activity, land ownership or rights may be divided across more than one individual. This requires the community getting agreement from all concerned individuals which is costly and can be difficult, with the last owner able to exert monopoly powers.

In their work on brownfield developments, Adams et al., (2001) found problems of assembling rights across multiple owners was found to be the most difficult barrier to overcome, resulting in significant or very significant disruptions in 85% of the cases where this barrier was identified. The case studies described by the interviewees in this study also included examples of community development delays caused by multiple ownership.

As previously noted, larger scale developments or developments of a linear nature (e.g. paths/cycle ways) are more likely to require the assembly of user rights and there are several well publicised examples where community-led developments have apparently been blocked by the decisions of a single or few land owners.

A particular type of barrier associated with the need to assemble property rights across individuals is the presence of ransom strips, that is small areas of land incapable for development in isolation but essential to the overall proposed development or activity on adjacent land. The interviewees

highlighted case studies where this was an issue in terms of securing grid access for community renewables, as well as access to proposed sites for affordable housing, community parks, new community halls, and community woodlands (e.g. vehicular access to forestry track to remove timber). Key informants suggested that in some cases ransom strips may be strategically purchased by or retained by land speculators. From a community's perspective the demands of ransom strip owners can represent an insurmountable barrier to a planned activity. Provisions in the Community Empowerment (Scotland) Act 2015 are expected to have a role in addressing this type of barrier.

D Unacceptable terms

This form of barrier occurs when the landowner is willing to either sell or lease land but not on terms acceptable to the community. This may be due to restrictive terms of the conditions of sale. For example, in the context of urban regeneration, Adams et al. (2001) note that Local Authorities are often reluctant to sell the land outright and instead restrict disposals to long leaseholds which may or may not meet community (or community funder) aspirations. However the most frequently occurring reason for disagreement identified by the interviewees was large differences in the valuation of land by the buyer (community group) and seller (landowner). Every property (land and associated buildings) is unique and the land market relies heavily on valuations provided by surveyors. Changes in the macroeconomy can affect the supply of and demand for properties and their market value, as well as the lending criteria of funders. As a result properties are often on the market for considerable periods of time and there can be a mismatch between the valuation given to landowners when the market was buoyant and the price offered by buyers at a different stage of the property cycle. In such circumstances, sellers are often reluctant to adjust their expectations downwards, and sale price expectations remain high, as described in the interviewee case studies. Even beyond these market related problems, the valuations provided by surveyors can vary as a result of differences in their assessment of the condition of the property, its potential for generating income, and choice of comparables (that is the price recently fetched for properties considered similar to that under consideration).

One particular issue raised by key informants which relates to this barrier is the consequence of a property being granted planning permission for a particular use at a particular point in time. This significantly increases the value of that property to the landlord and can place it out of the reach of funding available to the community.

This highlights a more general point on the interdependency between land ownership barriers and land use planning. The nature of the planning system is such that it can generate rent seeking behaviour whereby land owners hold land and either apply for planning permission (and extensions) or object to other proposals for planning in order to increase the value of the land (Adams

et al., 2001; Keogh, and Evans, 1992). The more flexible the planning regime, the greater the possibility that planning may indirectly act as a barrier to community land-based activities through the incentives it gives to landowners.

E Unwilling owner

There are various reasons why a land owner may be unwilling to sell land or surrender lessor rights to a community:

- 1) Retention for continued current use
- 2) Retention for control or protection
- 3) Retention for subsequent (own) development
- 4) Retention for subsequent sale

The first three reasons are more likely to be associated with the behaviour of industrial and former landed property owners types identified in section 3 as opposed to owners whose main purpose is to hold land as an investment asset. In contrast the fourth reason (retention for subsequent sale) is equally applicable to all land owner types. Such behaviour may be due to speculation (based on the assumption that by postponing the transfer of rights, a better a higher value may be achieved) or simply land owner indecision and uncertainty.

The key informants identified several examples of case studies where it was difficult to explain a landowner's unwillingness for sale. In some cases, this was attributed to a lack of willingness of a landowner to engage with communities in negotiations. In urban contexts, the lack of any identifiable reason for unwillingness to surrender property rights has been labelled "corporate inertia" and is argued to disproportionately affect small plots of urban land owned by organisations who overall have extensive land holdings but whose main business or interest is not in land or property (Adams et al., 2001).

In rural areas, problems associated with owner unwillingness have often been linked to the issue of scale of ownership. Large areas in rural Scotland are owned by relatively few people. As a consequence, a lack of support for proposed community land-based activities by a single land owner can have disproportionate local impacts. As MacGregor notes (1993), in relation to rural land use:

"In many areas of Scotland, large land owners play a crucial role in local development: they are the rural planners."

F Structural barriers facing communities

The case studies highlighted some barriers to community land based activities which could be considered structural in so far as they relate to the external environment within which communities operate. In this way they are distinct from the barriers categories described under section G below which relate to

internal community characteristics or decisions. In particular, the interviewees highlighted the following three categories of barriers to community land based activities:

- Inability to raise required funding
- Limitations to advisory support
- Lack of legitimacy

The current policy agenda favours asset transfer to communities with some community funders (e.g. The Big Lottery Fund) making asset ownership a condition of funding. This means that the level of funding sought by communities is often high and may be beyond that possible for the community to raise (e.g. above the limit for Scottish Land Fund grant funding). The issue is not only related to the level of funding: A number of funders (including, for example, the Coalfields Regeneration Trust) refuse to provide support for projects on land owned by the public sector on the basis that the development should be funded through the public sector owner and that the public sector would benefit from the support. While the logic of this is clear, this approach can inhibit community activities from stimulating change.

Another reason identified by the informants as a barrier to community activities is the level of advisory support available, particularly at critical stages of the development process (e.g. during Local Development Plan reviews or when managing opposition). In particular, advisory and funding support for the alternative of leases and management partnership arrangements is not well developed. A further related issue is that advisors may not be approached by the community in time to negotiate secure land access for community land-based activity.

Finally, community groups may suffer from a lack of legitimacy which discourages landowners from selling or leasing property rights to the group. This may be because landowners consider potential income flows from community projects as more risky than from other proposed purchaser/users or it may be due to perceived reputational problems should the community group subsequently fail in its ambitions. The key informants suggested that this was a particular issue for public sector landowners due their accountability to wider communities and tax-payers. In general, established community groups are recognised as having greater legitimacy due to the timescales required in building community capacity and reputation.

G Community constraints and decisions

The final category of barrier to land-based activities relates to the ability and willingness of communities to take on the responsibility of land ownership.

The alternative reasons for this category of barrier are:

- The potential liabilities of ownership are disproportionate to community benefits

- Differing community aspirations
- A lack of community capacity
- Lack of willingness to engage with landowner

In relation to the first, when the liabilities associated with owning the land become clear, a community may withdraw from a development even if the landowner is happy to surrender ownership rights. Another, more straightforward example of disproportionate liabilities identified in the case studies was where the scale of land for sale/lease exceeds that required by the community group and the landowner is, for financial reasons, unwilling to break the sale into smaller lot sizes.

Several of the informants highlighted case studies where different opinions within a community either delayed or inhibited community activities. Different aspirations within a community may relate to the perceptions of community priorities (e.g. affordable housing versus allotments), and/or their level of reliance on communal activities (i.e. contributing to community capacity rather than individual interests). Alternatively, they may arise from differences in opinion about a community's capacity and skills base.

Turning to community capacity, a growing number of studies have shown that this varies considerably both across and within rural and urban areas (Skerratt, 2013; Middlemiss and Parish, 2010). The issue is attracting strong policy attention and there is considerable government support for mechanisms which can spread best practice and increase community capacity in areas where need is greater. It remains the case, however, that even if a landowner is willing to transfer property interests, the community may not be aware of opportunities, processes or funding streams, or may not be willing or able to take on the associated responsibilities. The key informants described communities who were willing, but unable to progress land-based activities due to lack of further volunteer time (i.e. beyond existing community activities).. Thus there are potentially demand-side ownership barriers which may inhibit community activities, as well as interdependencies between the two sides (demand and supply).

Finally a barrier may be associated with a lack of willingness of a community to negotiate with a land owner, at times due to personality clashes. Some key informants suggested that this was associated with the community's unwillingness to consider anything less than outright ownership of land.

5 Other issues arising from the analysis

5.1 Differences in barriers by community activities

Consistent with expectations, the key informants confirmed that certain types of land ownership barriers are of particular importance to certain types of community activities.

Community **housing projects** frequently struggle to access the level of funding required (Barrier F.1, Table 2). Planning also represents a structural barrier to housing developments in many places and interacts with the willingness or unwillingness of a particular landowner to release land for sale for community-led housing.

The informants confirmed that multiple ownership (Barrier C.2) is a particular problem for **footpaths** or **cycle paths** in rural areas but also many different types of urban community proposals.

Renewable energy projects are also likely to come up against barriers around the assembly of rights across multiple owners, as well as issues with ransom strips (e.g. to secure wayleaves). This is often because landowners have high expectations regarding the income from renewable energy projects and may seek to use the leverage of their landownership to secure income from the project. Community-led renewable energy projects (like owner-led schemes) struggle with the uncertainty of 'where the wire needs to go' and this complicates the process of securing land rights. On the positive side however, the key informants suggested that there is a perception that advice and funding support for community renewable energy projects is strong.

Community growing projects have specific needs for fencing and services (e.g. running water), provision and maintenance of which may be considered inconvenient to the landowner, therefore might lead to their unwillingness to sell or lease to community groups (Barrier E). Sites for community growing activities may also require testing for contamination, as well as subsequent decontamination and future monitoring, which again incurs costs (typically on the previous occupant accountable for the land contamination, if identifiable).

Mountain bike trails are considered of higher liability risk than say paths developed for walking and thus more likely to suffer from liabilities being considered disproportionately high relative to benefits (Barrier G.1). Finally some community activities for example **onshore windfarms** (as compared to, for example, community woodlands), are considered more divisive and thus liable to barrier G.2 due to their visual or infrastructural impact.

5.2 Rural urban differences

In general the interviewees felt that urban communities would have less experience in developing land-based community activities and, as a result, are

more likely to be unable or unwilling to buy or lease land (Barrier G). This they attributed to the stronger community ethos in many rural areas. Geographical communities are often clearer in rural areas and partly through need, they tend to be more proactive in delivering public good services. One interviewee noted that the general decrease in public sector funding and centralisation of services had resulted in rural communities almost being expected to be proactive in terms of coming up with new community -driven initiatives despite the fact that they comprise fewer people and often have a greater of older residents than their urban counterparts.

Some informants argued that, because they comprise fewer people, there is more likely to be consensus in rural communities on their priorities, however, it follows that any differences in opinions will be more transparent. Importantly, it was acknowledged that in many rural areas the landowner(s) are known and indeed part of the community. This can help to facilitate negotiations in terms of agreeing acceptable terms and conditions for the transfer of property rights.

There were a number of specific barriers that were considered to be more of a problem in urban areas compared to rural areas regardless of type of proposed activity. These included barriers associated with land owner identification, divided ownership rights (securities and real burdens), multiple ownership, constraints associated with planning and higher community liabilities (associated with higher use and potential vandalism etc.). It was suggested that reaching acceptable terms would be more problematic in an urban context as a result of higher land values and greater alternative competition for land use. Associated with this, as illustrated by several of the case studies, rural communities may have a wider range of alternative sites on which their activity can take place. Within this context, the increased policy attention and support being given to urban communities in the Community Empowerment (Scotland) Act 2015 is well directed.

There was less of a clear view on which types of community land-based activities were more or less likely to face barriers as a result of their geographic context. The only suggestion was that housing projects might be easier in urban areas as a result of existing service provision and housing association models of development. More clear was the suggestion that the urban versus rural distinction was too blunt a distinction and that within both types of areas there were likely to be major differences in the significance of barriers as a result of interests and culture (e.g. Western Isles versus Northern Isles), land tenure (e.g. crofting versus non crofting areas) and the attitudes of key stakeholders in Local Authorities.

5.3 The influence of land owner types

Apart from a public versus private land owner distinction, few commonalities emerged regarding landowner types. When prompted, the informants recognised that communities dealing with investment owners (see Section 3 above) are particularly liable to be constrained by Barrier D.2: Different

valuations. However, this was also highlighted as an issue with other charitable and NGO-landowners. Other owners are unable to sell or lease land to communities due to restrictive covenants based on their acquisition of the land as a gift (e.g. education authorities and conservation owners such as the National Trust for Scotland) and/or tend to be highly risk averse when considering the transfer of land rights.

Instead, individual personality and attitudes to community engagement/support in general was suggested as critical, in particular with regard to private landowners but also in relation to key office holders in public land holding organisations including local authorities. Key informants stated that private landowners who are 'community minded', act as benefactors and demonstrate proactive land management. Several examples were given where private landowners have helped to drive forward community lease arrangements or have donated land and assets to the community, according to personal wishes.

There was a suggestion that compared to public sector or charities, private landowners can be easier to deal with as they have a tendency for more direct decision making. However, the key informants also highlighted that negotiations with private landowners can be unpredictable and with a higher level of risk, due to potential disagreement, trust and partnership issues. The role of advisors to private landowners was also noted as significant.

Scale of landownership was identified by some interviewees as a factor which influences the likelihood of landowners agreeing to sell or lease land to community groups however the pattern was unclear and no overall trend was identified. For example, some argued that individual private owners of small landholdings are more cautious in engaging with community land-based activities ('not knowing where it is going to end'). A key issue is that whilst in many cases there may be a possibility of finding alternative land for the community activity, a lack of engagement by a single large scale land owner in a locality can lead to disproportionate impacts.

Public landowners present certain barriers to community buyers, in particular regarding restrictive title conditions and 'claw back'. In some cases Forestry Commission Scotland (FCS) is criticised for imposing restrictive conditions on community buyers with regard to commercial activity, which then limits their potential to maintain a viable forestry enterprise (i.e. because profits are required to be returned to FCS rather than reinvested into the community enterprise). There are also concerns regarding State Aid, and the effort required by communities (and advisory support) to fulfil the bureaucracy required in land acquisition from public bodies. Some key informants considered it unreasonable that a community should be required to register their interest in community right to buy if the public body (e.g. the local authority) was already a confirmed willing seller. However, there was recognition that such public bodies were primarily concerned with accountability and transparency, especially where public finances are

restricted and affected by budget cuts. Similarly, public landowners, like many NGOs, are also perceived as being more risk averse, especially in terms of losing potential value, asset income, or being responsible for assets if a community enterprise fails.

However, there was broad recognition amongst the key informants that public landowners generally have an ethos of supporting communities and finding routes to community landownership. Public landowners will often give communities more time to develop business plans, and there are positive examples of lease arrangements with communities, facilitating a 'feasibility study in practice' for later ownership. In particular, public bodies are supportive of anchor community organisations, to which assets can 'bolt on' easily and clearly. Again, however, the attitudes of key office holders in public landowning bodies are critical in supporting community land-based activities. Finally, the key informants highlight the role of the Community Empowerment (Scotland) Act 2015 in facilitating the easier and efficient sale of land from public bodies to communities.

5.4 Resolution mechanisms

The existence of barriers to community land-based activities is a potential justification for government intervention. Each category of barrier identified in the classification scheme arises from a different source and thus may require a different resolution mechanism.

Many of the structural barriers facing communities could in theory be overcome by changes in existing funding regulations and/or improvements in advisory services. Similarly, changes in planning regulations could potentially help to overcome any unintentional impacts of planning on land values or behaviour. Elements of the Community Empowerment (Scotland) Act 2015 were expected by interviewees to be helpful in addressing several of the issues identified in relation to community capacity-related barriers, especially in urban areas.

More generally, the case studies highlighted several different resolution strategies which had been used to overcome land ownership barriers to community activities. On some occasions this involved helping communities find alternative locations for their activities. In other cases external mediation and consultation processes had been effective in overcoming problems between particular landowners and communities, allowing activities to proceed.

The classification scheme described in this report provides a basis for better understanding some of the barriers that can occur in developing community land-based activities and thus effective ways of resolving issues should they arise.

References

- Adams, D. (2015) Compulsory sale orders as a response to hardcore urban vacancy and dereliction. Paper presented to Transience and Permanence in Urban Development Workshop, University of Sheffield, January 2015.
- Adams, D., Disberry, A., Hutchison, N. and Munjoma, T. (2001) Ownership constraints to brownfield development *Environment and Planning A* 33, pp. 453-477.
- Aiken, M., Cairns, B., Taylor, M. and Moran, R. (2011) Community organisations controlling assets: a better understanding. Report for the Joseph Rowntree Foundation, June 2011.
- Ball, M., Lizieri, C. and MacGregor, B.D. (1998) *The economics of commercial property markets*. Routledge, London.
- Callaghan and Williams (2014) Teddy bears and tigers: How renewable energy can revitalise local communities *Local Economy*.
DOI: 10.1177/0269094214551254
- Land Reform Review Group. 2014. 'The Land of Scotland and the Common Good'. Report of the Land Reform Review Group, May 2014.
- MacGregor, B. (1993) Land Tenure in Scotland. The 1st John McEwen Memorial Lecture, Aberfeldy, 24 September 1993.
- Middlemiss, L. and Parish, B. (2010) Building capacity for low-carbon communities: The role of grassroots initiatives. *Energy Policy* 38, 759 – 7566.
- Pillai, A. (2010) Sustainable rural communities? A legal perspective on the community right to buy. *Land Use Policy* 27, pp 898-905
- Scottish Government (2014) A Consultation on the Future of Land Reform in Scotland.
- Skerratt, S. (2013) Enhancing the analysis of rural community resilience: Evidence from community land ownership. *Journal of Rural Studies* 31, 36-46.

Appendix A: Key informant interviewees

Kenny Auld	Scottish Outdoor Access Network
Amanda Bryan	Aigas Associates
David Cameron	Community Land Scotland
Jamie Dent	Dumfries and Galloway Small Communities Housing Trust
Linda Gillespie	Community Ownership Support Service Team, Development Trusts Association Scotland
John Glover	Community Land Advisory Service (CLAS)
Angus Hardie	Scottish Community Alliance
Richard Heggie	Urban Animation
Jon Hollingdale	Community Woodlands Association
Heather Holmes	Scottish Government Land Reform Unit
Sandra Holmes	Highlands and Islands Enterprise (Strengthening Communities)
Richard Kelly	Community Assets team, Glasgow City Council
Derek Logie	Rural Housing Scotland
Ronnie MacRae	Highlands Small Communities Housing Trust
Chris Morris	Local Energy Scotland
Helen Pank	Federation of City Farms & Community Gardens
Pete Ritchie	Nourish Scotland
Peter Ross	Dumfries and Galloway LEADER
Eric Samuel	Big Lottery Fund
David Wood	Planning Aid Scotland



© Crown copyright 2015

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

This document is also available from our website at www.gov.scot.
ISBN: 978-1-78544-635-1

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for
the Scottish Government
by APS Group Scotland
PPDAS56179 (09/15)
Published by
the Scottish Government,
September 2015



Social Research series
ISSN 2045 6964
ISBN 978-1-78544-635-1

Web and Print Publication
www.gov.scot/socialresearch

PPDAS56179 (09/15)