

WOODLAND CROFT ALLOCATIONS - GUIDANCE FOR COMMUNITY LANDLORDS

(whilst written primarily for community landlords who need to ensure that the public interest is safeguarded, some of the information included may also be useful to private landlords seeking to allocate new woodland crofts)

Selection of Tenants

The selection of tenants is one of the most important, and potentially sensitive, parts of any new woodland crofts project.

Formally, it will first involve the community landlord identifying the preferred tenants, and then subsequently applying to the Crofting Commission to have the selected tenants approved (once the crofts have been created).

Both parts of the process need to be open and transparent, and while there is flexibility for local variation, when public funding is involved there are certain requirements which should be followed.

The objective of the selection process will be to choose the most appropriate tenants fairly, whose plans for the croft will most benefit the community and the wider public, as well as themselves.

Selection of suitable tenants will go a long way to ensuring that the aims and objectives of a woodland crofts project are met.

Both aspects of the process are considered further below. However the emphasis is placed on the identification of tenants by the community landlord, as the process of application to the Crofting Commission is no different for woodland crofts than any other croft and as such further guidance is available from them.

Some general considerations

Equality: Public agencies and funders involved at any stage in a woodland crofts project seek to ensure that the principles of equal opportunities¹ are adhered to. As a result it is important that communities too follow the principles of equal opportunities, throughout the development and management of their projects – and especially in selecting beneficiaries (ie croft tenants).

This is not to say that local needs and priorities cannot be reflected in any criteria set by the community to help in the selection of tenants – after all a successful project will be one that identifies and then meets local need. However, any criteria chosen must be reasonable and justifiable (and not based on the attributes listed in note 1 below). Furthermore, if the criteria are scored to assist in comparing applicants, any weighting should be balanced so that no one criterion can dominate the others.

Openness and transparency: The details of the selection process and any criteria/scoring involved should be public information and readily available to anyone with an interest (*openness*). In addition, they should be as simple as possible and therefore easily understandable (*transparency*). Maintaining openness and transparency throughout the selection process will help reassure all those involved that it is fair and based on equality.

The Selection Process: It is up to individual community groups to decide the exact detail of their own selection process. The following therefore represents a guide which can be varied according to individual circumstances. However it should be noted that as the selected tenants must be approved in due course by the Crofting Commission² (CC), considering their requirements in the process and criteria chosen will do much to assist the Commission in coming to an early decision when responding to future applications. Also, where purchase of Forestry Commission woodland under the National Forest Land Scheme (NFLS) is proposed, proposals for the selection of tenants which follow the principles of this guidance can be used to support the NFLS application for purchase of the woodland.

Main steps in the allocations process:

- Confirm what is being offered
- Decide on the selection panel
- Decide application criteria & scoring
- Decide application format and process
- The application

1. Confirm what is being offered

Both community landlord and prospective tenant will need to be clear at the start of the selection process about the nature of the croft being offered. Depending on when the community chooses to carry out the selection, the detail may be fairly generic (eg a croft of x ha, with a share of y ha of common woodland) or may be very specific (eg an individual croft with boundaries marked on the ground (or a map). Both approaches have their advantages and disadvantages: *see discussion*.

In either case, there is a minimum level of detail which must be confirmed. It is suggested that this should include:

- The minimum area available
- The permanent improvements on the croft at the outset
- The rent payable
- Whether an entry fee will be payable, and if so how much
- Options for the provision of housing
- Arrangements for the use of existing trees on the croft³
- Whether access to further collectively-managed woodland is available
- Additional conditions to, or variation of, the Statutory Conditions of Let, which the community landlord will apply (which could cover some of the issues above)⁴

All these details should be laid out in a clear and simple document which can be used both to provide information on the project to stakeholders, and be part of any application pack (see below).

Discussion: In the former case, tenants are identified earlier and may therefore be more willing to contribute to the wider development of the project, knowing that they have secured (subject to CC approval) a croft for themselves. There is also the opportunity to tailor the extent and layout of crofts to individual tenant's aspirations, within reason. On the other hand, with more open to debate and interpretation there is a greater risk of later disagreement and delay in confirming details.

In the latter case, the details are fixed and 'what you see is what you get' – however this level of detail is only likely to be achieved at an advanced stage of the project, meaning that prospective tenants may be wary of contributing much prior to this, in case their application is unsuccessful, leaving a greater workload for the community body.

2. Decide on the selection panel

A community body proposing to establish woodland crofts will usually be a Company with Directors elected by the local community, who are thus both accountable to it, and legally required to act in the best interests of the Company. As a result a selection panel comprising Directors of the community group would be appropriate and in some cases it may be possible to use the full Board as the selection panel. More commonly however the Board will include directors who themselves have a direct or indirect interest in gaining a tenancy, **and they should play no part in the selection process**. It may also be desirable (or essential, if numbers dictate) to co-opt other members of the community to the selection panel from outwith the Board: *see discussion*.

Discussion: Such co-opted members should ideally be persons of standing within the community. It can be helpful to establish the selection panel before beginning the work of identifying criteria for selection, and any scoring system to be used, particularly where external members are co-opted onto the panel; this will allow all to become more familiar with the background to the process and thus apply it in a consistent manner.

3. Decide application criteria & scoring

The criteria used to judge applications follow directly from the desired outcomes of the project. These will vary from community to community but are likely to include such things as: management of the woodland for local economic & environmental benefit; development of a culture of forest stewardship and local timber skills; and provision of sites for homes and businesses. Such outcomes will already have been considered as part of applications for funding and purchase of the woodland.

It may be helpful to group criteria into categories, with a roughly equal weighting given to each category when a scoring system is devised (this will ensure that an application very strong in one area does not automatically prevail over a good, but more balanced application).

It is important to remember that individual criteria are not requirements; and no-one should be ruled out by 'failing' to meet them all. Rather, the application of points scores built up over a range of criteria ensure that an overall view is taken: see *discussion*.

Discussion: one approach would be to use groups of criteria such as the following:

Personal circumstances:

- *Locally resident or with other local connections*
- *Does not already own or tenant a croft*
- *Family circumstances (single/couple/family)*
- *Track record of involvement in community activities/projects*

Proposals for the croft

- *General economic and environmental sustainability of the proposals*
- *Strength of woodland development & utilisation proposals*
- *Proposals suit available resource*
- *Sound business plan*

Skills, Experience & Resources

- *Experience/training in woodland management*
- *Experience/training in other land management*
- *Other relevant experience*
- *Skills related to business proposals*
- *Commitment to undertake training*
- *Equipment already available to applicant*

4. Decide application format and process

Once the community has confirmed the desired attributes of potential tenants, thought needs to be given to how applicants provide information to the selection panel. A standard application form is useful as it can help ensure information is presented, and then evaluated, in a consistent manner. Supporting information can be allowed, but again it is helpful to set boundaries on this to avoid having to compare someone presenting a glossy portfolio with someone using the application form alone. A declaration should be included on the application form whereby the applicant confirms that all details submitted on the form or any supporting information are correct, and understands the consequences if not.

A simple business plan will provide important information to the selection panel as to how well thought-out the proposals are - again, a standard format is preferable. However, tenants will vary in the extent to which the croft contributes to their income or provides a significant business opportunity, and the 'cultivation' or 'purposeful use'⁵ of the croft must be considered equally, alongside any financial projections: see *discussion*.

An application form, business plan template and 'offer' document from (1) above then form the key parts of an application pack which can be sent to prospective tenants, together with a covering note which explains the application process. This note will need to include:

- The timetable for applications (especially closing date; also dates for sift, any interviews, and final decision).
- Information on the selection panel.

- The criteria against which applications will be judged.
- Any necessary, or desired, provisos (eg 'the selection panel's decision is final', 'acceptance of the offer of a tenancy must be confirmed in writing', 'any tenancy offer is provisional until confirmed by the Crofting Commission', etc).

Finally, applications should be formally invited through public advertisement in a local paper circulating in the community, giving brief details of the vacant crofts and of how to obtain an application pack. Posters can also be displayed within the catchment of the community group, to help reach more people. Even those who have previously expressed interest to the community group, whether formally or informally, should adhere to the same application process, and any advertising should make this clear. All applicants will therefore be considered on an equal basis.

Discussion: not everyone will wish – or be able – to make much money from their croft operation, taking perhaps more in the way of benefits in kind; but few will want to lose money on it! Importantly, the most 'profitable' proposals may not be the ones which provide most community and wider public benefit.

5. The application process

Once the new crofts are advertised, the process will hopefully then proceed according to the agreed plan, and the focus will therefore be on administering this plan successfully. In that respect, thorough record-keeping is advisable to avoid problems, and as a record for future reference: see *discussion (1)*.

When the selection panel comes to sift applications, it is best if this can be completed as a group (though it would be sensible for individual members of the panel to have scored the applications ahead of time). This allows different perspectives to be shared and ensures that the sift is completed at the allotted time. A standard scoresheet completed by each panel member will ensure consistency, and provides a future record of the selection process. Interviews are advisable to try to separate evenly matched applications and also allow an opportunity to explore issues further than a written application.

Once applications have been finally scored, it is useful to list them in order of preference as a sort of 'waiting list'. This has a number of advantages:

- It allows for the easy identification of 'reserves' should some or more of those offered tenancies subsequently withdraw (or should the Crofting Commission fail to approve them)
- Where initial applications are for a croft in general, rather than a specific one, it gives a framework for the future allocation of specific sites
- It allows the community group to highlight the preferred tenants, and reserves, without needing to publicise individual scores, which could be contentious, especially if scores are close: see *discussion (2)*.

Successful, reserve and unsuccessful applicants should all be notified in writing at the same time, to avoid the risk that decisions become public knowledge before those affected have been informed. The letter should also indicate any required action by the applicant eg written acceptance of any offer.

Discussion (1): The application process is sensitive and it is possible the community group may receive future queries or challenges by some unhappy with the outcome. Being able to refer to comprehensive records will allow such questions to be answered. In particular, safeguards should be considered which minimise the risk of problems. For example, some way of proving that an application has been received would be sensible: this could be via issuing a receipt or requesting the use of Recorded Delivery mail. Once received, applications should be stored securely and not opened until the closing date has passed. Information/references supplied by successful applicants should be verified to a reasonable degree at an appropriate point in the allocations process.

(2) This point raises the issue of openness. The community group will need to find a balance between sufficient openness, and the need to respect applicants' privacy in terms of personal or commercially confidential information. It would be inappropriate for individual application papers to be made public, but qualitative feedback on applications, both successful and unsuccessful, will be valued by both those directly involved and the wider community, in demonstrating a fair and open process.

Application to the Crofting Commission for approval of tenants

Although the application to the Crofting Commission by the community group for their approval of the selected tenant(s) includes similar personal information (from the tenant) to the application process outlined above, there is a significant difference between the two processes in terms of timing.

Whereas, as described above, the community has considerable flexibility in when they can choose to select their tenants, the application to the Crofting Commission relates to a specific croft and can therefore only take place once that croft has actually been created (in most cases the creation of new crofts involves a formal application by the owner of the land and does not make reference to specific tenants (unless the land is already tenanted)).

This has the advantage that any tenant previously selected by the community and proceeding to this stage, will by then know the exact details of the croft their application relates to, and is therefore presumably content with what is being offered ie all applications for Crofting Commission approval will be 'serious' ones.

As mentioned earlier, the process of gaining Crofting Commission approval of a tenant is the same for any type of croft (woodland or traditional) and an application form and guidance is available elsewhere⁶. Key features include:

- The completion and submission of a standard application form
- The submission of a scale plan of the croft in question
- The statutory requirement to advertise the proposed tenancy in the local paper
- The opportunity for anyone with an interest to submit comments to the Crofting Commission within 28 days of the advertisement
- The requirement to submit the application to the Crofting Commission before the public advertisement appears

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Crofting Commission, Inverness	01463 663439
Forestry Commission - Highland & Islands Conservancy, Dingwall	01349 862144
Forestry Commission – Perth & Argyll Conservancy, Perth	0300 067 6005
Community Woodlands Association	01309 674004
Scottish Crofting Federation	01599 530 005

This guidance note has been produced to provide guidance on the selection of woodland croft tenants. While it is intended to provide an accurate reflection of the main issues, it does not cover all the detail included within them and there is no guarantee of the legal accuracy of its content. We strongly recommend that professional and legal advice be sought for more detailed information and guidance on specific cases.

Notes

1. "Equal opportunities" means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions
2. www.crofting.scotland.gov.uk
3. Under the Statutory Conditions of Let which apply to croft tenancies, most existing trees (ie not planted by the tenant) belong to the landlord. The landlord can however sell these to the tenant, or enter some other arrangement for their management and use with the tenant, if desired.
4. Any additional conditions of let (which are not given or guaranteed by the Crofters (Scotland) Act 1993, as amended by the Crofting Reform etc Act 2007), must be reasonable as they can be challenged in the Scottish Land Court, and if judged to be unnecessarily restrictive could be removed by the Court. Furthermore, if an additional condition of let is proposed which withholds a right included in the Act from a crofter, other than those referred to in the Act under section 5(3), this will require the prior approval of the Land Court.
5. "purposeful use" in general terms is any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.
"cultivation" is defined to include the use of a croft for horticulture or for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, the growing of fruit, vegetables and the like and the planting of trees and use of the land as woodlands
6. See <http://bit.ly/1AWGg43>