



## Eunson v Crofting Commission – Lands Tribunal upholds decision of the Crofting Commission to refuse a decrofting application



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The owner-occupiers of five crofts on mainland Shetland have failed in an appeal against a decision by the Crofting Commission to reject their applications for decrofting directions. The Lands Tribunal agreed with some of the appellants' criticisms of the Commission's decision but refused to overturn it as they held that the decision could not be said to be unreasonable and, based on the information available to it, the Commission had been almost bound to refuse the applications.

### Background

The owner-occupiers of five crofts applied to have the crofts decrofted to enable them to grant securities over them in return for a bank loan. The bank loan was required for the development of a renewable energy project on a separate site. All five applications to decroft were refused by the Commission. The grounds for refusal were as follows:

1. the provision of decrofted land for the purposes of obtaining security for financing of a project on other land was not a "reasonable purpose" under the Crofters (Scotland) Act 1993 and it was therefore not a mandatory ground for granting a decrofting direction;
2. the renewable energy project in question was not certain to proceed even if decrofting was granted; and
3. there would be detriment to the general interests of the crofting community in the district if the decrofting direction was granted.

All five applications were subsequently appealed to the Lands Tribunal. It was agreed that one of the crofts was the leading case and that all five appeals would be subject to the determination made in that case.

### Appeal to the Lands Tribunal

In the Appeal against the decision the Appellants argued that the Commission had:

1. provided insufficient reasons for its conclusions;
2. had taken into account irrelevant considerations, namely the prospects of the renewable energy project going ahead and its location on land which was not the land subject to the decrofting application; and
3. had not been entitled to find that the crofts were part of a "crofting community" in the area within the meaning of Section 61(1) of the Crofters (Scotland) Act 1993.

In relation to the first point the Lands Tribunal said that the Commission was under a duty to give proper and adequate reasons, leaving an applicant to the Commission in no doubt as to what the reasons for the decision were and what was taken into account. Whilst sufficient reasons were given for most parts of the decision, the Commission had failed to give sufficient reasons why the renewable energy project being on other land was a factor against granting the application.

In relation to the second point the Lands Tribunal said



that, as the renewable energy project was given by the Appellants as the reason for decrofting, the Commission was not only entitled but bound to take into account the likelihood of the project going ahead. They also found that the Commission was entitled to take into account the location of the proposed project despite the lack of explanation.

On the third point, the finding that there was a “crofting community”, the Lands Tribunal agreed with the Appellants that the Commission had not had sufficient information to find that the crofts were part of a crofting community. More generally, they found that the definition of “crofting community” is unclear and should be clarified as a matter of priority by parliament.

Overall, although the Lands Tribunal agreed with some of the Appellants’ criticisms of the Commission decision, it decided that the decision was not flawed to the extent that it should be set aside. In fact, it found that, on the information available to it, the Commission was almost bound to come to the decision it did. If the appellants wished to supply further information it was open to them to lodge a fresh application to the Commission.

## Analysis

This decision gives some encouragement to those seeking to challenge a decision of the Crofting Commission but ultimately it shows that the Lands Tribunal will allow the Commission wide discretion. The decision emphasises that proper reasons must be given by the Commission but if the underlying decision appears sound, the Lands Tribunal will be reluctant to overturn it. The decision also suggests that the Commission is entitled to take into account the full context of a decrofting application (rather than its isolated impact on the croft in question) when deciding whether to award an order.

As with many cases, each application to decroft will be decided on its own merits and factual circumstances. Applicants should ensure they give the Commission as much information as possible when making an application.

Should you have any queries about crofting law or making an application to the Crofting Commission please contact Emma De Saily or Laura McKinnon in our rural team or Stephanie Hepburn in our property dispute resolution team.