

WOODLAND CROFTS - GUIDANCE ON HOUSING AND DEVELOPMENT

(whilst written primarily for community landlords and their tenants, some of the information included may also be useful to other crofters seeking to build on their crofts)

Housing and Development

For many woodland crofters, the opportunity to build a home on the croft and erect other buildings in support of their activities will be key benefits of their tenancies. Whilst crofting law grants certain rights to tenants in this respect, it does not remove the obligation to satisfy planning regulations, in particular to obtain consent for development from the local authority where necessary.

In addition, the likely presence of a standing timber crop on a woodland croft or nearby represents a potential source of raw material for construction – and fuel – which is environmentally friendly and can be a cost-effective solution, if skills and equipment for its utilisation are available.

Development on woodland crofts will be influenced by a combination of legislation, and practical issues relating to the nature of the materials available, funding, and the design approach taken. These are considered separately below.

Crofting regulation in relation to housing & development

The discussion of crofting law in this section relates to land under crofting tenure. Where land is not croft land, or used to be but has been decrofted¹, it is not subject to the crofting acts. In the past croft land has often been decrofted in order to secure finance on it, after the tenant has exercised their right to buy it. However, this right is likely to be withheld by community landlords when new crofts are created², to protect the public interest. Hence the scope of this note is restricted to the situation where development takes place on croft land, and is considered a permanent improvement to it.

Alternatives to this approach in respect of housing, where the house is tied to the croft through mechanisms other than crofting law, have been investigated and information on the options is available elsewhere.³

It should be noted that at the time of writing (2019) financial support for crofting post-Brexit is under review. Hence the information presented here is subject to change.

Statutory Conditions of Let

Under crofting law every tenancy of a croft is subject to statutory conditions set out in the law (although additional conditions can also be applied, subject to certain constraints)⁴.

Under the statutory conditions a crofter has the right to erect a single house on a croft where no house exists, or in substitution for one that previously existed. The crofter does not require the landlord's consent for this; however planning approval is always required. The crofter is also responsible for providing such facilities ('fixed equipment') as may be required to cultivate⁵ the croft.

Permanent Improvements

Permanent improvements are improvements carried out to a croft by a croft tenant (or the tenants who have preceded him in the tenancy). They are fixtures on the land and include the dwelling house, walls, fences, roads, trees planted by the tenant (except on common grazings/common woodland), indeed anything which would be considered to add value to the croft as an agricultural

subject. Where improvements are not specifically detailed within crofting law however – in the context of woodland crofts for example, this could include items of forestry infrastructure – it is sensible for landlord and tenant to agree what should be considered improvements at the outset, rather than assuming they will be covered by the legislation; this will help avoid future dispute. Improvements must also be suitable (ie appropriate) to the croft⁶.

In addition, where a crofter uses the croft for a subsidiary occupation (subsidiary to cultivating the croft), and erects buildings or carries out works, which are required for this occupation, these will be considered permanent improvements suitable to the croft, as long as they are fixtures on the land and do not significantly interfere with the cultivation of the croft.

On the request of either the landlord or the tenant, the Scottish Land Court (see below) will record the condition of the croft, and any buildings or other permanent improvements on it, and who carried out and paid for them.

On the event of a tenancy ending, either by renunciation, removal or termination, the crofter may be entitled to compensation for the value of these improvements, less any assistance the landlord or the landlord's predecessors may have given towards them. The amount of compensation is defined as the amount that the landlord might reasonably expect to receive from an incoming tenant for the improvement. If landlord and outgoing tenant cannot reach agreement on this, the amount will be fixed by the Land Court.

Strictly speaking compensation is payable to the outgoing tenant by the landlord, who would then seek to recover this from the incoming tenant. In practice the compensation is often paid direct to the outgoing tenant by the incoming one with the consent of the landlord, and crofting law allows for this. This approach may be particularly appropriate to community landlords for whom the payment of compensation may present cashflow difficulties.

The above is a brief outline of permanent improvements and the compensation due for them, however as with many aspects of crofting law, there are additional details covered in law and further advice should be taken from a solicitor specialising in crofting matters.

The Scottish Land Court

The Scottish Land Court is a Court of Law with authority to resolve a range of disputes that may occur within crofting. These could be issues of dispute between landlord and tenant, or appeals against decisions or directions of the Crofting Commission made in response to an application made to them. Many aspects of crofting law are also dependent on landlord and tenant reaching agreement. In the event agreement cannot be achieved, the matter can be referred to the Land Court for resolution. As a result of its role as final arbiter, you will find regular reference to the Land Court in wider discussions of crofting. However, as with any dispute, involving the Court should be a last resort in many cases, with alternative approaches to resolving differences being preferable.

For more information see www.scottish-land-court.org.uk

Financial support

Financial support for both the croft house and other development is currently available through the Croft House Grant scheme (CHG) and the Crofting Agricultural Grant Scheme (CAGS).

The Croft House Grant is available to crofters to build new croft houses or to rebuild and improve existing croft houses. Grants are geographically targeted into priority areas, High, Standard or Low priority. Full details on the CHG are available from Scottish Government Rural Payments & Services.

The Crofting Agricultural Grant Scheme provides assistance towards improving and sustaining the viability of rural business on crofts. Grants are available for a range of infrastructure and land management works such as buildings, access roads, provision of services, fences, dykes, livestock facilities, drainage, bracken control and so on. CAGS is part of the Scottish Rural Development

Programme (SRDP), which also offers other financial support to crofters, for example through the Forestry Grant Scheme. Full details on CAGS, and other SRDP support for crofters, are available at: <https://www.ruralpayments.org/publicsite/futures/topics/schemes-by-customer/crofters/>

Planning Approval

Development – in essence building or modifying structures – is governed by the planning system, and more often than not will require prior approval from the Planning Authority (though there are exceptions to this – see below). Planning Authorities base their planning decisions on their Local Development Plan: a concise document with accompanying proposals maps that contains land use allocations and policies, which identify the locations for housing, business and retail development. Additional, more detailed policy guidance is often issued as ‘Supplementary Guidance’.

The process of drawing up Local Development Plans involves wide consultation so it is important that community groups engage fully with it to ensure that their future aspirations are recognised. The process is outlined on Local Authority websites in the Development Plan Scheme, a document which details the programme for the Plan and opportunities for community involvement. This is likely to be a more effective way to have a bearing on planning decisions than trying to influence them later, because planning applications must generally be decided in accordance with the Development Plan.

Permitted Development

Many activities connected with mainstream forestry or farming do not usually need Full Planning Permission, including some building types, excavation, and engineering operations; these are ‘permitted developments’. There are exceptions to this, so it is important to check with the planning authorities first. In any event they can offer advice on siting and design, which should be considered carefully even for permitted developments.

However, certain permitted developments do still require what is known as ‘Prior Notification’. These include the erection of new buildings, or the significant modification of existing ones, and the construction of paths and tracks. The process of notification involves giving the planning authority information on the proposed development; they then have 28 days to confirm that significant impacts are unlikely, or alternatively request full details be submitted for prior approval. Permitted development rights may also be restricted where there are designations relating environmental or historic interest.

Some developments will however always require planning approval. These include: new houses; change of use of a building; substantial changes to the appearance of a building; formation of new car parks or road access; the construction of larger agricultural or forestry buildings; and the development of tourist accommodation or visitor facilities. This list is not exhaustive, and as ever, the golden rule is to discuss any development proposals with the planning authority first.

Housing

The opportunity for a tenant to build a house on the woodland croft has been noted above to be a key benefit to the tenant - and indeed the wider community: one of the recognised benefits of the crofting system has been its success in retaining populations, in part due to this opportunity.

Planning approval is needed for croft houses, like any other, and because crofting areas are typically rural, approval may be subject to Local Authority ‘Housing in the Countryside’ policies which apply outwith areas of settlements zoned for housing development, and other policies, for example those to safeguard particular environmental designations. Housing in such areas is usually restricted to some degree, however many Local Authorities recognise the tradition of housing on crofts and are willing to support it. In some cases they may require some comfort that what is proposed is a croft house for a genuine woodland croft enterprise, and they may therefore apply legal restrictions as to the use of the house (‘Section 75 agreements’)⁷ to ensure that it remains so.

However, planning authorities are likely to be reassured that proposals for housing on community-owned crofts are genuine, as community landlords will be anxious themselves to ensure that crofts are occupied and well managed by the tenant. They will typically take measures both in the initial selection of tenants and in the subsequent management of the tenancy that maximise community benefit from the presence of the crofts.

Obtaining planning approval for a community scale proposal which includes multiple new houses can present difficulties, if it is not already supported in the Local Development Plan. Therefore it is strongly advisable that you anticipate your community's needs and potential opportunities and discuss possible sites with the Local Authority at the earliest possible stage.

A useful source of information on the planning system generally is Planning Aid for Scotland. They are an independent charity who can offer free and impartial advice, information and support, and have a free planning advice helpline for individuals and communities. For more information see www.pas.org.uk/.

Building Regulations

In addition to the need for planning approval, if you propose to erect a new building, or to alter, extend or convert an existing building, you will normally require permission from the Building Standards department of the Local Authority. Permission is granted in the form of a Building Warrant, which must be obtained before any work begins, and which shows that the proposal complies with Building Regulations.

Building Regulations are legal requirements intended to provide reasonable standards “for the purpose of securing the health, safety, welfare and convenience of people in and around buildings, for conserving fuel and power and for furthering the achievement of sustainable development”⁸.

Once the work has been carried out and completed, a completion certificate must be submitted. This is needed to confirm that work has been carried out in accordance with the warrant and the Building Regulations. Subject to satisfactorily establishing that the work complies, the Building Standards department will then accept the completion certificate.

There are certain exemptions from the Building Regulations and the need for a Building Warrant, relevant to development on woodland crofts, but in most cases the above information will apply. Exemptions include single-storey detached buildings used for agriculture or forestry, but these are subject to certain qualifications and exceptions. One of these is that they do not cover any form of sleeping accommodation.

One exemption which *does* cover sleeping accommodation is a new exemption 23A for huts under 30 square metres, though this is only in respect of leisure or recreation at present. This hutting exemption is however significant as huts may provide an important opportunity for diversification on a woodland croft.

Further information can be obtained from your local authority Building Standards department, and the Building Standards pages of the Scottish Government website: <https://www.gov.scot/policies/building-standards/>

Timber Construction

Utilising timber grown on the croft for construction purposes would seem to be an obvious and desirable choice for many woodland crofters. However, it can be seen from the above that construction is highly regulated; in particular, Building Regulations require that structural timber used in buildings is strength graded.

Strength grading

Strength grading is an accurate assessment of the mechanical properties of a piece of timber. The modern approach to timber grading is not tied to specific timber species, but instead uses grading categories called strength classes. These are based upon what are termed characteristic values describing the mechanical performance of the timber. Any timber species that meets the required value can be used within the strength class. The benefit of this approach is that engineers are free to design using strength classes without worrying about which timber species to use.

It is essential that structural timber carries evidence of its strength class. Strength graded timber is therefore stamped with a stamp which gives information on strength, species, moisture content etc as well as various reference codes. Typically timber is machine graded, which involves measuring the stiffness (and hence strength) of timber using a large machine. Such facilities are only available at larger sawmills so to have locally produced timber strength graded may involve sending it to a larger mill for grading, which may not be cost-effective.

However it is also possible to strength grade timber visually – whereby suitably qualified persons use their experience to assess the number and severity of any defects in a piece of timber before assigning it a strength grade. This can be done on site avoiding the need for transport of timber so may be suitable for locally produced timber. There are however a more limited number of visual strength grades available (in comparison with machine grading); further, visual strength grading – like all strength grading – must be carried out at a moisture content appropriate to the environment in which the timber will be used. This means it should not be done ‘off saw’, and in practice for internal construction use will require it to be dried to a moisture content of 20% or less before grading.

Technology is also advancing all the time, with acoustic tools in development⁹ offering the prospect in the future of being able to grade timber quickly and easily in the wood (even as standing timber), using hand-held equipment.

Appropriate design and specification

Those who wish to build with their own – or locally sourced – timber will be limited to the quality and species available to them, and the options for strength grading. This need not be a problem if architects and specifiers bear this in mind, and design and specify accordingly. In terms of the discussion above, this will likely involve using larger sections of timber to give sufficient strength. Techniques such as post and beam construction are therefore very appropriate for use with local timber, and there are increasing numbers of architects designing buildings in this way.

Timber for non-structural applications eg cladding, flooring, interior joinery etc need not be strength graded. However durability will be a factor in exterior situations, and use of timber treatments may be required depending on species and location in the building¹⁰. As a general principle, good detailing to avoid timber remaining damp for extended periods is as important as inherent durability or timber treatment: even treated timber will ultimately fail if saturated. For interior use, timber will need to be kiln dried to an appropriate moisture content to avoid it ‘moving’ once fitted. In relation to this, perhaps the biggest challenge in using ‘home grown’ timber arises from the natural movement which often occurs when timber is first dried and can result in a previously straight piece becoming unusably warped.

At one time, the equipment needed to convert timber from round logs, dry it, and machine it for its end uses was very costly and thus the preserve only of dedicated sawmill businesses - such that using locally produced timber was often practically difficult and expensive. Nowadays however there are numerous small mobile sawmills, kilns and planer/moulders available for which community or co-operative ownership is a realistic option.

Further information on timber construction generally, including guidance for download, is available [here](#).

Woodfuel

Wood produced from managed woodlands which are replanted after felling is a renewable and low carbon fuel. As such, it provides an important alternative to fossil fuels for heating, for climate change reasons, and hence its use is supported by various incentives¹¹. Furthermore, as a locally produced fuel, it provides resilience for communities against supply disruptions and price volatility. It would therefore seem the obvious heating solution for woodland crofters, especially as modern woodburning equipment can attain efficiencies of 90%.

The first priority in new construction should however be to minimise the heating demand through good insulation, and good design for passive solar gain. Many local authorities now produce supplementary guidance on designing for sustainability, which may be helpful in this respect. Having identified the heat demand of a building (or buildings, as boilers can be shared through 'district' heating arrangements) the basic choice comes down to 'on demand' heat (automated woodchip & pellet boilers), or boilers combined with 'thermal storage' using large accumulator tanks (batch burning log boilers). Either of these options provides automatic or semi-automatic solutions which deliver similar 'programmable' heating to that of oil or gas boiler systems. 'Traditional' woodstoves are also options, but though typically cheaper they tend to be less efficient for heating water, and more labour intensive. That said, a 'dry' stove in an open plan, well insulated house may well be an appropriate choice.

Ultimately, choice of woodfuel system may be governed by whether woodland crofters wish to use their own timber for fuel. As well as woodfuel being a by-product of other forestry activities, its production through broadleaved coppice management can be an ideal option for woodland crofters, bringing a number of benefits. A range of species can be grown on a range of soil types; on exposed sites the threat of windthrow is minimised; and the size of the material produced means that heavy machinery is not needed to move or process it, it can be dried quickly, and with hardwood timber being 'energy dense', heat output is high.

Pellets, woodchip and logs all require varying levels of equipment and facilities to prepare, and which of these crofters choose will thus be influenced by the resources available to them. Alternatively, woodfuel is readily available from commercial suppliers in most areas.¹¹

Further Reading

The Highlands & Islands Woodland Handbook, Bernard Planterose (Croft Woodlands Project, 2019)

Contacts

Scottish Forestry - Community Development Policy Advisor	0131 370 5250
Community Assets Team, Highlands & Islands Enterprise	01520 722 988
Community Asset Transfer Manager, Forestry & Land Scotland	0131 370 5182
Crofting Commission, Inverness	01463 663 439
Scottish Forestry - Highland & Islands Conservancy, Dingwall	0300 067 6950
Scottish Forestry – Perth & Argyll Conservancy, Perth	0300 067 6005
Community Woodlands Association	01309 674 004
Scottish Crofting Federation	01599 530 005
Planning Aid for Scotland	0131 220 9730

This guidance note has been produced to provide an introduction to issues relating to housing & development on woodland crofts. While it is intended to provide an accurate reflection of the main provisions of the applicable legislation and regulations, 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. Decrofting is the removal of land from crofting tenure by a direction issued by the Crofting Commission, or resumed by Order of the Scottish Land Court; it is no longer then subject to the crofting acts. For more information see www.crofting.scotland.gov.uk (under Regulatory Applications/Forms & Guidance).
2. Under the provisions of section 5, subsection (3)(b) of the Crofters (Scotland) Act 1993, as amended by the Crofting Reform etc Act 2007, the Crofting Reform (Scotland) Act 2010 (asp 14), and the Crofting (Amendment) (Scotland) Act 2013, (henceforth referred to as 'the Act').
3. Further information from the Highlands Small Communities Housing Trust www.hscht.co.uk.
4. Any additional conditions of let (which are not given or guaranteed by the Act), 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, subsection (3), this will require the prior approval of the Land Court.
5. "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. This restricts compensation for improvements to what is suitable for the croft. This provides some protection for community landlords who fear being exposed to compensation claims from tenants who 'over-develop' their crofts. However, because the assessment of 'suitability' is to some degree subjective, it would be sensible to agree compensation arrangements in detail at the start of any tenancy (eg through additional conditions of let). Arrangements surrounding compensation for improvements are complex and it is recommended further advice is sought from a crofting lawyer if required.
7. Under Section 75(1) of the Town and Country Planning (Scotland) Act 1997, as amended, a planning authority may enter into an agreement with any person interested in land in their district, for the purpose of restricting or regulating the development use of the land, either permanently or during such period as may be prescribed by the agreement. Such agreements are generally known as 'Section 75 Agreements'.
8. Current Building Regulations were introduced by The Building (Scotland) Regulations 2004, and have been amended regularly since, most recently in 2017. See the Scottish Government website for more information.
9. <https://www.forestresearch.gov.uk/documents/1445/FCTN018.pdf>
10. For a general introduction to timber cladding see www.scotland.gov.uk/Publications/2002/03/15098/8731
11. For more information on woodfuel including sources of funding, see the Usewoodfuel Scotland website at www.usewoodfuel.co.uk. This site also contains a list of woodfuel suppliers.