Justice Committee

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003

Supplementary written submission from Greenbelt Group Ltd

Greenbelt Group Limited supplementary comments arising from oral evidence (5 March 2013) to Justice Committee inquiry into the effectiveness of the Title Conditions (Scotland) Act 2003.

Overarching comments

- Greenbelt Energy Limited is not a Property Factor in terms of the Property Factors (Scotland) Act 2011. It does not provide services to residents and residents are not obliged to contribute to the maintenance of the land. Greenbelt Energy Limited is a landowner maintaining its own land. The Committee member who raised this at the outset of our oral evidence has previously been informed of this. Reference to Greenbelt Energy Limited is therefore irrelevant for the purposes of the present Inquiry.

- It is appropriate for a developer to indicate at the planning application stage of a development whether the long term management arrangement is through common or single ownership model or adoption by local authority or other agency such as Scottish Water or indeed other (such as developer retaining ownership).

- We have provided our further views on the role of planners in the process.

- As stated in our Written Submission to this Committee it makes good practical sense for a developer to appoint at the outset of a development and to retain control of the solution for the maintenance and establishment of the open space areas. This is particularly relevant in the present economic climate where many estates are being built out over a longer period of time on a phased basis.

- This is the standard method of Greenbelt’s appointment. There is nothing wrong or unusual in this process. This is an arm’s length transaction between Greenbelt and the developer. Greenbelt has no financial or other interests with any developers. In terms of the Property Factors (Scotland) Act 2011 Greenbelt is required to declare any such interest - there is none.

- We have provided a copy of our Deed of Conditions wording (page 15). We draw the Committee’s attention to the comments we have noted thereon for ease of reference.

- In the case of certain developments where Greenbelt has been appointed (including Menstrie, Clackmannanshire) there is no alternative management mechanism for maintenance of the areas and features contained within the title deeds to each house.
The planning process prior to this development starting involved very detailed discussions between the developer, Clackmannanshire Council and the former Scottish Executive (now the Scottish Government) in relation to the provision and management treatment of the open spaces and the flood prevention schemes. This is borne out in the detailed planning conditions attached to the consent for the development.

The developer carefully considered which organisation or management model was best placed and had the necessary expertise to both carry out the implementation works and deliver the long term management of what is a complex and diverse set of landscape features and mechanisms as required by the planning authorities. Greenbelt and our Green space service were chosen on this basis.

Residents on our developments have chosen to retain Greenbelt as their service provider.

Home owners choose where to live. As stated in our Written Response to the Scottish Government’s 2011 Consultation of Maintenance of Land on Private Housing Developments (not yet published) certainty can and should be provided to home owners at point of sale (under the UK Consumer Code for Homebuyers) to inform and educate them in relation to their potential obligations for the maintenance of open space.

We have provided a sample report on house price trends for a Greenbelt development at The Pines Ellon, AB41 from 2006 (when Greenbelt took over the management and maintenance) to date. Residents expressed an interest in transfer arrangements a number of years ago but which has never been progressed due to lack of appetite on their part (referred to in Table B of Appendix 1 of our written Submission). House sales continue to take place and even in the present economic climate house prices continue to rise. This report demonstrates that the Green space model provides added value to house prices in addition to adding value to the amenity.

The statistics from the Property Factors Register indicate Greenbelt’s market position represents about 5-7% of private sector property management market. However as the focus of our forward business is presently concentrated almost exclusively on England and Wales in line with market trends this market share is likely to decrease in future years.

Comments on other submissions

Submission TC 25 by Professor Kenneth Reid contains a suggestion that if dismissal turned out to be possible “a factor would continue to own the recreational ground and could use it for whatever purpose it fancied.” This is simply not true. The land must be used in accordance with the existing use provided for in terms of the title conditions and the planning consent.

Submission TC 2 by Professor Robert Rennie highlights a situation where a RSL owns an amenity area but where neighbouring owners’ titles oblige them
to contribute to the maintenance of that area but however the owners have no formal title right to use that area and raises the question whether in such circumstances the title condition obliging the owners to contribute towards the maintenance might be unenforceable. In relation to this point, Greenbelt’s view is it is prudent for the Committee to strike the right balance between the academic legal opinions of the conveyancing professors and the practical issues and requirements “on the ground” as noted in the oral evidence presented to the Committee on 5 March by SFHA – does the Committee really want the housing stock to deteriorate?

Concluding comments

- We re-state our position that there is no appetite for change.
- Where is this mass dissatisfaction? HOHP, developers and also the Scottish Government have no evidence of mass complaint, so it would be helpful to understand where this mass dissatisfaction is and from whom.

Response of Greenbelt Group Limited to written submission from Greenbelt Group Action to Justice Committee inquiry into the effectiveness of the Title Conditions (Scotland) Act 2003 (TC9).

March 2007 document

We do not have any communication to which the responder refers dated March 2007.

In April 2008 we received a doorstep petition presented by the respondent referring to residents’ desire to terminate management services under the 2003 Act and suggesting that given the number of signatories, Greenbelt would be, in effect removed. The petition did not indicate which provisions of the 2003 Act were being founded upon.

Greenbelt is not a manager - it is administering its own land – something that any owner can do – and not land which is owned in common by others. There is nothing wrong with that. As there is no Manager there is no statutory right to dismiss under s28 or s64 of the 2003 Act.

This doorstep petition represents a prime example of a determined individual persuading an ill-informed majority to sign up to a change which was in his own interests but not in the interests of everyone else.

This assumes all residents are opposed to Greenbelt – which they are not. It would be wrong to base a majority view on a doorstep petition.

Greenbelt’s position (set out as part of our Voluntary Consumer Choice Option) inter alia is that to facilitate transfer of open space to the residents: -

- 2/3rd of home owners have no objections to the transfer arrangements (in line with the provisions of the 2003 Act for dismissal of a Manager); and
• A properly constituted body must be in place to own such land; e.g. limited company.

There was and still continues to be no evidence to suggest that either of these conditions have been met in this instance.

Greenbelt considers it appropriate where transfer is being considered to conduct an independent ballot of the individual residents and when doing so to provide them with all relevant information regarding the extent of their rights and responsibilities to enable them to make an informed decision as to whether they wish to proceed with the transfer. This is standard practice under our Voluntary Consumer Choice Options.

Other introductory comments

We refute absolutely the responder’s statement that “despite numerous audits, Greenbelt Group has failed systematically for many years to deliver services to the standards outlined in our title deeds”.

We re-state our position in our Opening Statement of oral evidence to this Committee, which is that on every one of our sites (around 200 in Scotland), which represents about 5-7% of private sector property management market, the open space is well maintained and managed, is safe and tidy, has recorded maintenance files on play areas/sustainable drainage features and importantly customer enquiry through various communication routes.

There is no record of any planning enforcement or indeed any insurance claim against flooding or any credible evidence of anything even vaguely approaching mass dissatisfaction by customers.

Greenbelt has made a commercially based business decision not to pursue decree against any of our customers in Scotland.

Overarching comments

Reference has been made to other legally commissioned legal opinions suggesting that Greenbelt’s business model is not compliant with the 2003 Act. Such Opinions are directly contradictory to Opinions Greenbelt have received over the years. We are fully satisfied that our business model is fully compliant with TSCA 2003.

The responder invites this Committee to declare these burdens invalid and to remove these automatically from the title deeds.

As policy decision makers, the Scottish Government has a duty to ensure that new legislation is based on accurate and credible information and not on the misleading information with which it has previously been provided by this responder and a determined vocal minority of complainers who have behaved unwisely and unfairly and who have acted in their own interests. Fundamentally, the Scottish Government has no mandate for seeking to amend the existing legislation in this way.
An obligation to maintain an area of open ground is no different in kind from one to maintain the roof of a tenement or to maintain a private road over which there is a servitude right of way. It is no more or less than an obligation to pay money.

It is not contrary to public policy, not repugnant with ownership or illegal and it does not constitute a monopoly in terms of the 2003 Act.

It is absurd to suppose that it is a monopoly for the ownership and control of land to be in the hands of one person (in this case Greenbelt) rather than anyone else (in this case the owners of the individual houses), for that is true of all ownership of all land at all times.

The Open Ground (land) serves the individual houses by contributing to their amenity.

The Greenbelt Deed of Conditions wording confers in favour of the residents a servitude right of pedestrian access and egress over the land for recreational purposes and amenity use of the land. We are therefore content that the residents have a formal title right to use the land and therefore the reciprocal title condition obliging them to contribute towards the cost of maintenance sufficiently relates to the individual houses for the purposes of s3 of the 2003 Act.

The responder states that “not a single estate took Greenbelt Group up on its “Options” scheme”. That is incorrect and is therefore misleading. We refer the Committee to Appendix 1 of our Written Submission (Table B – estates at Eyemouth (where developer agreed to make alternative management arrangements) Masterton (where local authority adopted on payment of commuted sum by residents) and Gryffe (where Greenbelt sold the land).

Response to questions raised by the Committee

6 - The responder suggests amending the 2003 Act to include land owning maintenance companies under the definition of “Managers”. Greenbelt is not a Manager – as previously stated it is simply administering its own land.

This suggestion is fundamentally flawed. One matter which is not clear or addressed is ownership of open space land and the responsibilities of land ownership if the provider of that maintenance is removed.

Land has a monetary value, and land owning management and maintenance companies are private commercial businesses. Proposed legislation would result in the loss of a legitimate income stream for private organisations. Even in the compulsory purchase scenario due compensation is paid to the owner of the land to be transferred. The scenario envisaged by the respondent is no different. Who is to pay compensation and on what basis? We re-state our position that any transfer of management and maintenance obligations should only take place once the LMC has transferred ownership (on the basis of requirements of our Consumer Choice Option). Any attempt by Scottish Government to interfere with ownership rights would constitute a contravention of Article 1 ECHR.
7(a) & 7(b) **We refute absolutely** the responder’s statements that “residents are mandated to pay land owning maintenance companies sums of *their choosing whether goods or services are delivered or not* and for as long as we remain in our homes” and that “land owning maintenance companies have no incentive to treat their so called customers fairly”.

Greenbelt has achieved the status of a Registered [Scottish] Property Factor under the Property Factors (Scotland) Act 2011 and our registration number is PF000191.

All provisions of the Property Factors (Scotland) Act came into force in Scotland on 1 October 2012.

The Scottish Government has approved our registration under the new law. This enables us to legally continue to offer a land management and maintenance service to our customers and we have the appropriate procedures in place to comply with the new law.

The new law sets minimum standards of practice and a **code of conduct** for the residential property and land management industry with which Greenbelt and all registered property factors must comply. It provides increased protection and improved services for homeowners and assurance to developers. As one of the leading land management companies in Scotland, Greenbelt has actively supported greater industry regulation and welcomes the new law.

A **key element** of the code is the requirement for a **written statement** to be issued to each homeowner to whom factoring services are provided. The written statement must be set out in a simple and transparent way, the terms and service delivery standards of the arrangement in place between us and the homeowner.

Home owners (may apply to the Home Owner Housing Panel for determination of whether a Greenbelt has **failed** –

- (a) to carry out property factor duties or
- (b) to ensure compliance with the property factor Code of Conduct

**To date Greenbelt has received no intimation of any referral by a resident to the HOHP.**

In the event of any future determination Greenbelt like all other registered property factors would require to comply with a Property Factor Enforcement Order. Failure to comply with such an Order is a criminal offence and may result in a property factor being removed from the Register. In such circumstances it would then be a criminal offence for Greenbelt or any other organisation/individual to continue to operate as a property factor.

Greenbelt appoints contractors who are both qualified and suitable to carry out works on a development on the following basis:

1. We advertise UK wide in Horticulture Week to invite maintenance and specialist contractors to apply to be part of our preferred supplier list (allowing us to
request quotes from only those selected from the list who meet the criteria for working with us e.g. experience, qualifications, size of portfolios worked on, H and S policy, specialisms, sufficient insurance, etc.) All applications are recorded and our PQQ (pre-qualifying questionnaire) is sent out to all applicants.

2 Once all applicants return the completed PQQ’s we then allocate these into geographic regions and in accordance with whether routine maintenance or specialist.

3 At the end of September yearly we carry out a review of all existing contractors’ performance (via the monthly inspections and scoring of performance by our Regional Operations Managers/ Customer Care/On site etc.) and their value for money on site. All of our sites in Scotland are managed, for economies of scale and value for money, in portfolios which range in size. Yearly we review performance, price and geography of each portfolio.

4 At the end of September 2012 the current resident maintenance contractor’s performance and pricing meant that he retained the site on which the responder resides on performance and price and given he met that criteria and has met our preferred supplier criteria he also has entered into a 5-year Service Agreement with us effective from 1 November 2012. The Service Agreement will be reviewed annually for performance and the price provides only for an annual inflationary increase which is beneficial for residents for consistency of service and costs.

5 So long as the resident maintenance contractor continues to perform and meet the criteria of the preferred supplier list and the terms of his Service Agreement with us then he will remain on site without any requirement for us to retender it to other contractors on the preferred supplier list.

6 There is also a specialist play area contractor appointed who is on our preferred supplier list.

7 Greenbelt has ensured that all contractors appointed by us have provided evidence of public liability insurance.

8 All documents in relation to this process have been retained, either in electronic or paper form and are commercially sensitive.

**Land banking contract between developer and Greenbelt Group**

Greenbelt does not act as land bankers for developers. Appendix B of the responder’s submission refers to a “right of redemption” – a legal mechanism frequently used in land development transactions (particularly pre the 2003 Act) whereby the developer wishes to reserve the right to re-acquire part of the land typically to facilitate access for future development purposes.

The 2003 Act codified with some important modifications the previous law relating to real burdens and introduced new statutory provisions for the creation, enforcement, variation and extinction of real burdens created in a deed executed on or after the appointed day (28 November 2004).
In the case of a deed executed on or after 28 November 2004, it is no longer possible to create a real burden consisting of a right of redemption or reversion or any other type of option to acquire a property.

Whilst it is still possible to create a personal right of redemption enforceable between the parties to the contract the redemption would not be an encumbrance on the land constituted in favour of the owner of other land in that person’s capacity as owner of that other land. Our experience is that since the introduction of the 2003 Act the practice of contractual redemptions is limited and is very much the exception and certainly not standard practice.

Any transfer to Greenbelt including such rights cannot reasonably be said to create some harbour for future development land primarily because of the authorised planning use designation of the land as open space/amenity land. Any future development of such areas would be subject to planning consent being granted by the local authority for a change of use.

The suggestion therefore that developers have a strong vested interest in the land owning maintenance model continuing to facilitate land banking is fundamentally flawed. In practice, the reverse is true – if a developer perceives a certain piece of land as having development value they will retain ownership and control over this area and not transfer it to Greenbelt.

Customer care information

Our Customer Care team currently utilise a system known as “Call Take” to monitor, investigate and resolve any enquiries or complaints we may receive, in line with our Customer Care Charter.

This Charter (attached – which is published on our website and which we send in hard copy form to each of our individual residents with their Written Statement of Services in compliance with the Property Factors (Scotland) Act 2011) outlines our commitment to our customers and the standards of service they should expect to receive when communicating with us either by telephone (Freephone line), e-mail, mail or via our Website Enquiry Facility.

In line with our Customer Care Charter, by which we aim to respond to all of our customer concerns in full, this Call Take system allows us to see all ‘open’ cases at any given time. Every communication to our Customer Care team is logged, regardless of the medium, and an ‘issue’ raised and assigned to the relevant department. Our monitoring system will then identify when the issue is at certain stages and issue reminders to those responsible for providing a resolution. This ensures that the issue does not remain unanswered. If, due to the complex nature of the enquiry, we require further time to investigate, an acknowledgement will be issued to the customer to advise accordingly.

In addition the Call Take system provides us with weekly statistics to allow us to analyse the calls received. An example of this is as follows:
Week ending 23 February 2013

Calls: 151 [105 were closed; 28 were 'Opened'; 5 were for finance; 13 others.]; of these, 62 were emails (41%), 42 were letters (28%); 47 telephone (31%).

69% were answered at the point of the call.

3% were referred to our Finance Department.

9% were responses to circulars.

Breakdown:
The remaining 19%, or the 28 open cases, can be broken down as follows:
- 10 (35%) were calls; of these calls 6 (60%) were for sites in Scotland and 4 (40%) were for sites in England.
- 18 (65%) were issues; of these 10 (55%) were for sites in Scotland, 3 (17%) were for sites in Ireland, 3 (17%) were for sites in Wales and 2 (11%) were for sites in England.
- 17 (94%) were enquiries from residents, 1 (6%) was from an MSP.
- 14 (78%) were maintenance related, 3 (21%) in England, 7 (50%) in Scotland, 3 (21%) in Ireland and 1 (8%) in Wales.
- 3 (17%) were referred to our Legal Department, all for Scotland.
- 1 (5%) was related to the AMC for a site in England and referred to our Finance Department.

None of the above issues were complaints.

For the present operating Year-to-Date (1st October 2012 to date) the average number of communications per week for Scotland is 63. Of these, 95% are being closed (i.e. answered and attended to) within 20 days in terms of our Customer Care Charter.

The open issues are monitored on a regular basis and answered by the person who has logged them for consistency purposes.

Payment rate/collection information

Collection rate Scotland – 92.03% (Based on AMC’s (plots/units) billed to date on all sites and current balance O/S) i.e. number of plots/units in Scotland annually contributing.

Overall collection rate on this basis is 90.93%, let down by Wales (in its infancy) and Ireland. There are a number of court cases pending in England.

The balance of about 8% of non-collected plots relate to either won’t pay, can’t pay or owner has requested special circumstance such as unemployment/bankruptcy.

Payments received analysis, over past 12 months:

Cheque 21.17%
Direct Debit 49.75%
Card payments 15.52%
BACS 11.12%
On-line 2.40% (Only just introduced and available for last 3 months of the 12) *
Other 0.05%

* Over the past 3 months of availability this has seen around a 9%-10% take up.

Summary of information being stored all generated by SIS (Greenbelt database) and PDF images saved in site files:
- Introduction letter, or Change of Owner Letter (Initial correspondence we would issue)
- Bill or DD notification (if relevant)
- Reminder
- Final Reminder
- Debt Recovery Letter
- 7 Day letter
- Lender letter
- Receipts – e-mail for on-line as standard other payments types are on request.

We do not retain any credit card details; these are taken over the telephone or in person.

We do not store any Card/Account details for on-line payments; we currently use a third party (PayPal) who process the payments and remit to us.

Direct Debits, we have a password/restricted access system which stores bank account details and notify with 10 days’ notice, as guidelines state, in writing prior to any deduction from a bank account.

All payment information is stored on our billing system with only the cheque number or receipt reference numbers (for on-line and credit card payments) as a reference point.

Greenbelt Group Limited’s views on the role of planners in planning process

Planners when considering planning applications generally consider open space at detailed stage and to assist will refer to following documents:
- Scottish Planning Policies: for example
  - SPP 11: open space and physical activity
  - SPP 3: planning for housing
  - SPP 21: Greenbelts
  - SPP 17: Transport and Planning

Circulars: statements of government policies and guidance on how a matter may be implemented as a result of a legislative or procedural change.
- Planning Advice Notes: for example
  - PAN 60 Planning for Natural Heritage
  - PAN 61 Planning and Sustainable Drainage Systems (SuDS)
  - PAN 71 Conservation Area Management
  - PAN 68 Design Statements
  - PAN 65 Planning and Open Space.

It is in this context that Planners must be assured that the Social, Economic and Environmental components of open space and other features are secure in a long term and sustainable arrangement.

The planning system does provide for open space to:
- Recognise and protect valued features such as SINC or TPO’s or similar.
- Ensures the provision of quality open space within the design.
- Recognises that features such as SuDS and play areas etc. are part of modern developments.

Most Planning Authorities know that Greenbelt offers more than just an “adoption service” and that the company is always prepared to assist in providing guidance from experience and knowledge on design and implementation of open space and features such as play areas, woodlands, SuDS and handover processes where large phased developments are relevant.

Greenbelt does not play any decision making role in the planning process. This is absolutely the case as the developer is the applicant and the planner/planning committee the decision maker.

However, as part of proposals by the developer, then it appropriate to indicate whether the long term management arrangement is through common or single ownership model or adoption by LA or other agency such as Scottish Water or indeed other (such as developer retaining ownership).

In 2012 Greenbelt was awarded sites in Aberdeenshire, Lothian, Borders, Highlands and Angus regions.
### House Sold in AB41 8AT

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<th>% Value Change</th>
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### Houses Sold in AB41 8AS

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CREATING GREAT OUTDOORS

CUSTOMER CARE CHARTER

Greenbelt is committed to service delivery that is totally customer focused. This is underpinned by our Customer Care Charter detailing how we will communicate with our customers, providing information about our standards of service and explaining how you can expect to be treated when dealing with the company. We will provide a service that is helpful, focussed on solving customer problems and responsive to your needs. This factsheet is one in a series of publications about how we work with our customers.

Overall our aim is to deal with enquiries as quickly and as fully as possible and to keep you informed if we require additional time.

Our Commitment to You

We will:
- Deal with your enquiry honestly, fairly and politely
- Give prompt and accurate advice and information
- Respect your right to confidentiality
- Take into account your individual needs
- Keep you informed about what is happening with your enquiry
- Listen to what you have to say
- Have an easy-to-use enquiry procedure if things should go wrong

By telephone:
- We aim to answer your call promptly and to let you know who you are speaking to. If you are calling during a busy spell please be patient – your call will be directed to the relevant member of staff who will respond to your call as quickly as they can; or, alternatively, leave a message and we will call you back within 24 hours.
- We will return voice-mails, and messages left on our out-of-hours answer service, during the next working day. Normal office hours are Monday to Friday 09.00-17.00 (excluding public holidays)

Face-to-face:
- We will deal with you clearly and politely
- Should you wish a meeting, we will aim to arrange this as soon as possible and we will confirm it with you in advance

Standards of Service

In writing:
- We will confirm receipt of your enquiries and complaints received by fax or e-mail within 2 working days
- We aim to reply to you within 20 working days of receipt either giving a full reply or advising you that additional time will be required and stating a date by which we will respond
- All personal correspondence will be attributed to a named person
- Our letters and leaflets will be written clearly and will be free of jargon

Helping us to help you:
- Please let us know if you have any difficulty contacting us
- Tell us of any relevant changes in your circumstances as soon as you can
- Please be considerate and polite to our staff and our contractors as we are here to help you
- Tell us if you have any comment or complaint about our service
- Make suggestions if you think there are ways we could improve our service

Evaluation:

Our standard of service will be regularly monitored as part of our self evaluation process.

If you have any queries you can contact us on:

Our Freephone Enquiry Line: 0800 028 1749
Fax: 0845 094 0941
Email: mail@greenbeltgroup.co.uk

In case of emergency over the Christmas to New Year, and Easter, periods (where our offices are closed for more than just a Saturday & Sunday) please contact us by our normal telephone number 08450 940 940 and listen to the special hotline message that will be given. This message will also appear on our website. Follow the instructions provided.

Where we have responsibility for mechanical features such as a sewage pumping station or electric gates, we have systems in place that notify specialist repair contractors directly. When a fault occurs they will attend as a matter of priority.

Our offices do not close on any other public holidays, so on all other occasions please contact us via the usual methods given above.
Putting things right

We recognise that from time to time customers may be dissatisfied with the standard of service they have experienced. Such issues need to be addressed in order to ensure that our normal high standards are maintained.

In the event that you are dissatisfied with our full reply you must write in the first instance to the Head of Customer Services, as soon as possible, but within 28 days from issue of our full reply who will respond within 5 working days of receipt, either giving a full reply or advising you that additional time will be required and stating a date by which he will respond.

If you are dissatisfied with the full reply of the Head of Customer Services you must write to the Managing Director, as soon as possible, but within 14 days of receipt of our full reply stating why you do not consider the full reply to be satisfactory. The Managing Director will confirm his decision in writing within 10 working days of receipt, either giving a full reply or advising you that additional time will be required and stating a date by which he will respond. The decision of the Managing Director is final.

If you live in Scotland, if you remain dissatisfied with the Managing Director’s decision, and if you consider that we have failed to carry out our “property factor” duties in terms of the Property Factors (Scotland) Act 2011 (“the Act”) or if you consider we have failed to comply with the Code of Conduct (set out in the Act) you can ask for a determination by the Homeowner Housing Panel. The Panel can be accessed on line at [http://www.rhoscotland.gov.uk](http://www.rhoscotland.gov.uk). To make a complaint to the Panel you must first notify us in writing of the reasons why you consider we have failed to comply with our duties or failed to comply with the Code and we must also have refused to resolve your concerns or have unreasonably delayed in attempting to resolve them.

COMPLAINTS PROCEDURE

The Company has a formal Complaints Procedure which can be used where our customer enquiry process does not cover the following:

- An alleged grievance
- Against an employee
- Against a contractor
- Involving criminal damage

This factsheet is one in a series of publications about how we work with our customers.

Overall our aim is to deal with complaints as quickly and as fully as possible and to keep you informed if we require additional time.

Anyone who believes they have a valid grievance or complaint should put it in writing to:

| The Head of Customer Services, Greenbelt Group Ltd |
| McCafferty House, 99 Firthill Road, Glasgow G20 7BE |

Your complaint will be logged on the company’s enquiry management system, and be investigated immediately. The Head of Customer Services will respond within 5 working days of receipt, either giving a full reply or advising you that additional time will be required and stating a date by which he will respond. The full reply will be sent recorded delivery or registered post.

If you are dissatisfied with the full reply of the Head of Customer Services you must write to the Managing Director, (address as above) as soon as possible, but within 14 days of receipt of our full reply stating why you do not consider the full reply to be satisfactory. The Managing Director will confirm his decision in writing within 10 working days of receipt, either giving a full reply or advising you that additional time will be required and stating a date by which he will respond. The full reply will be sent recorded delivery or registered post. The decision of the Managing Director is final.

If you live in Scotland, if you remain dissatisfied with the Managing Director’s decision, and if you consider that we have failed to carry out our “property factor” duties in terms of the Property Factors (Scotland) Act 2011 (“the Act”) or if you consider we have failed to comply with the Code of Conduct (set out in the Act) you can ask for a determination by the Homeowner Housing Panel. The Panel can be accessed on line at [http://www.rhoscotland.gov.uk](http://www.rhoscotland.gov.uk). To make a complaint to the Panel you must first notify us in writing of the reasons why you consider we have failed to comply with our duties or failed to comply with the Code and we must also have refused to resolve your concerns or have unreasonably delayed in attempting to resolve them.
DEED OF CONDITIONS

By

[DEVELOPER] LIMITED

2018

FAS

Subjects: nod burdens affecting the Amenity Areas on <= development
WE, < > LIMITED, incorporated under the Companies Acts (Registered Number < >) and
having our Registered Office at < >, hereby provide as follows:

PART 1 INTERPRETATION

In this Deed:

“Annual Management Charge” means the total annual costs and charges incurred in the
relevant Year by the Open Ground Proprietors in effecting the Management Operations
(whether by virtue of Rule 3.1 hereof or otherwise) and which sum shall include without
limitation:

(a) all routine, non-routine and emergency works (including but not restricted to any
element thereof specifically attributable to the cost of (i) the removal of fly tipping or
other debris from any part of the Open Ground, (ii) capital works (including but not
limited to felling) required in respect of mature trees on any part of the Open Ground,
and (iii) rectification of damage to any part of the Open Ground caused as a result of
vandalism or nuisance);

(b) all reasonable fees charges and expenses incurred (including fees of professional
advisers, agents or bodies instructed or employed in connection therewith and the
costs and expenses of employing staff) whether directly or indirectly and reasonable
estate management remuneration and charges incurred including without prejudice to
the generality of the foregoing any insurance premiums and charges;

(plus all VAT deductible thereon);

“Annual Sum” means an advance payment in respect of a Proprietor’s liability under Rule 4.1
to be reasonably determined by the Open Ground Proprietors;

“Burdened Proprietors” means the Open Ground Proprietors;

“Developer” means the Developer Limited (designator);

“Development” means the subjects registered in the Land Register of Scotland under Title
Number < >;

“Development Land” means the residential development site known as and forming < > all as
shown for demonstrative purposes outlined in red on the Plan being the subjects registered
in the Land Register of Scotland under Title Number < > under exception of the Open Ground;
"Due Date" means such date or dates as the Open Ground Proprietors may in their absolute discretion specify from time to time;

"Dwelling" means each individual property constructed or to be constructed on the Development Land and "Dwellings" shall be construed accordingly;

"Management and Maintenance Specification" means the specification annexed and executed as relative to this Deed of Conditions;

"Management Operations" means all works and others comprised in the management, maintenance and where necessary renewal of the Open Ground in accordance with the Management and Maintenance Specification and generally at all times in accordance with generally prevailing principles of sound silvicultural and/or sound residential land management practice (as the case may be);

"Open Ground" means such part or parts of the Development comprising [insert anything specifically included – landscaped areas and/or areas of open space, woodland, play areas, surface water attenuation features, entrance features, boundary walls, fences, hedges, lighting bollards and associated electricity supply, and any other features to be installed by the Developer] which are to be disposed by the Developer to the Open Ground Proprietors, shown shaded green on the Plan together with (i) all boundary walls within or bounding such areas, and (ii) any additional areas which are to be disposed by the Developer to the Open Ground Proprietors, but excluding therefrom (a) all walls, fences, hedges, or other structural boundary dividing the Open Ground from any Dwellings erected or to be erected on the Development and (b) all boundary walls forming part of the Dwellings; and (c) [insert anything else specifically excluded];

"Open Ground Proprietors" means Greenbelt Group Limited incorporated under the Companies Act (registered number 1923769) and having its registered office at McCafferty House, 99 Firthill Road, Glasgow G20 7BE or its successors or any other person, persons or entity of the appropriate Local Authority as proprietors of the Open Ground;

"Plan" means the plan annexed and executed as relative to the Deed of Conditions;

"Proprietor" means the proprietor or proprietors from time to time of each Dwelling;

"Year" means any period of one year commencing on such date as the Open Ground Proprietors may in their absolute discretion determine from time to time.
PART 2 REAL BURDENS

Rule 1-status of real burdens and date of creation

1.1 The real burdens in this Deed of Conditions comprise a common scheme affecting the Development Land and the Open Ground;

1.2 The real burdens take effect, in respect of any Dwelling or any other part of the Development, on the date on which this Deed of Conditions is registered in the Land Register of Scotland.

Rule 2-variation and discharge of real burdens

2.1 This rule provides for the variation or discharge of any of the real burdens in this Deed of Conditions;

2.2 A real burden may be varied or discharged by a deed of variation or discharge under section 33 of the Title Conditions (Scotland) Act 2003 granted by or on behalf of the owners of at least fifty per cent of the Dwellings in the Development;

2.3 Where the Developer is proprietor of any Dwelling any deed of variation or discharge will require to be executed by the Developer;

2.4 No application may be made to the Lands Tribunal for Scotland under sections 30(1)(a)(i) and 91(1) of the Title Conditions (Scotland) 2003 Act in respect of the real burdens created in this Deed for a period of five years after the date of registration of this Deed of Conditions in the Land Register of Scotland;

2.5 Sections 31 and 35 of the Title Conditions (Scotland) Act 2003 are expressly disappplied to the Open Ground and it is expressly stated that no liability will attach to the Open Ground Proprietors under the said Section 31.

Rule 3-Real Burdens affecting the Open Ground

The following real burden is imposed on the Open Ground in favour of the Development Land:

3.1 The Burdened Proprietors shall carry out the Management Operations, provided that the foregoing obligation shall cease to have effect at such time as the Development Land shall have ceased substantially to be used as a residential housing development.
Rule 4 - Real Burdens affecting each Dwelling

The following real burdens are imposed on the Development Land in favour of the Open Ground:

4.1 The Annual Management Charge is shared equally among the Dwellings, and each Proprietor is liable accordingly;

4.2 On the Due Date in each Year each Proprietor must pay to the Open Ground Proprietors the Annual Sum;

4.3 Where, in any Year, the Annual Sum exceeds a Proprietor’s liability under Rule 4.1, the excess is to be retained as an advance payment for liability in subsequent Years;

4.4 In the event of any Proprietor or Proprietors so liable failing to pay the Annual Sum within 28 days of the Due Date (and which sum shall attract a reasonable late payment charge if not paid within 28 days of such Due Date) the Open Ground Proprietors shall (without prejudice to the other rights and remedies of the other Proprietors) be entitled to sue for and to recover the same in its own name from the Proprietor or Proprietors so failing together with all the expenses incurred by the Open Ground Proprietors (including the said reasonable late payment charge);

4.5 The Open Ground Proprietors must within three months after the end of any Year make available, at their Registered Office, a full and vouched statement of account of the Annual Management Charge in respect of that Year to any Proprietor who requests in writing to examine same;

4.6 Nothing contained herein shall prevent or restrict the Developer from transferring responsibility for management and maintenance of part or parts of the Open Ground to the Open Ground Proprietors in terms hereof prior to the eventual conveyance of the Open Ground and in which case, from the date of such transfer of responsibility, each Proprietor will be bound to pay the Annual Sum applicable to such part or parts of the Open Ground and the Open Ground Proprietors shall be entitled to enforce the real burdens imposed in terms of this Clause;

4.7 When a Proprietor sells or disposes of his Dwelling he must notify (a) the Open Ground Proprietors at least fourteen days prior to the date of settlement of the sale of the Dwelling of the identity of the purchasers of the Dwelling and (b) the purchasers
prior to completion of their purchase of the Dwelling of their obligations in terms of this Rule;

4.8 All Proprietors are hereby bound and obliged not to deposit refuse upon or otherwise exercise any rights which they may have over the Open Ground in such a manner as to cause nuisance or prejudice to the Open Ground or any part thereof or to prejudice or adversely affect the efficient and economic carrying out by the Open Ground Proprietors of any part of the Management Operations;

4.9 All Proprietors are hereby bound and obliged not to deposit refuse upon or otherwise exercise any rights which they may have over the Open Ground in such a manner as to cause nuisance or prejudice to the Open Ground or any part thereof or to prejudice or adversely affect the efficient and economic carrying out by the Open Ground Proprietors of any part of the Management Operations;

4.10 No dog must be allowed to foul any part of the Open Ground and no dog is permitted on the Open Ground unless it is:
   4.9.1 kept on a lead; and
   4.9.2 accompanied by a responsible person.

**Rule 5: Servitudes affecting the Development Land**

The following servitudes are imposed on the Development Land in favour of the Open Ground:

5.1 A servitude right of access to and egress from the Open Ground from and to the public road and footpath for pedestrians and all manner of vehicles over and through the roads, lanes and footpaths comprised or to be comprised in the Development Land.

*[insert any relevant additional servitudes as appropriate]*
Rule 5- Servitudes affecting the Open Ground

The following servitudes are imposed on the Open Ground in favour of the Development Land:

5.1 All necessary servitude rights of access reasonably required through the Open Ground for the purpose of laying and thereafter maintaining and if necessary renewing sewers, pipes and other necessary utility conduits required to serve the residential housing development constructed or to be constructed by the Developer on the Development Land and for all works properly and necessarily associated therewith as required by statutory authority from time to time, provided always that all or any of the foregoing rights are (1) exercised in such manner as to cause the least practicable interference with the lawful and permitted activities and operations of the Open Ground Proprietors upon the Open Ground and in accordance with reasonable prior written notice to and consultations with the Open Ground Proprietors and (2) subject to the Proprietor exercising such rights being responsible at all times for making good all damage caused to the Open Ground or to any trees, buildings or other structures or property in or upon the Open Ground to the extent that such damage arises out of the exercise by the such Proprietor of said rights;

5.2 Inherent and irrepealable right of pedestrian access and passage over the Open Ground for recreational purposes and amenity use only of the Open Ground, subject to the Proprietor exercising such right being responsible at all times for making good any damage caused to the Open Ground or to any trees, buildings or other structures or property in or upon the Open Ground to the extent that such damage arises out of the exercise by such Proprietor of said rights. IN WITNESS WHEREOF.