

# NOTIFICATIONS AND GROUNDS AND DECISIONS FOR APPLICATIONS DECIDED

Applications between 01/10/18 – 07/10/18

N.B. If your area is not shown in the list below, this is due to no notifications being recorded/ applications decided in your area for the specified period.

## **Argyll, Skye & Lochalsh, South and West Inverness**

**Croft:** 21 Garafad  
**Parish:** Kilmuir (Skye)  
**Reg No:** I2639  
**Case Number:** 90916  
**Application Type:** Subletting

<b>Decision – Approved</b>	<b>Part Croft – 0.71 ha</b>
<b>Grounds for Decision</b>	
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.	
<b>Conditions</b>	
The sublet will be for the fixed period of 7 years.	

**Croft:** 9 Portnahaven  
**Parish:** Kilchoman  
**Reg No:** A0567  
**Case Number:** 86843  
**Application Type:** Decrofting – Croft House Site and Garden Ground

<b>Decision – Approved</b>	<b>Extent: 0.157 ha</b>
<b>Grounds for Decision</b>	
Having considered all of the available information, the Commission is satisfied as required by the Crofters (Scotland) Act 1993 that the site consists only of the dwellinghouse on or pertaining to the croft and that the extent of the garden ground is appropriate for the reasonable enjoyment of the dwellinghouse as a residence and has agreed to grant the Direction as requested.	

**Croft:** Alister Annie's Croft  
**Parish:** Colonsay  
**Reg No:** A1588  
**Case Number:** 91277  
**Application Type:** Short Term Let

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.
<b>Conditions</b>
The sublet/short term let will be for the fixed period of five years.

**Caithness, Orkney & Shetland**

**Croft:** 8 Ordale  
**Parish:** Unst  
**Reg No:** Z2170  
**Case Number:** 85693  
**Application Type:** Owner-Occupier Crofter Letting

**Decision – Approved**

**Grounds for Decision**

Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** Poets Croft  
**Parish:** Canisbay  
**Reg No:** C0119  
**Case Number:** 84565  
**Application Type:** Let Part of a Croft

**Decision – Approved**

**Grounds for Decision**

Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** Ayres of Selivoe  
**Parish:** Sandsting  
**Reg No:** Z1491  
**Case Number:** 88730  
**Application Type:** Assignment

**Decision – Approved**

**Grounds for Decision**

Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** Easthouse  
**Parish:** Northmavine  
**Reg No:** Z1249  
**Case Number:** 90347  
**Application Type:** Assignment

**Decision – Approved**

**Grounds for Decision**

Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** Burns  
**Parish:** Whalsay  
**Reg No:** Z0936  
**Case Number:** 87478  
**Application Type:** Decrofting – Part Croft

<b>Decision – Approved</b>	<b>Extent: 0.04 ha</b>
<b>Grounds for Decision</b>	
<p>Having considered all of the available information, the Commission is satisfied this application is for a reasonable purpose and that the extent of the land applied for is not excessive in relation to that purpose. The Commission has therefore agreed to grant the Direction as requested.</p>	
<b>Conditions of Direction</b>	
<p>The land must be enclosed (so far as not already enclosed) with a stockproof fence within four months of acquisition.</p> <p>That fence shall be maintained in good order and repair by each successive owner or occupier of the land.</p>	

**Croft:** North Voe  
**Parish:** Dunrossness  
**Reg No:** Z0320  
**Case Number:** 90642  
**Application Type:** Decrofting – Croft House Site and Garden Ground

<b>Decision – Approved</b>	<b>Extent: 0.057ha</b>
<b>Grounds for Decision</b>	
<p>Having considered all of the available information, the Commission is satisfied as required by the Crofters (Scotland) Act 1993 that the site consists only of the dwellinghouse on or pertaining to the croft and that the extent of the garden ground is appropriate for the reasonable enjoyment of the dwellinghouse as a residence and has agreed to grant the Direction as requested.</p>	
<b>Conditions of Direction</b>	
<b>Enclosure of area:</b>	<p>The land must be enclosed (so far as not already enclosed) with a stockproof fence within four months of the date of the Direction.</p> <p>That fence shall be maintained in good order and repair by each successive owner or occupier of the land.</p>

**Croft:** North House (Apportionment 1)  
**Parish:** Delting  
**Reg No:** Z3758  
**Case Number:** 90503  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
<p>Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.</p>

**Croft:** North House (Apportionment 2)  
**Parish:** Delting  
**Reg No:** Z3759  
**Case Number:** 90587  
**Application Type:** Assignation

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** Effstigarth  
**Parish:** Yell  
**Reg No:** Z2681  
**Case Number:** 90490  
**Application Type:** Assignation

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

### **Highland (excl Caithness)**

**Croft:** 84 Brae  
**Parish:** Urquhart & Logie Wester  
**Reg No:** R5592  
**Case Number:** 89038  
**Application Type:** Decrofting – Part Croft

<b>Decision – Approved</b>	<b>Extent: 0.119 ha</b>
<b>Grounds for Decision</b>	
Having considered all of the available information, the Commission is satisfied this application is for a reasonable purpose and that the extent of the land applied for is not excessive in relation to that purpose. The Commission has therefore agreed to grant the Direction as requested.	
<b>Conditions of Direction</b>	
The land must as a first change of use, be used, let or disposed of as a site for a dwellinghouse.	
The land must be enclosed (so far as not already enclosed) with a stockproof fence within four months of the development being completed.	
That fence shall be maintained in good order and repair by each successive owner or occupier of the land.	

## **Western Isles**

**Croft:** 8 Geocrab, Harris  
**Parish:** Harris  
**Reg No:** I1671  
**Case Number:** 91739  
**Application Type:** Consent to be absent

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
The Commission has considered the application for consent to be absent from the croft under section 21B of the Crofters (Scotland) Act 1993, is satisfied that there is a good reason for the crofter not to be ordinarily resident on, or within, 32 kilometres of the croft and grants the crofter consent to be absent until 18/09/2021.

**Croft:** 2a Leurbost (House Site Only)  
**Parish:** Lochs  
**Reg No:** R6682  
**Case Number:** 82646  
**Application Type:** Decrofting – Section 18 Feu

<b>Decision – Approved</b>	<b>Extent: 0.117 ha</b>
<b>Grounds for Decision</b>	
As this application has been made in respect of a croft which was feued under Section 17/18 of the Crofters (Scotland) Act 1955, the Commission has agreed to grant the Direction as requested.	

**Croft:** 54b Balallan  
**Parish:** Lochs  
**Reg No:** R2946  
**Case Number:** 88274  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** 37a Lower Bayble  
**Parish:** Stornoway  
**Reg No:** R3662  
**Case Number:** 88982  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** **8b Carrageich**  
**Parish:** **Harris**  
**Reg No:** **I1591**  
**Case Number:** **90547**  
**Application Type:** **Decrofting – Part Croft**

<b>Decision – Approved</b>	<b>Extent: 0.1125 ha</b>
<b>Grounds for Decision</b>	
<p>Having considered all of the available information, the Commission is satisfied this application is for a reasonable purpose and that the extent of the land applied for is not excessive in relation to that purpose. The Commission has therefore agreed to grant the Direction as requested.</p>	
<b>Conditions of Direction</b>	
<p>The land must as a first change of use, be used, let or disposed of as the site for a dwellinghouse.</p> <p>The land must be enclosed (so far as not already enclosed) with a stockproof fence within four months of the development being completed.</p> <p>That fence shall be maintained in good order and repair by each successive owner or occupier of the land.</p>	

**Croft:** **15 Fivepenny Ness**  
**Parish:** **Barvas**  
**Reg No:** **R0769**  
**Case Number:** **89861**  
**Application Type:** **Assignment**

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
<p>Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.</p>

**Croft:** **19 North Bragar**  
**Parish:** **Barvas**  
**Reg No:** **R0410**  
**Case Number:** **88656**  
**Application Type:** **Assignment**

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
<p>Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.</p>

**Croft:** 10 Rhugashinish  
**Parish:** South Uist  
**Reg No:** I5470  
**Case Number:** 90500  
**Application Type:** Decrofting – Part Croft

<b>Decision – Approved</b>	<b>Extent: 0.172 ha</b>
<b>Grounds for Decision</b>	
<p>Having considered all of the available information, the Commission is satisfied this application is for a reasonable purpose and that the extent of the land applied for is not excessive in relation to that purpose. The Commission has therefore agreed to grant the Direction as requested.</p>	
<b>Conditions of Direction</b>	
<p>The land must as a first change of use, be used, let or disposed of as the site for a dwellinghouse.</p> <p>The land must be enclosed (so far as not already enclosed) with a stockproof fence within four months of the development being completed.</p> <p>That fence shall be maintained in good order and repair by each successive owner or occupier of the land.</p>	

**Croft:** 14 Leurbost  
**Parish:** Lochs  
**Reg No:** R3249  
**Case Number:** 90764  
**Application Type:** Decrofting – Croft House Site and Garden Ground

<b>Decision – Approved</b>	<b>Extent: 0.057 ha</b>
<b>Grounds for Decision</b>	
<p>Having considered all of the available information, the Commission is satisfied as required by the Crofters (Scotland) Act 1993 that the site consists only of the dwellinghouse on or pertaining to the croft and that the extent of the garden ground is appropriate for the reasonable enjoyment of the dwellinghouse as a residence and has agreed to grant the Direction as requested.</p>	
<b>Conditions of Direction</b>	
<b>Enclosure of area:</b>	<p>The land must be enclosed (so far as not already enclosed) with a stockproof fence within four months of the date of the Direction.</p> <p>That fence shall be maintained in good order and repair by each successive owner or occupier of the land.</p>

**Croft:** 44 Swainbost  
**Parish:** Barvas  
**Reg No:** R1226  
**Case Number:** 90536  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
<p>Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.</p>

**Croft:** 10 Kirivick  
**Parish:** Uig  
**Reg No:** R5325  
**Case Number:** 90723  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** 11 Kirivick  
**Parish:** Uig  
**Reg No:** R5326  
**Case Number:** 90727  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** 14 Garrabost  
**Parish:** Stornoway  
**Reg No:** R3956  
**Case Number:** 90765  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** 19 Galson  
**Parish:** Barvas  
**Reg No:** R0801  
**Case Number:** 90810  
**Application Type:** Assignment

<b>Decision – Approved</b>
<b>Grounds for Decision</b>
Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.



**Croft:** 13 Swainbost  
**Parish:** Barvas  
**Reg No:** R1196  
**Case Number:** 91122  
**Application Type:** Assingation

**Decision – Approved**

**Grounds for Decision**

Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Croft:** 17 New Garrabost  
**Parish:** Stornoway  
**Reg No:** R4018  
**Case Number:** 88262  
**Application Type:** Assingation

**Decision – Approved**

**Grounds for Decision**

Having considered all of the available information, the Commission is satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or will have an adverse effect on the sustainable development of the crofting community and the application has been granted.

**Crofts:** 28A Leurbost  
**Parish:** Lochs  
**Reg No:** R6708  
**Case Number:** 88520  
**Application Type:** Decrofting – Section 18 feu

**Decision – Approval – Extent 0.139 ha**

**Grounds for Decision**

The application provided us with all the necessary information to take a decision and is in line with the Commission Plan and Policy Guidance. We are therefore satisfied that the application does not adversely affect the interests of the estate, the crofting community, the public at large or have an adverse effect on the sustainable development of the crofting community.

Common Grazing: **Melbost & Branahuie**  
Parish: **Stornoway**  
Reg No: **CG/R/1/073**  
Case Number: **72151**  
Application Type: **Application for New Use of a Regulated Common Grazing (Section 50B)**

### Finding and Grounds

Having considered all of the information provided in respect of the above application, the Commission's considerations and conclusions are set out below.

#### **Preliminary finding on the objection from the landlord**

The Commission, having considered the submissions made on behalf of the applicant (Melbost and Branahuie Common Grazings) dated 3 July 2018 and the objection made on behalf of the landlord, the Stornoway Trust, dated 3 April 2018 and having previously advised the parties that in light of the objection it will be considering under section 50B(2) of the Crofters (Scotland) Act 1993 ("the 1993 Act") whether the proposed use would be detrimental to the interests of the owner, has now proceeded to consider the objection based on section 50B(2). **On the basis of the objection received, the Commission has considered and accepts, as a matter of fact, that the proposed use would be detrimental to the interests of the owner or landlord in terms of section 50B(2) of the 1993 Act for the reasons set out below.** The Commission does not consider that it is empowered to consider the application because the terms of section 50B(2) are mandatory. The Commission does not accept the applicant's submission at paragraph 17 that the Commission is bound to proceed in accordance with section 58A(7), because section 58A(7) does not state that the Commission cannot or should not have regard to other factors as well.

The applicant should be aware that the Commission is not refusing the application on its merits but instead considers that it is unable to proceed to make such a determination on the merits because it has accepted the objection.

#### **The role of section 50B(2) of the 1993 Act**

It is the Commission's understanding that, in terms of section 50B(2) of the 1993 Act, it has to consider its mandatory terms only if section 50B(2) is specifically raised as a matter by the owner or landlord in an objection. The applicant submits that the Commission has no power to consider section 50B(2) of the 1993 Act, but the applicants are unable to demonstrate how a proposal that the landlord or owner has demonstrated would be detrimental to the interests of the owner or landlord could proceed, nor how the Commission should deal with an objection based on section 50B(2). Section 50B was introduced into the 1993 Act by the Crofting Reform (Scotland) Act 2007 and was then partially repealed by the Crofting Reform (Scotland) Act 2010. The Commission notes that at the Stage 2 debate on the Crofting Reform (Scotland) Bill 2006 in the Scottish Parliament, the Deputy Minister for the Environment and Rural Development stated that she "*was in absolutely no doubt that, in deciding whether to approve an application, the Commission will be required to satisfy itself that the requirements of that subsection [subsection 50B(2)] are met.*"

#### **Relationship between section 50B and section 58A of the 1993 Act**

The Commission notes that the requirement to assess an application in terms of section 58A(7) is subject to any express provision made by the 1993 Act in respect of any category of case. It is the Commission's view that where the landlord or owner makes an objection based wholly or partly on section 50B(2), the Commission must consider the objection in light of the mandatory terms of section 50B(2) and satisfy itself whether, on the facts and submissions presented to them by the landlord, the grounds in section 50B(2)(b) have in fact been established.

### **Relationship between section 50B and sections 19A and 20 of the 1993 Act**

The Commission has considered the landlord's submissions regarding section 50B of the 1993 Act, and in particular that section 19A or 20 of the 1993 Act must be used for any substantial development. It is not clear to the Commission, however, that section 50B can be used only in connection with a development that is consistent and compatible with the existing uses of the common grazings, as section 50B(1) provides that the purpose can be to use the common grazings for uses other than for grazings or woodlands. The Commission does not accept this part of the landlord's objection.

### **The issue of "detriment"**

The Commission is of the view that any detriment must be objective and not subjective or *de minimis*. Where the landlord or owner can objectively demonstrate some detriment to his or her interests, it is the Commission's understanding that section 50B(2) will apply even if that detriment is relatively minor or small. The Commission is not at this stage considering the wider interests of the estate, which would be a factor to be considered under section 58A(7)(b), but restricting its consideration only to detriment that would be caused to the owner or landlord as a distinct legal personality.

### **Consideration of the submissions regarding detriment**

The Commission has considered the examples of detriment cited by the landlord in turn, using the numbering contained in the submission from the landlord. Before doing so, the Commission notes that the landlord has submitted that the applicant, Melbost and Branahue, has acknowledged detriment in previous correspondence to the Commission. The Commission notes, however, that the applicant in that correspondence states that they believe that their proposal will not be detrimental to the interests of the landlord. The Commission now considers the examples of detriment more fully set out in the second part of the applicant's submission. The Commission has also considered in this context the submissions from the applicant.

1. The Commission assumes that when Parliament passed what is now section 50B of the 1993 Act, it was aware of the terms of paragraph 11 of Schedule 2 to the 1993 Act (the Statutory Conditions). The Commission has no jurisdiction to adjudicate on any matter concerning the Statutory Conditions but notes that the reserved rights must be used by the landlord reasonably and without prejudicing a crofter's security of tenure. The landlord has not specified which of, nor how, the rights it enjoys in terms of paragraph 11 would be interfered with. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground.
2. The Commission has considered the landlord's submission that any approval given by the Commission under section 50B would be in perpetuity. The Commission notes however that there is no reason in principle why any proposed use must be in perpetuity and indeed any proposed use could be to use part of the common grazings for other purposes for a finite period of time. If the Commission had been able to consider the application its merits, it could also have considered imposing conditions on any approval (including conditions with regard to the timescales and time limits) in terms of section 58A(11) of the 1993 Act if it considered it appropriate to do so. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground.

3. The Commission has considered the landlord's submissions regarding section 19A of the 1993 Act, but the Commission has no jurisdiction to consider section 19A applications (other than a statutory right to object to them) and assumes that Parliament did not consider the terms of section 19A and section 50B to be inconsistent. The landlord appears to be making a general legal point about section 50B of the 1993 Act rather than demonstrating that the proposed use would be objectively, as a matter of fact, detrimental to its interests. The Commission notes that the Land Court in *Stornoway Wind Farm Limited -v- Crofters having rights in Stornoway Wind Farm Site* SLC 59/17, in its Order of 4 December 2017, stated that the granting of any section 50B applications would not foreclose its consideration of the section 19A application. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground of objection.
4. The Commission has considered the landlord's submissions regarding renewable energy as being included in the list of reasonable purposes for which a landlord or owner can apply to resume land or apply for a Scheme for Development. However, section 19A and section 20 are concerned with the restriction or removal of crofters' rights in order that the landlord (or a developer acting with the agreement of the landlord) can take possession of the land from the crofters for one or more of the reasonable purposes set out in the 1993 Act. The Commission's understanding is that section 50B is not subject to any consideration of the "reasonable purpose" test because it is not concerned with removing land from crofting tenure or restricting the rights of crofters or removing their possession of land subject to crofting tenure, nor in the Commission's view could it be implied that Parliament intended that any such "reasonable purpose" test should be applied in the absence of any specific provision therefor. Nor is there any express restriction in the uses to which the part of the common grazings can be put, other than that the use must not be detrimental to the interests of the owner or the use being made, at the time of the application, of other parts of the common grazing. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground.
5. The Commission has considered the landlord's submissions regarding the perceived inadequacies of section 50B, but this is a matter for future law reform. The Commission notes the statement of detriment to the interests of neighbouring common grazings (or, more correctly, the general common grazings or those other parts of the general common grazings that have been apportioned to a township), but is of the view that the landlord has not demonstrated how the general common grazings would suffer detriment if the proposed use goes ahead, or specifically how, as a question of fact, the landlord's interest in the general common grazings would be affected. The Commission does **not** consider that the landlord has demonstrated that there would be any objective detriment on this ground.
6. The Commission has considered the submission from the landlord regarding the infrastructure required to service any renewable energy development, including cabling, access roads, borrow pits and sub-stations, and the requirement for consents. The landlord argues that these considerations would make it difficult for the development proposed by the applicant to be implemented, and that point may be valid. However, these considerations in isolation do not establish that the proposed use would be detrimental to the landlord's interest.

If the Commission had proceeded to assess the section 50B application on its merits, under section 58A(7), the Commission could then have considered whether the proposed use was likely to go ahead, particularly where the proposed use depends upon statutory consents (other than planning permission) and a grid connection which has not yet, and may not be, obtained.

The landlord submits that approval of the section 50B application would be detrimental to the interests of other common grazings sharing in the general common grazing within the Stornoway Wind Farm proposed development area. However, no submissions have been made by the other section 50B applicants referred to or by any other grazings committee that approval of this proposal would be detrimental to their interests.

The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground, but it does accept (see below) that the implementation of the section 50B proposed use would be an impediment to its own plans to develop the Stornoway Wind Farm scheme.

7. The Commission has considered the submission from the landlord that implementation of the proposed use would prevent the larger Stornoway Wind Farm development from proceeding, and that this would be detrimental to its interests. In this context, the Commission also notes the statement from the landlord at point 6. that development would be “unlikely” to go ahead on a “piecemeal” basis rather than as one “cohesive” development. The landlord has informed the Commission that a section 19A Scheme for Development application has been made with the landlord’s consent (the Stornoway Wind Farm proposed development) for a development involving the various common grazings set out in the final paragraph of point 6. in the landlord’s submission. The landlord further states that preventing the Stornoway Wind Farm proposed development from going ahead would be detrimental to its interests by depriving it of the benefits it would receive from the larger Stornoway Wind Farm development set out in the section 19A application. The Commission **accepts** that implementation of the section 50B proposed use would make more difficult, and could prevent, the implementation of the landlord’s own preferred larger Stornoway Wind Farm development, in which the landlord has invested time and resources. The Commission further **accepts** that such an impediment to the implementation of the larger Stornoway Wind Farm development would be detrimental to the interests of the landlord.

**Common Grazing:** **Sandwick and Sandwick East Street**  
**Parish:** **Stornoway**  
**Reg No:** **CG/R/1/003**  
**Case Number:** **79970**  
**Application Type:** **Application for New Use of a Regulated Common Grazing (Section 50B)**

### **Finding and Grounds**

Having considered all of the information provided in respect of the above application, the Commission's considerations and conclusions are set out below.

#### **Preliminary finding on the objection from the landlord**

The Commission, having considered the submissions made on behalf of the applicant (Sandwick and Sandwick East Street Common Grazings) dated 3 July 2018 and the objection made on behalf of the landlord, the Stornoway Trust, dated 29 March 2018 and having previously advised the parties that in light of the objection it will be considering under section 50B(2) of the Crofters (Scotland) Act 1993 ("the 1993 Act") whether the proposed use would be detrimental to the interests of the owner, has now proceeded to consider the objection based on section 50B(2). **On the basis of the objection received, the Commission has considered and accepts, as a matter of fact, that the proposed use would be detrimental to the interests of the owner or landlord in terms of section 50B(2) of the 1993 Act for the reasons set out below.** The Commission does not consider that it is empowered to consider the application because the terms of section 50B(2) are mandatory. The Commission does not accept the applicant's submission at paragraph 17 that the Commission is bound to proceed in accordance with section 58A(7), because section 58A(7) does not state that the Commission cannot or should not have regard to other factors as well.

The applicant should be aware that the Commission is not refusing the application on its merits but instead considers that it is unable to proceed to make such a determination on the merits because it has accepted the objection.

#### **The role of section 50B(2) of the 1993 Act**

It is the Commission's understanding that, in terms of section 50B(2) of the 1993 Act, it has to consider its mandatory terms only if section 50B(2) is specifically raised as a matter by the owner or landlord in an objection. The applicant submits that the Commission has no power to consider section 50B(2) of the 1993 Act, but the applicants are unable to demonstrate how a proposal that the landlord or owner has demonstrated would be detrimental to the interests of the owner or landlord could proceed, nor how the Commission should deal with an objection based on section 50B(2). Section 50B was introduced into the 1993 Act by the Crofting Reform (Scotland) Act 2007 and was then partially repealed by the Crofting Reform (Scotland) Act 2010. The Commission notes that at the Stage 2 debate on the Crofting Reform (Scotland) Bill 2006 in the Scottish Parliament, the Deputy Minister for the Environment and Rural Development stated that she "*was in absolutely no doubt that, in deciding whether to approve an application, the Commission will be required to satisfy itself that the requirements of that subsection [subsection 50B(2)] are met.*"

#### **Relationship between section 50B and section 58A of the 1993 Act**

The Commission notes that the requirement to assess an application in terms of section 58A(7) is subject to any express provision made by the 1993 Act in respect of any category of case. It is the Commission's view that where the landlord or owner makes an objection based wholly or partly on section 50B(2), the Commission must consider the objection in light of the mandatory terms of section 50B(2) and satisfy itself whether, on the facts and submissions presented to them by the landlord, the grounds in section 50B(2)(b) have in fact been established.

### **Relationship between section 50B and sections 19A and 20 of the 1993 Act**

The Commission has considered the landlord's submissions regarding section 50B of the 1993 Act, and in particular that section 19A or 20 of the 1993 Act must be used for any substantial development. It is not clear to the Commission, however, that section 50B can be used only in connection with a development that is consistent and compatible with the existing uses of the common grazings, as section 50B(1) provides that the purpose can be to use the common grazings for uses other than for grazings or woodlands. The Commission does not accept this part of the landlord's objection.

### **The issue of "detriment"**

The Commission is of the view that any detriment must be objective and not subjective or *de minimis*. Where the landlord or owner can objectively demonstrate some detriment to his or her interests, it is the Commission's understanding that section 50B(2) will apply even if that detriment is relatively minor or small. The Commission is not at this stage considering the wider interests of the estate, which would be a factor to be considered under section 58A(7)(b), but restricting its consideration only to detriment that would be caused to the owner or landlord as a distinct legal personality.

### **Consideration of the submissions regarding detriment**

The Commission has considered the examples of detriment cited by the landlord in turn, using the numbering contained in the submission from the landlord. Before doing so, the Commission notes that the landlord has submitted that the applicant, Sandwick & Sandwick East Street, has acknowledged detriment in previous correspondence to the Commission. The Commission notes, however, that the applicant in that correspondence states that they believe that their proposal will not be detrimental to the interests of the landlord. The Commission now considers the examples of detriment more fully set out in the second part of the applicant's submission. The Commission has also considered in this context the submissions from the applicant.

1. The Commission assumes that when Parliament passed what is now section 50B of the 1993 Act, it was aware of the terms of paragraph 11 of Schedule 2 to the 1993 Act (the Statutory Conditions). The Commission has no jurisdiction to adjudicate on any matter concerning the Statutory Conditions but notes that the reserved rights must be used by the landlord reasonably and without prejudicing a crofter's security of tenure. The landlord has not specified which of, nor how, the rights it enjoys in terms of paragraph 11 would be interfered with. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground.
2. The Commission has considered the landlord's submission that any approval given by the Commission under section 50B would be in perpetuity. The Commission notes, however, that there is no reason in principle why any proposed use must be in perpetuity and indeed any proposed use could be to use part of the common grazings for other purposes for a finite period of time. If the Commission had been able to consider the application on its merits, it could also have considered imposing conditions on any approval (including conditions with regard to the timescales and time limits) in terms of section 58A(11) of the 1993 Act if it considered it appropriate to do so. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground.

3. The Commission has considered the landlord's submissions regarding section 19A of the 1993 Act, but the Commission has no jurisdiction to consider section 19A applications (other than a statutory right to object to them) and assumes that Parliament did not consider the terms of section 19A and section 50B to be inconsistent. The landlord appears to be making a general legal point about section 50B of the 1993 Act rather than demonstrating that the proposed use would be objectively, as a matter of fact, detrimental to its interests. The Commission notes that the Land Court in *Stornoway Wind Farm Limited -v- Crofters having rights in Stornoway Wind Farm Site* SLC 59/17, in its Order of 4 December 2017, stated that the granting of any section 50B applications would not foreclose its consideration of the section 19A application. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground of objection.
4. The Commission has considered the landlord's submissions regarding renewable energy as being included in the list of reasonable purposes for which a landlord or owner can apply to resume land or apply for a Scheme for Development. However, section 19A and section 20 are concerned with the restriction or removal of crofters' rights in order that the landlord (or a developer acting with the agreement of the landlord) can take possession of the land from the crofters for one or more of the reasonable purposes set out in the 1993 Act. The Commission's understanding is that section 50B is not subject to any consideration of the "reasonable purpose" test because it is not concerned with removing land from crofting tenure or restricting the rights of crofters or removing their possession of land subject to crofting tenure, nor in the Commission's view could it be implied that Parliament intended that any such "reasonable purpose" test should be applied in the absence of any specific provision therefor. Nor is there any express restriction in the uses to which the part of the common grazings can be put, other than that the use must not be detrimental to the interests of the owner or the use being made, at the time of the application, of other parts of the common grazing. The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground.
5. The Commission has considered the landlord's submissions regarding the perceived inadequacies of section 50B, but this is a matter for future law reform. The Commission notes the statement of detriment to the interests of neighbouring common grazings (or, more correctly, the general common grazings or those other parts of the general common grazings that have been apportioned to a township), but is of the view that the landlord has not demonstrated how the general common grazings would suffer detriment if the proposed use goes ahead, or specifically how, as a question of fact, the landlord's interest in the general common grazings would be affected. The Commission does **not** consider that the landlord has demonstrated that there would be any objective detriment on this ground.
6. The Commission has considered the submission from the landlord regarding the infrastructure required to service any renewable energy development, including cabling, access roads, borrow pits and sub-stations, and the requirement for consents. The landlord argues that these considerations would make it difficult for the development proposed by the applicant to be implemented, and that point may be valid. However, these considerations in isolation do not establish that the proposed use would be detrimental to the landlord's interest.

If the Commission had proceeded to assess the section 50B application on its merits, under section 58A(7), the Commission could then have considered whether the proposed use was likely to go ahead, particularly where the proposed use depends upon statutory consents (other than planning permission) and a grid connection which has not yet, and may not be, obtained.



The landlord submits that approval of the section 50B application would be detrimental to the interests of other common grazings sharing in the general common grazing within the Stornoway Wind Farm proposed development area. However, no submissions have been made by the other section 50B applicants referred to or by any other grazings committee that approval of this proposal would be detrimental to their interests.

The Commission does **not** consider that the landlord has demonstrated on the facts that there would be any objective detriment on this ground, but it does accept (see below) that the implementation of the section 50B proposed use would be an impediment to its own plans to develop the Stornoway Wind Farm scheme.

7. The Commission has considered the submission from the landlord that implementation of the proposed use would prevent the larger Stornoway Wind Farm development from proceeding, and that this would be detrimental to its interests. In this context, the Commission also notes the statement from the landlord at point 6. that development would be “unlikely” to go ahead on a “piecemeal” basis rather than as one “cohesive” development. The landlord has informed the Commission that a section 19A Scheme for Development application has been made with the landlord’s consent (the Stornoway Wind Farm proposed development) for a development involving the various common grazings set out in the final paragraph of point 6. in the landlord’s submission. The landlord further states that preventing the Stornoway Wind Farm proposed development from going ahead would be detrimental to its interests by depriving it of the benefits it would receive from the larger Stornoway Wind Farm development set out in the section 19A application. The Commission **accepts** that implementation of the section 50B proposed use would make more difficult, and could prevent, the implementation of the landlord’s own preferred larger Stornoway Wind Farm development, in which the landlord has invested time and resources. The Commission further **accepts** that such an impediment to the implementation of the larger Stornoway Wind Farm development would be detrimental to the interests of the landlord.

**Common Grazing:** **Sandwick and Sandwick East Street**  
**Parish:** **Stornoway**  
**Reg No:** **CG/R/1/003**  
**Case Number:** **79970**  
**Application Type:** **Application for New Use of a Regulated Common Grazing (Section 50B)**

### **Finding and Grounds**

Having considered all of the information provided in respect of the above application, the Commission's considerations and conclusions are set out below.

#### **Preliminary finding on the objection from the landlord**

The Commission, having considered the submissions made on behalf of the applicant (Sandwick and Sandwick East Street Common Grazings) dated 3 July 2018 and the objection made on behalf of the landlord, the Stornoway Trust, dated 29 March 2018 and having previously advised the parties that in light of the objection it will be considering under section 50B(2) of the Crofters (Scotland) Act 1993 ("the 1993 Act") whether the proposed use would be detrimental to the interests of the owner, has now proceeded to consider the objection based on section 50B(2). **On the basis of the objection received, the Commission has considered and accepts, as a matter of fact, that the proposed use would be detrimental to the interests of the owner or landlord in terms of section 50B(2) of the 1993 Act for the reasons set out below.** The Commission does not consider that it is empowered to consider the application because the terms of section 50B(2) are mandatory. The Commission does not accept the applicant's submission at paragraph 17 that the Commission is bound to proceed in accordance with section 58A(7), because section 58A(7) does not state that the Commission cannot or should not have regard to other factors as well.

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