Edinburgh Royal Hospital for Sick Children
community right to buy application declined

17 MAY 2017
By: Steven Edgecombe | Sheila Irvine | Drew Wallace

The Royal Hospital for Sick Children, Edinburgh is located in Marchmont and Sciennes, a leafy, desirable, residential area located a mile or so to the south of the city centre. The site extends to just over 4 acres and includes a number of nineteenth century listed buildings.

The hospital became surplus to operational requirements of NHS Lothian and was marketed for sale in November 2016. After becoming aware that the site was to be sold, a group of local residents formed the “Marchmont and Sciennes Development Trust” (MSDT), a "community body" under the community right to buy provisions of part 2 of the Land Reform (Scotland) Act 2003 (the 2003 Act).

MSDT, which has been established to acquire and facilitate development of the site with a view to it being used in a sustainable way for the benefit of the local community, submitted an application on 24 March to the Scottish Ministers to register an interest in relation to the site in the Registers of Community Interests in Land (RCIL). In terms of the 2003 Act, Scottish Ministers were then obliged to issue a temporary prohibition notice, preventing NHS Lothian from taking any further steps to market or sell the site until the application of MSDT had been considered. As the application to register an interest by MSDT was submitted after the site came on to the market, it is classed as a "late application", a type of application which, according to the official guidance on the 2003 Act, should only be permitted in exceptional circumstances. A successful application by MSDT would give them a pre-emptive right to acquire the site at market value.

When it was originally introduced, the community right to buy applied to rural land only, but it was extended to urban areas in April 2016. The Scottish Ministers' decision has therefore been awaited with great interest, as the application by MSDT is seen as a test case for the operation of the community right to buy in Scottish towns and cities.

The Scottish Ministers have now made their decision. In a Ministerial Notice dated 15 May 2017 the Scottish Ministers have advised that they have declined to consider MSDT's application for failure to comply with the technical requirements of the 2003 Act, as opposed to making a decision based on the substantive merits of the application.

The reason given is that part of the hospital site is owned by The Scottish Ministers (per Lothian Health Board), and part is owned by The Trustees of Lothian Health Board Endowment Fund (otherwise known as the Edinburgh and Lothians Health Foundation). Section 37(15) of the 2003 Act states that an application to register a community interest in land may relate to only one "holding of land". According to the Ministerial Notice, Scottish Ministers have declined to consider MSDT's application as it relates to two separate holdings of land, and therefore does not comply with the requirements imposed under section 37 of the 2003 Act.
In terms of the 2003 Act, declinature of MSDT’s application is treated as a decision not to enter the community interest in the RCIL, and the application is now marked in the RCIL as "deleted".

MSDT now have a period of 28 days from the date of the Scottish Ministers’ decision in which to appeal the decision to the sheriff court. In the meantime, the temporary prohibition notice ceases to have effect.

To view the application by MSDT in the Register of Community Interests in Land, click on “Community Body Interests”, then click on "Midlothian" and scroll down the list to application reference "CB00209".

Detailed commentary on the right to buy is available in the Scottish Government’s March 2016 guidance. Pages 121-123 of the guidance contain a useful flowchart summarising the right to buy process and timescales.

AUTHORS

Steven Edgecombe
Partner
Edinburgh | T: +44 (0)20 7349 0296
steve.edgecombe@dlapiper.com

Sheila Irvine
Partner
Edinburgh | T: +44 (0)20 7349 0296
sheila.irvine@dlapiper.com

Drew Wallace
Partner
Edinburgh | T: +44 (0)20 7349 0296
drew.wallace@dlapiper.com