



LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Petitions PE875, PE896 and PE 961

Common Good Assets and Funds

ISSUES RAISED IN EVIDENCE

1. A variety of issues were raised by the petitioners and emerged during consideration of the petitions by the Committee. Broadly speaking, they were—
 - the adequacy of record keeping by local authorities of common good assets and funds;
 - the purposes for which common good assets and funds may be applied;
 - the disposal of common good assets and of heritage properties; and
 - the involvement of local communities.
2. Each of these broad areas is considered below.

Maintenance of records

3. Miss Mary E Mackenzie, in additional information to her petition PE875, stated that—
 - There has been laxness in maintaining records of Common Good assets, particularly in the case of moveable assets.
 - There should be legislation to ensure that a complete record of Common Good assets, heritable and movable, is held by each Council.
 - Land and property should be carefully recorded on OS maps.
 - Where a council occupies common good heritable assets, there should be a distinct and clear common good heritable assets rent fund account.¹

¹ PE875. additional information included with petition

4. Andy Wightman, in his publication “Common Good Land in Scotland: A Review and Critique” reported on a survey of the 32 Scottish local authorities which he had conducted in 2005 in which he requested information about common good funds and assets. Of the 29 councils which replied he found that the information varied markedly in quality and was often incomplete. He stated that—

“...the detailed findings reveal

- a worrying ignorance about the topic itself;
- appalling record keeping; and
- manifestly inaccurate financial reporting”²

5. COSLA, in a letter to the Public Petitions Committee, stated that it does not consider that there is any need for legislative change. It stated that common good property of all kinds is already recorded and audited as part of the legislative audit regime and there is a requirement to keep a separate common good account.³

6. The Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) told the Local Government and Transport Committee in its written submission that—

“The principal thrust of this petition is covered by existing legislative duties and in particular by the duty of best value. Any additional guidance by the Scottish Executive to Councils as to what is expected of them, as suggested by Audit Scotland, would be welcomed....compiling a proper register of all moveable and heritable common good assets is a laborious and labour intensive process...it may be that the Committee consider that the Executive should make available additional resources to facilitate this process.”⁴

7. In its written submission, Audit Scotland said that the standards of stewardship expected in relation to common good assets are equal to those for council owned assets. The Code of Practice on Local Authority Accounting in the United Kingdom does not require councils to report full common good accounts, but many continue to do so. Where full accounts are not provided, councils are required to report the nature and amount of common good funds.⁵

8. It went on to state that—

“While acknowledging the concerns expressed in the petitions, there has to be a question whether the extent of identified problems with

² Common Good Land in Scotland: A Review and Critique. Andy Wightman & James Perman. Caledonia Centre for Social Development

³ Letter to Public Petitions Committee 23/11/05

⁴ SOLAR Written submission to LGT Committee meeting of 21/11/06

⁵ Audit Scotland written submission to LGT Committee meeting of 21/11/06

common good assets in proportion to the overall finances of councils would merit the additional burden of regulation by statute and separate audit. If there are areas where further clarity is required it may be possible for this to be addressed through guidance by the Scottish Executive to councils as to what is expected of them.

9. It informed the Committee that—

“...the Local Authority (Scotland) Accounts Advisory Committee which, with the Chartered Institute of Public Finance and Accountancy (CIPFA), sets out proper accounting practice for local authorities has decided to undertake a review with the intention of producing guidance on the operation of and accounting for common good in Scotland.”⁶

10. In oral evidence, Audit Scotland said—

“All councils have an assets register and are required to account properly for all the common good and statutory assets that they hold. However, that is a relatively new innovation. Capital accounting was introduced only in the 1990s and the best-value audits that we are carrying out in each Scottish council show that the information that is available is still improving.”⁷

11. They said that—

“The people who put together the rules for local authority accounting are planning to do a piece of work to add to what is known about common good assets and to set out guidance for councils on accounting for common good assets and operating common good funds. That will help councils to clarify areas about which there are doubts.”⁸

12. The Minister stated in oral evidence—

“It appears to us that the existing legislation is sufficient, given that it makes clear the responsibility that rests with local authorities. A substantial body of supporting guidance and advisory notes clarifies more fully the nature of local government's responsibilities. That guidance includes the accounting standards that are set by the Accounting Standards Board and, in particular, the code of practice on local authority accounting. It also includes the advisory notes that are produced by the Chartered Institute of Public Finance and Accountancy and the Royal Institution of Chartered Surveyors on the principles of good asset management.

“In addition, the Scottish Executive has published material that the best value task force produced. It includes statutory guidance on the principles of best value, non-statutory advisory notes on best value in

⁶ Audit Scotland written submission to LGT Committee meeting of 21/11/06

⁷ OR LGT 4321

⁸ OR LGT 4329

relation to asset management and sustainable development, and statutory guidance on local authorities' approach to the content of their public performance reporting.”⁹

13. He went on to say—

“Audit considerations and how such matters are presented in local authority accounts are issues for the Accounting Standards Board. I understand that the local authorities accounts advisory committee, whose core business is development of the code of practice on local authority accounts and which works with the ASB, has agreed to review the accounting arrangements for common good assets, so some work will be done on that.”¹⁰

14. The Minister went on to inform the Committee that—

“...the Executive is gathering information on and recording the assets that non-departmental public bodies hold. If we decide to extend that exercise and to register the assets of local authorities, it may be appropriate to set up a register as part of that exercise. However, no decision has yet been taken on whether to extend it. Obviously, we would have to discuss the matter with COSLA.”¹¹

15. He undertook to make inquiries of all 32 local authorities to ensure that information about councils' assets and common good funds is available.¹²

Application of common good funds

16. Sally Richardson, in relation to her petition PE961, said that existing legislation does not ensure sustainable management of public assets and common good land.

17. Andy Wightman, in oral evidence, said that—

“...the tax base of a local authority—the moneys that are raised through statute, council-levied taxes, grants from the Scottish Executive and various local government statutes that empower local authorities to charge for cleansing or whatever—is constrained and regulated. Such funds can be put to limited purposes.

“Common good funds are a legacy of the first four or five centuries of local government, in which no statutory control was exerted over what local government did.”¹³

18. He went on to say that—

“...my understanding is that common good funds should not be used for statutory purposes. In other words, common good funds cannot be

⁹ OR LGT 4512

¹⁰ OR LGT 4513

¹¹ OR LGT 4516

¹² OR LGT 4521

¹³ OR LGT 4269

used for purposes for which there are statutes in place that empower councils to raise certain funds or make certain charges.¹⁴

“A general power of expenditure on the part of local authorities would not be interpreted as a statutory power that would preclude the expenditure of any common good funds in the same way that other statutory powers that are much more tightly defined would.”¹⁵

19. SOLAR, in its written submission to the Committee stated that—

“A middle way might be to abolish the distinction between the common good and general funds of local authorities, but to impose extra obligations on local authorities for properties that have historic or recreational significance – whether or not these exist within former burghs.”¹⁶

20. And—

“Other than the requirement to have regard to the interests of the former burgh’s inhabitants, there is no specific legal requirement as to how the common good fund should be spent. There is nothing legally to stop the local authority from using the fund for one of its statutory purposes.”¹⁷

21. In oral evidence, SOLAR said that—

“...the Local Government in Scotland Act 2003 introduced a general power to advance well-being, which says that a local authority can do anything that will advance the well-being of the area or residents. How that interacts with the provision to which I referred, which is specifically about common good, is probably a nice legal question...”¹⁸

Disposal of common good assets and heritage properties

22. Miss Mary E Mackenzie, in additional information to her petition PE875, said that—

- All proposed disposals should be notified and advertised, to allow objectors to test the disposal or sale publicly in the Courts.
- Local authorities sometimes dispose of housing stock to housing associations and activity centres to charities, without considering whether the land under the assets may be common good land.¹⁹

23. West Dunbartonshire Heritage Ltd, in its petition PE896 said that—

¹⁴ OR LGT 4270

¹⁵ OR LGT 4271

¹⁶ SOLAR Written submission to LGT Committee meeting of 21/11/06

¹⁷ Ibid

¹⁸ OR LGT 4317

¹⁹ Written evidence to LGT Committee meeting of 14/11/06

- The Scottish Executive should require local authorities to consult on any disposal of heritage properties. There should be an appeals process.
- Local authorities dispose of buildings to avoid the costs of care and maintenance.
- Public access to heritage properties becomes more limited and protection of listed buildings is more complex than if they remained in public hands.
- Scottish Ministers may call in an application to dispose of a listed property and may arrange for a local inquiry. Otherwise, there is no mechanism for an inquiry.²⁰

24. In their oral evidence they said that—

“Our urgent proposal is that all councils that wish to sell or otherwise dispose of inherited assets, such as listed buildings or common good land, should be required to obtain clear public consent in a process that is legally defined and monitored by Parliament.”²¹

25. Sally Richardson, in her petition PE961, said that—

- New procedures are needed to ensure that Common Good land and usable publicly owned buildings can, as a first priority, be retained and reused by the public either directly through community organisations and trusts or through continued local authority management.
- There is no formal opportunity for public objections to such sales.

26. According to the Scottish Civic Trust—

“In 1973, Common Goods were transferred to the control of Local Authorities under the Local Government (Scotland) Act. Section 75(2) of the Act deals with the disposal of such land. A local authority must make application to the Court of Session or the Sheriff Court to dispose of Common Goods Assets. There is no provision for third party involvement unless there is a legal challenge to the disposal. Various modifications to this section have taken place in the Local Government etc. (Scotland) Act 1994 and the Local Government (Scotland) Act 2003. The 1994 Act specifically mentions Common Goods within section 15. Subsection 4 of s.15 places a restriction on the transfer of Common Good property. Local Authorities are required to “have regard to the interests of the inhabitants of the area to which the common good related prior to 16th May 1975” except in the cases of the four main cities, who were required to have regard to the interests of all the

²⁰ PE896. additional information included with petition

²¹ OR LGT 4296

inhabitants of their area. There is no definition as to what constitutes 'having regard to'."²²

27. The Scottish Civic Trust also argued that—

“...as the assets are held in the interests of the inhabitants of the area the Trust believes that the inhabitants have a right to be involved in decisions relating to these assets.”²³

28. In its written submission, SOLAR noted that—

“...not all common good land needs the consent of the court before it can be disposed of. It is only that land to which a question arises as to the right of the authority to alienate.”²⁴

29. Historic Scotland, in its written submission to the Public Petitions Committee, described its role in relation to the Listed Building Consent process. It stated that it is committed to ensuring that the historic environment is used and managed in a sustainable way. It noted that an owner of a listed building is not obliged to insure against more risks than would be covered for any building of similar use or value. It had reservations about putting in place a statutory mechanism that could result in the owners of historic properties being compelled to retain ownership when they do not have the financial resources to ensure due care and maintenance.²⁵

30. In its written submission, SOLAR said that where there is not a requirement to go through a consultation process, this could be done by legislation but

“...it would appear to be preferable to deal with the matter by Scottish Executive guidance if it was felt that this was a particular problem”.²⁶

31. They said that—

“...there may be no obvious use for a common good asset by a local authority. In such circumstances, the local authority has to have the flexibility to seek another user of the property.”²⁷

32. But—

“Local authorities could be tasked with keeping a register of such properties; they could also be required to allow disposal only if specific criteria can be met and if no community use can reasonably be found after diligent investigation.”²⁸

33. The Minister, in his oral evidence, told the Committee that—

²² Letter to Public Petitions Committee 9/1/07

²³ Letter to Public Petitions Committee 30/1/06

²⁴ SOLAR Written submission to LGT Committee meeting of 21/11/06

²⁵ Letter to Public Petitions Committee 30/11/05

²⁶ SOLAR Written submission to LGT Committee meeting of 21/11/06

²⁷ Ibid

²⁸ Ibid

“although decisions about whether and how common good assets can be used or disposed of depend on the conditions that are attached to each gift, the law is clear about where the responsibility for reaching such decisions and managing the common good rests: it rests, appropriately, with local authorities—as it does in relation to other council assets, such as schools and libraries.”²⁹

Community involvement

34. Miss Mary E Mackenzie, in her written submission to the Committee, pointed out that local Councillors are also trustees of common good funds and that there could be conflict of interest.³⁰

35. Andy Wightman recommended that—

“...statutorily constituted community bodies should be able to take back title to their common good assets at no cost...”³¹

36. SOLAR, in oral evidence, said that—

“There is a potential drawback in creating another body to administer the fund separately, because local government finances and the common good fund are fairly closely linked. A lot of common good properties, such as theatres and museums, are maintained by local authorities using money from other pockets, rather than wholly from the common good fund.”³²

37. In its written submission, SOLAR said that—

“The existing legal framework provides an adequate device for ensuring that local authorities act properly in relation to their stewardship of common good assets.”³³

38. And—

“Community bodies are generally staffed by volunteers and may not have the capacity to administer funds and assets which may be valued in the millions of pounds.”³⁴

²⁹ OR LGT 4512

³⁰ Petitioner's written evidence to LGT Committee meeting of 14/11/06

³¹ Written submission dated 7/11/07

³² OR LGT 4310

³³ SOLAR Written submission to LGT Committee meeting of 21/11/06

³⁴ Ibid