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[Home](#) > [Parliamentary Business](#) > [Committees](#) > [Local Government and Transport](#) > [Meeting Papers](#) > [Contents](#) > [..back](#)

Local Government and Transport Committee Official Report 27 March 2007

Col 4633

Scottish Parliament

Local Government and Transport Committee

Tuesday 27 March 2007

[THE CONVENER *opened the meeting at 14:02*]

The Convener (Bristow Muldoon): Today's meeting of the Local Government and Transport Committee will be our last of the current parliamentary session. I place on record my thanks to all committee members for their contributions over the past four years—not only those members who are present at the moment, but those who have served on the committee over the course of the whole four years. This has been a very effective committee. It has carried out a lot of effective business and has scrutinised the work of the relevant ministers in a thorough manner. Thank you all for your help on that. I also place on record my thanks to Martin Verity and his team of clerks for their professional support throughout the four years.

We now come to the business of today's meeting. The agenda as originally published had the item on the Scottish statutory instrument that the Minister for Finance and Public Service Reform is coming along to address at the top, but he is not available until about 3.30, therefore I have rejigged the agenda so that the item will come at the end. If we get through all the other items before then, it will be necessary for me to suspend the meeting until 3.30. Apologies for that, but it is unavoidable.

Col 4634

Petitions

Common Good Assets (PE875)

Listed Buildings (Consultation on Disposal) (PE896)

Common Good Land (PE961)

14:04

The Convener: The first agenda item—as it is now—is consideration of petitions PE875, PE896 and PE961, which members will recall are the three petitions on common good property. Members have received a copy of a letter from the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, responding to the points that the committee made on issues around the recording of common good assets and funds; the valuation of assets; whether there should be additional guidance to local authorities; and the promotion of common good assets and funds to allow communities to have influence over their use.

Do members feel that the minister's letter responds sufficiently to the petitioners' issues? In addition, what should our recommendation be in concluding our consideration of the petitions? In particular, do members believe that new legislation is required to improve the management of common good assets, or could that be adequately covered by guidance to local authorities?

Michael McMahon (Hamilton North and Bellshill) (Lab): I just want to see progress being made on the issues. I have been enlightened by the information that I have received on the issues since the petitions first came to the Public Petitions Committee, which I convene.

Although the minister does not say that he wants to do exactly what the petitions call for, his letter offers a way of progressing. His suggestion could be a first step, and the issues could be revisited if the unacceptable current situation does not improve. In that case, legislation could be the way forward.

We could give the guidance a chance to work first and see whether matters improve at the local government level such that there is a beneficial outcome that addresses the concerns raised in the petitions.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Michael McMahon's suggestion is the right approach. Regarding registers, the minister says in his letter:

"local authorities are best placed to balance the competing objectives of comprehensiveness on the one

Col 4635

hand and clarity, accessibility and cost ... on the other hand".

He goes on to say that his letter to local authorities

"invites views on whether more detailed guidance would assist them in ... their obligations under Best Value."

The minister is therefore prepared to provide detailed guidance. He adds:

"I am sure officials will advise Ministers after the Scottish Elections"—

whoever those ministers are—

"about the extent and nature of feedback ... In addition, COSLA is taking forward separate work to improve the ability of local authorities to manage their assets effectively."

The position is therefore that attention has been drawn to the problem and the Executive and the Convention of Scottish Local Authorities are trying to do something about it. I agree with Michael McMahon that it is worth while giving them a chance to do that. I am sure that the future Local Government and Transport Committee could re-examine the issue if a solution was not forthcoming.

Ms Maureen Watt (North East Scotland) (SNP): I concur with Michael McMahon and Mike Rumbles. The topic has had a good airing and has been enlightening for everybody involved, including those who were contacted to make submissions to us.

The council elections will bring a substantial swathe of new councillors into our local authorities and I hope that, during their induction process, they are made aware of the unique nature of the common good funds and of their duty and responsibility to ensure that they are administered properly.

I agree that, if it is brought to our attention at a later date that things are not working regarding good practice and best value obligations, the topic should be revisited.

Dr Sylvia Jackson (Stirling) (Lab): We do not know what will happen regarding parliamentary committees after the election. However, will this committee leave a legacy paper on local government issues that we think should be examined?

The Convener: It was not my intention to leave a legacy paper as such, as most of the items that we have considered have been concluded or are about to be. However, our conclusion on the petitions could be drawn to the future committee's attention. That committee will be aware that we have done work on the issue and it will know about our final disposal of the petitions. If it wishes, it could monitor the situation to check that it improves in the way that people want and, if that does not happen, it could take further action.

Col 4636

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I do not disagree entirely with the remarks that have been made but, after looking at the precise wording of the letter from George Lyon, the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, it seems to me that it does not provide a direct response. However, that is not to say that I disagree with many of the statements in the letter.

I will address a few of the points that have arisen during our consideration of the petitions, which has been useful in casting light on issues that have never before been debated in the Scottish Parliament. The committee's initial standpoint was that there should be a clear record of common good assets. The minister's letter states that, in response to that recommendation, he has written to local authorities

"to remind them of their responsibilities to hold records of all common good assets and to make this information available to the public if asked."

However, that is not quite the same as having a distinct register of such assets.

The minister goes on to quote from the useful evidence that we received from Audit Scotland and SOLAR—the Society of Local Authority Lawyers and Administrators in Scotland. In relation to the way in which the records are kept, the letter points out that Audit Scotland stated:

"many common good assets have existed for centuries and these might not have the same form or level of completeness as transactions that have been completed more recently."

Already, we are moving into technical lawyer speak and away from the point of principle. The letter states that SOLAR said in oral evidence that

"information about common good assets could be held in a range of formats, such as Ordnance Survey plans",

which is true, but how would that prevent there being a list of the assets that are marked on Ordnance Survey maps? Creating a simple register that states, "See Ordnance Survey map X," would not place an onerous obligation on local authorities.

My central point, which I argued in response to the petitioners' case, is that every local authority should hold a register of common good assets. It has occurred to me—this may not be the first time that the point has been made—that anyone in Scotland or elsewhere could, under the Freedom of Information (Scotland) Act 2002, ask each local authority for a list of its common good assets. That would be a fairly simple way of forcing the issue. Perhaps that approach has already been tried by people who are listening to this discussion—I see heads nodding. I suspect that, as is the way with FOI, requests were made and the response was that the task would be expensive as it would

Col 4637

involve the time of too many officials and would cost more than the permitted limit—a kind of "You'll have had your tea" reply. If that is so, I hope that Mr Dunion, the Scottish information commissioner, is listening assiduously to the discussion and will put matters right if the requests go to appeal. It is only a matter of time before the issue is forced.

It would have been better if we had had a clear response from the minister that, at the very least, there should be a register. That is not to say that I disagree with the points that my colleagues have made about the elections and new councillors having their say. Nor do I disagree with the minister's statement that a review of asset management throughout the public sector should be carried out. However, that is a slightly different point. On that basis, I would prefer it if we adhered to our recommendation that councils should have a register of common good assets, which need not be elaborate or complicated and could be compiled over a period of time negotiated between the Executive and local authorities and their representatives. As a basic principle, we should at least have such registers in Scotland.

14:15

Paul Martin (Glasgow Springburn) (Lab): I was going to raise the issue that Sylvia Jackson raised about a legacy paper. It would be helpful to ensure that a future committee considers the issue in detail. We have had scope to consider whether legislation is necessary, but it would not be fair for us to consider the introduction of legislation without ensuring that we had interrogated every possible alternative. We have not had time to do that, nor have we had sufficient information from ministers or COSLA on how we can take the matter forward.

However, there is scope to seek greater compliance with the existing requirements to provide information. I am sympathetic to the petitioners in that respect. As Fergus Ewing said, they have asked for legitimate information, but the issue is how it is provided. Providing such information can promote the work that councils are doing through common good funds. Many common assets that are of interest to many parts of the world can be promoted by their work.

We have the usual response from ministers that various groups have identified some of the issues and that they will meet in the autumn to conclude some of the work. There must be greater clarity from the minister about when all the work will be concluded. It is only fair to the petitioners to seek clarification from the minister on that. If the minister says, "Yes, a future Executive should be committed to completing the work at some point," or at least if we can ensure that the next

Col 4638

committee seeks that information from the Executive, it will give the petitioners clarity that we have brought the investigation to the conclusion that it deserves.

The Convener: I point out that the current Executive cannot bind the future Executive on its priorities after the election. If we sought a further response from the minister, I suspect that we would not receive it until Parliament is dissolved. Our best option is probably to note the points that Paul Martin, Fergus Ewing and other members feel are important in a paper that we make available to the future committee. It will be for that committee to decide whether it wishes to pursue the matter further with the Executive that is formed after the election.

David McLetchie (Edinburgh Pentlands) (Con): I agree with the remarks that have been made and I welcome the fact that the Executive has written to councils about the importance of improving standards of record keeping and the importance of effective asset management.

I will pick up on a point that Fergus Ewing made when he referred to the fact that SOLAR said that records might be held on Ordnance Survey maps. We have moved to a system of registering title of all properties in Scotland on Ordnance Survey maps, so it should not be too demanding to have a proper record and an Ordnance Survey mark that creates a proper title to common good assets, given that our aspiration for all property titles in Scotland is to have a register of titles instead of the register of sasines.

I am disappointed by the minister's response. The purpose of having accurate records is to distinguish between property that is held for common good purposes and property that is held for other purposes. If all assets were held for a single purpose, or were wholly within the statutory powers of councils, there would be no point in differentiating between their common good assets and their other assets. There should be a record of what is common good and what is part of the general estate of local authorities. Perhaps there should be a third category, because as trustees councils have assets that have been bequeathed or donated to them and are held for specific trusts, as set down in the trust deeds.

There are at least three categories of asset holding, of which common good is one. The whole reason for having records of trust assets, general estate assets and common good estate assets is that they are necessary, because a differentiation of purpose applies to the assets. As far as I understand it, that goes to the heart of some of the complaints about the current record keeping. Fundamentally, people are saying that assets that should be in the common good pot are treated as if they are in a general pot and are therefore used

Col 4639

for a purpose that might be contrary to the terms of the common good fund.

Unless we distinguish the purposes for which assets are held, it will not matter whether we have all

the records in the world. We have to determine whether assets are common good assets or are part of the general estate, and therefore what they can be used for. Councils and councillors should clearly understand the distinction between the two. I must say that, even at the end of the evidence sessions, I was not wholly convinced that that was entirely grasped by the minister or his officials.

The Convener: Let me try to draw the arguments together. There seems to be broad agreement that the petitioners have raised an important issue and that the way in which at least some councils currently record and manage common good assets is far below the level that we want to apply. The petitioners have identified that, throughout Scotland, a range of local authorities do not have either a good record of their common good assets or appropriate procedures to ensure that, as David McLetchie mentioned, common good assets are used and, when appropriate, disposed of only in accordance with the terms of the common good bequest or other manner by which the council came into possession of the property.

I recommend that we agree to conclude consideration of the petitions but, in doing so, reiterate the fact that it is important that every local authority in Scotland has a publicly available common good asset list. We could also reiterate, as David McLetchie suggested, that there should be a clear statement—whether it comes from the Executive or individual local authorities—that common good assets can be used only for certain functions. That would mean that the public would be aware of what are common good assets and the terms under which the local authority can use them.

Those could be our recommendations. We recognise that the minister has indicated some ways in which the Executive hopes to improve how common good assets are managed, but we will also draw our report to the attention of the successor committee that deals with local government issues, in whatever shape that takes after the election, so that it can decide whether to monitor the Executive's dealing of the issue or carry out further work on the subject. Are members content to conclude consideration of the petitions in that way?

Members *indicated agreement.*

The Convener: We will correspond with each petitioner in that regard, and Martin Verity will produce an appropriate report for the successor committee.

Col 4640

Roads, Pavements and Footpaths (Maintenance) (PE855)

The Convener: Petition PE855, which is on the maintenance of local authority roads, pavements and footpaths, was submitted by Leslie Morrison on behalf of Kirkside area residents. The petition calls on the Scottish Parliament to urge the Scottish Executive to review the performance of local authorities in Scotland in maintaining and repairing roads, pavements and footpaths.

As members know, we have had a long-running interest in the maintenance of non-trunk roads and we took evidence on the petition from the Society of Chief Officers of Transportation in Scotland on 6 March 2007.

How would members like us to respond to the petition? Again, as we are almost at the end of the parliamentary session, I hope that we can conclude our consideration of the petition today. However, given that the maintenance of roads and of other local government assets, including paths and pavements, is undoubtedly a continuing issue, the report of our conclusion could be made available to our successor committee, so that it is aware of this committee's work. I would expect any such paper to draw attention to the witness sessions that we have held and the evidence that we have taken on the maintenance of local authority non-trunk roads. I invite comments from members.

Dr Jackson: As you know, convener, I am particularly interested in the subject. We have held several evidence sessions and we have started to move the agenda on, but much monitoring and discussion has still to take place. I endorse your suggestion that the issue is significant and that it should be passed on to the committee that takes over responsibility for local government concerns. As you say, we should highlight what has been done and the ways forward.

Fergus Ewing: Leslie Morrison is to be congratulated on raising this bread-and-butter issue that all of us who are regularly contacted by constituents about the state of our pavements, roads and streets know is a cause of concern and, in some cases, anger. It is also a safety matter. Not

pages

6 - 25

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