Submission from Alison Johnstone MSP

Introduction

I am a Scottish Green Party MSP and, until May this year, an Edinburgh councillor. I first engaged with this Bill in that capacity when it was first introduced to Parliament in session 3.

In December 2010 I tabled a council motion that would have Edinburgh Council support the exemption of common good land from the provisions of the Long Leases (Scotland) Bill and write to Parliament in this respect. Another relevant motion in my name was passed on the 2nd February 2012 in relation to the Bill as introduced in session 4.

Evidence

I argue here that the RACCE committee agree that Waverley Market in Edinburgh should be exempted from the provisions of the Long Leases (Scotland) Bill.

In the Justice Committee Stage 1 report on the Long Leases (Scotland) Bill in Session 3 the committee concluded on the evidence and discussions regarding common land that:

   The desirability for certainty from this legislation and the provisions for compensation provided in the Bill have led the Committee to conclude that it is not persuaded, at this time, that there is a compelling case for exempting leases of common good property from this Bill.

As alluded to above the main reason for this view was the desire to ensure uncertainty and delay was minimised in the context of there being incomplete registers of common good property and the potential for legal challenge against any land disposal.

The arguments for common good land remain strong in my view and should be reconsidered at this stage against any improvements in the registers of common good property held by Local Authorities, the Land Registration etc. (Scotland) Bill currently under consideration and, of course, the strength of the arguments themselves. Namely that land held in common good is often leased only due to restrictions on its disposal; that local authorities can in fact dispose of this land, ordinarily with the authority of the courts; and that the land is held on behalf of the residents of former burghs and not private interests. Common good land under long
lease should not be converted into ownership as “it is not in the same class as private property where leases were entered into as an alternative to feuing”.¹

However, if in reconsidering these arguments the committee is minded to not exempt common good land, I propose The RACCE committee recommend an exemption specifically for Waverley Market in Edinburgh.

This land may be easily and unambiguously defined and an exemption for this site alone would not lead to the legal uncertainty cited as a problem in the previous session.

Waverley Market is an iconic site and a substantial and incredibly valuable asset, held for the benefit of the public. It may represent a large part of the common good asset currently at risk as a result of the provisions in this Bill, although I would welcome other examples from other areas.

As a result of the strength of feeling in Edinburgh a motion was passed by full council on 2/2/2012 agreeing to write to the RACCE Committee to seek an exemption for Waverley Market.

As you know, Edinburgh Council are scheduled to give evidence to committee on this Bill on 29th February.

The Committee may be aware of differences of opinion with regards to Waverley Market’s Common Good status. Whether or not it is proven that the site is, or is not, Common Good Land, it belongs to the City and its people and is managed on their behalf by the City of Edinburgh Council.

It is well documented that under the provisions of the current Bill Waverley Market would pass into private hands for a very small sum.

This is unfair to the people of Edinburgh and as a result I am seeking an exemption for this specific site.

¹ See Andy Wightman’s evidence in Session 3