Local Government and Communities Committee

Common Good Property and Funds

Submission from Derick Tait

Response to Questions:

1. Are the common law rules which define common good property adequate? – No
2. Do you think the record keeping of common good property and assets held by local authorities could be improved? – Yes
3. Is there enough openness and direct engagement with local communities on common good property and funds and the use to which common good property and assets are put? – No
4. Are details of common good property and assets and income generated by their sale clear and transparent? – No
5. Are there any other issues relating to common good property, assets, and funds which you would wish to bring to the attention of the Committee? – Yes

Narrative:

Common Goods were once an important specific part of local community culture, managed by Town Councils and the like, which because of their dedicated specialist knowledge, were able to manage and disburse their obligations in that respect conscientiously, expeditiously, and appropriately. Sadly, as local government has become bigger (but not better), management of individual common goods has merged and passed into the trusteeship of those who neither appreciate their significance and importance to local communities, nor care particularly about their management. In recent years, I personally have been aware of instances of failure to manage common goods properly in three towns, principally because of lack of local knowledge. There have also been recent instances in my home town Hawick, where public meetings have been convened to demand proper and dedicated management by trustees (councillors) from outwith the town. Unfortunately, as the drive towards centralisation and city regions develops, remoteness of trustees from local knowledge will continue.

There is no doubt that the edict from the Scottish Government to Local Authorities to compile lists of common good assets opened several cans of worms, with delay upon delay in reporting entirely due to the failure to maintain proper records. In Hawick, that list has only now been completed, completion only being achieved thanks to the assistance of several civic groups in the town. Part of the problem with incomplete records is that the intentions of the original donors may not have been properly interpreted. Many may have made a “donation to the town” in the expectation that they were donating to the common good while councils assumed
the gift was under town, district, or regional control (obviously the reverse also applies). It is therefore essential that such records be given due respect and attention.

Financial assets present their own problem in that these are very often swallowed up, often without trace, into Council coffers. Indeed, I suspect that if all common goods asked for their monies back simultaneously it would spell financial disaster for many local authorities. The merging and management of “joint” common good funds into single investment portfolios clouds the issues of management fees charged and apportionment of dividends (and losses). On one occasion I even heard local council talk of a proposal to allow borrowing in excess of investment from such joint portfolios. Fortunately, those with an interest and knowledge prevailed.

Openness and engagement with communities is an essential if common goods are to be properly managed for the purpose intended (the benefit of the people in a community). Regrettably councils all too often give assurances of public consultation and then pay no more than lip service to the wishes of the public. All too often we see consultation periods being shortened, lengthened, or changed to suit political purposes and public opinion ignored.

While Scottish Borders Council manages the various common goods in the region, that management is by and large left to dedicated sub-committees in which councillors representing a town are responsible for the management of the common good of that town. While I cannot speak for the other Border towns, my impression of Hawick’s dedicated councillor sub-committees since 2003 is that they have been honest with the public, held open meetings, and acted in the interests of the town rather than themselves. I would argue that this is due to the fact that all councillors have had direct connection with the town through residence and the knowledge that residence brings on how a town works. Their commitment to Hawick Common Good can be seen from the fact that they invited local clubs and societies to be part of the recent asset-determining process. The down side of this arrangement, of course, is that all other non-Hawick councillors have the right of veto on any decision.

Common goods are a diverse subject and have been the subject of diverse management over the years. Many have been frittered away or spent to suit council budgets with little reaction from the communities involved. However in towns with a strong sense of community and appreciation of custom and tradition, common goods are a precious commodity to be jealously guarded not by sentiment, but by structure. Politicians ignorant of such structure are neither qualified, nor able, to analyse the present or shape the future.

As local government becomes less local, and the pen grows ever mightier than the sword, the intensity of the community fight to protect its rights and common should not diminish. Common goods belong to communities and their management should
be returned to those communities. Management should be devolved to appropriate civic bodies whose trustees are town dedicated councillors, community councillors, and representatives of appropriate local organisations. Rules, including a dispute resolution process, regarding what can properly be designated a common good asset need to be determined, and some instruction to trustees may be required, but there is no doubt in my mind that common goods would remain local and used for purpose if controlled by appropriate civic bodies.

Derick Tait