Local Government and Communities Committee

Common Good Property and Funds

Submission from Bob Hellyer and Colin Lipscomb

Since we have been asking questions of Moray Council (MC) and our Councillors now for over 10 years it will be very difficult to keep our observations to 6 pages but we will try. Our complaints can be summarised under 3 headings firstly the MC have consistently transferred property and land to the HRA account and then maintained that it was no longer common good (CG), secondly they have refused to answer questions on the annual CG accounts and thirdly in their communications they refuse to answer questions.

In 1997 MC sold land which was the old gas works at Bogton in Forres to Tescos. This sale was overseen by the current CEO of MC Mr Burns in 1997. We have maintained that this sale was of CG land. We also questioned the sale of property at Edgehill and Clovenside. We were told that these properties were not CG because they had been transferred to the HRA and were no longer CG. We questioned the legality of this action to no avail.

Eventually we questioned the sale at Bogton and the legality of transfer to the HRA with the Senior Conveyancing Solicitor of Scotland at a cost of £420. This was presented to the legal department 2 years ago at a meeting chaired by the MSP Richard Lochhead.

The legal departments response was “We hear what you say but we do not agree” Mr Lochhead took no action. The biggest example we know of this practise was in 2008 when land in Elgin valued at £2.1M was transferred to the HRA with no money paid to the Elgin CG, it was then sold 1 year later for £2.7M again with no money transferred to the CG. We submit that this practise is illegal as per the final paragraph in the solicitors report.

We asked at the same meeting chaired by our MSP questions reference the Forres 2014/15 CG accounts. Over the last 10 years we have been asking questions reference these accounts with little in the way of answers. Having said that some years ago we had a meeting with the MC principal accountant and she answered many questions that we had but that meeting actually made us raise more questions based on the fact that we then understood more about how the accounts were presented. As a result of this meeting the Forres Community Council asked for the detailed annual accounts for the Forres Common Good. Years later at the meeting chaired by the MSP the main question asked was “Where did the debtor for £84,000 come from?” in the 2014/15 accounts. We did not get an answer but it was said “You obviously do not understand corporate accounts” again the chair did nothing.

Eventually 2 years later after making the point that we could get the answer to this question with an FOI question we finally got the answer from the MC principal accountant. This answer shows that the accounts given to the Forres Community Council for 2014/15 were clearly incorrect.
As in the past this answer gave rise to further questions and we asked our local councillors (Trustees) if they were aware of this situation. Eventually 3 of our 4 Councillors admitted that they knew nothing of the Trust fund detail in the accounting answer.

This suggested that this Trust fund was established without any input from the Trustees.

In summary we maintain that MC have been misappropriating CG property, producing incorrect accounts, refusing to communicate using phrases like “you don’t understand” and “we disagree with you” and our Councillors have confirmed that they not only unaware of this but refuse to talk to us and also approve charges to the CG when members of the public ask questions.

We would be more than happy to give any further information into any investigation into the actions of MC.

Responses to Questions:

- Are the common law rules which define common good property adequate?

Yes but the Moray Council (MC) ignore them.

- Do you think the record keeping of common good property and assets held by local authorities could be improved?

YES. In 2010 MC said that rather than determine and produce a list of Common Good (CG) they would produce a legal report to the Estates depart reference any property that could be CG. This they have not done, we asked for these reports on a number of occasions and were told (No report, we discussed it on the telephone and decided it was not CG)

- 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! It took us 2 years to get a reply from MC accounts department to show that the published accounts to the Forres Community Council were inaccurate.

- Are details of common good property and assets and income generated by their sale clear and transparent?

Absolutely not. MC consistently use the “transferred to the HRA” as a reason not to credit the CG.

- Any other issues relating to common good property, assets and funds which you wish to bring to the attention of the Committee?
Yes. MC allow many sublets and total rental rebates of CG without recording this in the accounts. Finally MC are currently transferring CG property and Land into Trust Funds without publishing the actions.

R J Hellyer and C Lipscomb.