Local Government and Communities Committee

Common Good Property and Funds

Submission from James Perman

1. Are the common Law rules which define common good property adequate?

In a Scottish Parliament Written Answer of 17 November 2006, a definition was provided by Mr Tom McCabe (Minister for Finance and Public Service Reform). This was from a decision of a case heard in the Court of Session in 1944. This same definition is used by LASAAC in ‘Accounting for the Common Good Fund: A Guidance note for Practitioners’ issued in December 2007. To this (most widely held definition) can be added these from a case of 1893, which was at the pinnacle of Victorian thinking of what constituted Common Good.

These definitions have been generally ignored by my Local Authority over the past 10 years in its ongoing attempt to prepare accurate asset registers identifying common good assets as such, as per the letter from the Head of Best Value and Performance Team, to all Directors of Finance in February 2007, and due for implementation in 2009.

The definitions should be specifically made authoritative, to avoid misinterpretation issues.

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

Yes. If a Local Authority cannot apply the accepted definitions for common good (heritable) property, then the asset registers will contain errors. Additionally, attempting to use the concept of ‘materiality’ for a failure to include specific moveable assets from registers is a cause for complaint. If an asset is not recorded on a register it can ‘go missing’ or just be ‘lost’ over a period of time.

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?

Up to now, certainly not. In the past, common good assets have been alienated without specific notification to the public. However the Community Empowerment (Scotland) Act 2015 makes specific provisions in s104 and s105 which will allow the community to be better informed. What level of ‘regard’ the Local Authority must take of representations is unclear.
4. Are details of common good property and assets and income generated by their sale clear and transparent?

If the Local Authority has not defined an asset as Common Good, because it failed to apply accepted definitions, then assets have been disposed of, the proceeds of the disposal were not accounted for within the Common Good.

5. Any other issues relating to common good property, assets and funds which you wish to the attention of the Committee?

I refer the Committee to the Submission by North Ayrshire Council.

Accounts of Largs Common Good from the year to 15 May 1974 identify specific assets and the income from specific assets as Common Good.

As far back as 13 June 2000 the Largs Common Good Member/Officer Working Group identified assets which were gifted to the town, and so ‘not acquired under statutory powers’ and formed part of the Common Good.

From 2007 Anderson Park and Scott Park (bequest and deed of gift to the former burgh) had a nil value for Capital Accounting purposes and therefore do ‘not appear in the asset register maintained within Financial Services’, on the basis of materiality. A complaint to the Auditor concerning the local Authority’s failure to prepare accurate asset registers from 2009 resulted in an Audit Action point in the Auditor’s Report of that year:

The Council may not have identified all common good assets.

Risk – The council may be failing to make adequate disclosure within the common good.

Responsible Officer: ACE (Legal and Protective Services)

Target Date Dec 2010

To this day, there is still no accurate assets registers identifying common good assets as such, despite the matter being raised by the Auditor in the Report to Members on several occasions since.

A letter dated 8 September 2016, from a Financial Officer of the Local Authority, makes it plain what convoluted definition has been used to exclude assets from the common good. If this definition was applied all over Scotland, not one public park or public building could ever be in the common good anywhere. So, obviously, this definition applied by the Local Authority is incorrect. This matter was referred back
to the Local Authority on 28 October 2016 and 2 March 2017 and remains outstanding.

This matter is also still outstanding with the Auditor of the Local Authority, which will change from Audit Scotland to Deloitte LLP in respect of the year to 31 March 2017.

Wilful lack of applying the accepted definition, and so to exclude assets from Common Good in order to mitigate previous failures to account for assets, revenue earned from and proceeds of disposal of common good assets, as well as current and previous alienations, has probably coloured North Ayrshire Council’s submissions, and specifically its response to Question 5.

It is not clear from the Act what sanctions and powers of appeal will apply if a Local Authority wilfully fails to comply with the provisions of the Act.

James Perman