Local Government and Communities Committee

Common Good Property and Funds

Submission from David Harvie

Dear Sir,

As the person who represented Petition 896 on Common Good to the then Local Government & Transport Committee (considered together with two similar petitions) ten years ago, I offer the following observations and general narrative.

Following the considerations of a decade ago, and the introduction of the Community Empowerment (Scotland) Act 2015, I have reluctantly concluded that little progress has been made, and that I fear that the further guidance eventually to be published will be insufficiently strong to offer much practical advance on the present deplorable deficits in stewardship of Scotland’s Common Good property.

The definitions of Common Good have been many and varied. A thoroughly researched and generally accepted definition is vital. Some council officers have taken the view (and I quote) that, “the common good is seen as corporate property of the council.” Preferable is the definition in the Court of Session in 2003 of Lord Drummond Young, who pointed out that, “the town council or other local authority is regarded in law as simply the manager of the property, as representing the community” [Lord Drummond Young in Andrew Wilson and Others v Inverclyde Council 2003]. Recognition must be given to the unique public benefit conferred by the definition.

A definition of those assets to be considered as belong to the Common Good should also be greatly improved. Many local government officers think of only land, buildings and funds, ignoring completely a wide range of moveable assets, eg books, paintings, furniture, regalia, etc, etc. The full range of assets, derived from historical and legal record, should be defined. The issue of ‘alienability’ should, where appropriate, be covered.

In addition, the range of information in the registers should aim to be as extensive as possible. Relevant dates, geographical references, reasons for inclusion, valuations, legal restrictions or burdens, potential leasing terms, projected costs and income, insurance and conservation costs, and the fullest ‘document trail’ (where appropriate) should be listed for each item.

Given the sometimes extensive loss or misappropriation of public Common Good assets that has taken place in some areas over a long period of poor management, asset registers should be sophisticated rather than simplistic. There still appears to
be too much reliance on decisions about assets being taken “in such a way as the local authority may determine.” Definitions, conditions, asset register templates, and publication arrangements should be rigorous and identical for all local authorities. Only in this way will fair comparisons, accurate monitoring, and meaningful transparency for the public be possible.

It is vital that Common Good assets are accounted for separately from other local authority assets and estate. The possibility of local authorities being able to ‘lose’ assets by inappropriate transfer must be prevented.

Common Good assets should continue to be managed by local authorities, for the present. When all councils have full, comparable, up-to-date registers, consideration should be given to community involvement in managing the assets.

Local authorities should be required to maintain the physical integrity of Common Good assets (ie, repair, maintenance, conservation and insurance, depending on the category of asset). It should be considered whether or not a proportion of Common Good accounts could be expended on such repair and maintenance, or what other resource should be used.

Common Good asset registers should be held and published and otherwise made available in each local authority area according to identical guidelines and requirements, and not at the whim of individual authorities or officers. In libraries, in booklet form, etc, but most significantly on internet databases (again, in identical format across all authorities, allowing quick, accurate monitoring and general research).

With particular respect to Common Good assets, there is a clear and unusual public interest (albeit presently ill-defined), and the lack of clear obligation on councils to involve the public in decisions relating especially to proposed disposal is to be deplored. Communities should also have a right to decide on, or be consulted upon, how Common Good assets are used, and how the income from these assets is spent. Public consultation on what method of final consultation is used would be appropriate. Some form of appeal process covering such issues may also be required.

At present, the community may only discover such disposal intentions by accident and may further discover that the only opportunity to object involves becoming party to legal action in a Sheriff Court or the Court of Session. Such situations inevitably place individual members of the community under considerable stress and at severe financial risk, since local authorities will always seek to recoup costs against objectors who lose in court. A common outcome of such a situation is the withdrawal of the objections in the face of such unacceptable pressures. This is a wholly
inappropriate and inequitable situation - these are not issues of private gain but of public benefit.

I believe that consideration should be given to researching, in appropriate cases, historically ‘lost’ or ‘transferred’ assets, and to whether or not accountability can be traced and restitution or compensation achieved. This could be time-consuming and expensive, but the issue ought not to be ignored.

I believe that the egalitarian principle of assets being held ‘for the benefit of the community’ is one that has been allowed to wither on the vine. This is a fine principle that, were it to be readopted and supported with vigour (rather than, as sometimes happens, because of financial constraint in unrelated council responsibilities) would return rights of involvement to the community and result in a more sustainable economic, cultural and social environment for all of Scotland’s communities.

I hope these comments will prove helpful in the further consideration of these issues.

David Harvie