Local Government and Communities Committee

Common Good Property and Funds

Submission from Dr Marian Bruce

I would like to highlight the difficulty with which myself and my husband have had regarding determining the ownership of an ancient drove road in Alyth. This road, which is listed in A R B Haldane’s 1952 book “The Drove Roads of Scotland” forms part of the access route to our farm, is the public road from Alyth town to Alyth Commonty and is part of the Cateran Trail long distance walking path.

Despite the local knowledge that this road has been in general public use for hundreds of years the legal status of it has been impossible to determine. From my (non-legally trained) reading of the specialist law books “Common Good Land”, Andrew C Ferguson (2006), Avizandum and Scottish Road Law, Faulds, Craggs & Saunders (2008), Tottel, it would appear that this should be covered by common good law as “public right of passage” as it is the access route between the town of Alyth and Alyth Commonty, both public places. However, a legal opinion we obtained with regard to a dispute with our neighbour over the ownership and access on this road from Professor Roddy Paisley at Aberdeen University (who is only one of two people in Scotland sufficiently experienced enough in such law to deliver an opinion on the topic) disagreed with this text but despite this said that “the book is the best there is on a very difficult topic”. So even the best specialist legal text on this subject is open to interpretation via a dizzying array of case law which is quoted Professor Paisley’s his opinion. It is therefore obvious that the legal situation around such “Common assets” is not clear. The legal discussion regarding this case has now taken more than 4 years and is still ongoing. Our legal costs would have amounted to around £20,000 had they not been covered by our farm insurance policy.

Our experience of trying to find out any information from Perth and Kinross Council regarding their listing of this public road was that there was insufficient knowledge and expertise amongst Council Officers to answer our questions and a lack of resource to investigate fully.

The matter of Alyth Commonty itself is another situation which I’m sure is known to many of the Committee. The Commonty is an example of where local knowledge and historical usage of the common land is in disagreement with the current legal interpretation by Scottish Government agencies. This legal “black hole” which appears to only be resolvable via expensive and lengthy recourse to the highest courts in the land, has caused significant distress to the people of Alyth and legal and logistical costs to those parties involved. Again this illustrates that the legal status of such land is not readily accessible or transparent to members of the public.
I would be happy to discuss any of the above with the committee or provide more detailed evidence if required.