Dear Sir/Madam,

With reference to the above please find my submission as follows:

My personal experiences convince me that Fife Council are not carefully stewarding Dunfermline’s rich Common Good heritage.

In 2002 I tried to obtain from the Fife Council a comprehensive list of Heritable and Moveable assets. My experience with the council then, and since then, have been that they will only act when pressurised to do so by individuals who are concerned that their heritage is being misused by the cash-strapped council to replenish their coffers and release funds that would otherwise have had to come from their revenue raised by statutory means.

This is wrong. The common good is a unique gift belonging to the people, to be used for the benefit of the people of the former burghs as opposed to general council assets purchased with council tax revenue the revenue from which can be used as the council sees fit.

The people of Dunfermline have been fortunate in that over a long period of time they have been gifted money, land, and buildings, by local benefactors. The first such gift that I am aware of, a large tract of monastic land, was gifted them by the Abbot of Dunfermline, Robert of Crail in about 1322.

The terms of the gift were that many acres of pasture land was gifted to the ordinary people of Dunfermline in perpetuity, to do as they wished with in return for a token annual fee—six pence or a pair of white Paris gloves. This fee of course was nominal; the good Abbot was simply gifting the land to his townsfolk. This gift has the uniquely Scottish title, and legal distinction of being a “heritable common good” asset, and as such is supposed to be protected.

The Fife Council are the legal custodians of the common good of their former burghs with a duty of stewardship, but when I asked their Chief Executive where I might inspect the original 1322 charter he told me he had no idea, and suggested that I try the library as they might know!
Due to various factors; human-error, malfeasance, bad-stewardship, and even corruption over decades/centuries, very little of Dunfermline’s heritable common good land is left I believe our story is replicated throughout Scotland.

Fife Council’s solicitor, who deals with the Common Good, echoed the CEO’s lack of interest in the common good when in 2005 he stated that the people of the former burghs only owned common good land “in a philosophical sense only”!

In 2007 after many fruitless attempts to pressurise the council on common good issues I took up my concerns with the Auditor General for Scotland (See file attached) and was vindicated to some extent when an annual audit of the council by Audit Scotland’s Local Government reporting group was highly critical of Fife Council, finding their procedures for dealing with common good assets deficient.

I am very much of the opinion that (as evidenced by the dwindling common good assets both heritable and moveable of the former burghs) it is clear the current legislation on this issue is not working and new laws fit for the 21st century are required to protect them. The burghs of Scotland are things of the past, mere relics, and so are the laws that were supposed to have protected the unique gifts to the citizens of these once proud communities.

Trusting you would give this submission your full attention and should you require any further information please do not hesitate to contact me.

Yours sincerely,

Tom Minogue
Letter from Tom Minogue to Project Manager, Audit Scotland of 1 November 2007

Dear Sir

Complaint against Fife Council

I contacted you in August this year regarding the above and would now ask you to consider my complaint that Fife Council are not properly stewarding the common good assets of the former burgh of Dunfermline and have been negligent in their statutory duties in this regard since the reorganisation of the local authorities in 1996.

Background to the complaint

On 4 October 2005 I wrote to the then CEO of Fife Council expressing an interest in common good assets. I had been made aware of the legal requirements of local authorities for the recording and stewarding of such assets by an Audit Scotland report of 2004 which looked at the common good within Borders Council. In addition to this report I was aware of a public petition, PE875, which was before the Scottish Parliament. I referred to both of these matters in asking Fife Council how it dealt with common good assets.

On 12 October 2005 I received a reply to my letter from the CEO from one of his members of staff who assured me that the council had appropriate arrangements in place to ensure that common good assets were safeguarded, properly recorded and properly insured. Accompanying this letter was an A4 sheet of figures purporting to show the accounts for the common good of Fife Council. The assurances given in the letter were not sufficient for my purposes and the single sheet with a series of numbers on it were that if I knew anything about common good assets could I let him know for his ongoing work in drawing up a comprehensive list.

He made it clear that he was dealing with all of the 23 former burghs of Fife (7 Central, 4 West and 8 East) and this task would be a long term project and he needed all the help he could get from members of the public. I queried several properties that I suspected were common good and he responded with what little information he had but he was less than certain about the status of some properties and would make vague statements such as “the fact that these were purchased from the Trust suggests to some that they are Common Good. This aspect however needs further research and if you have any more background this would be welcome.” This to me suggested that I was dealing with a “do-it-yourself” form of local government. He did not however respond to my queries about the 2 plots of
land for bungalows that had been sold from property that had been part of the Townhill Woodland.

At this time I had also contacted the Registers of Scotland to establish if they could help me to help Fife Council in their research of the common good and though they made various suggestions they could not help and stated that they owned no register of common good assets as such. They concluded that I would have do individual searches on any property that I thought was a gift to the people of the burgh and was by definition a common good asset.

My next step was to meet the lawyer dealing with the compilation of a common good register for Fife Council. He and I had exchanged views in the columns of the local newspaper at which time he stated – in response to my claim that the 1322 Charter by Robert, Abbot of Dunfermline had gifted large areas of Dunfermline to the citizens – that he people only owned the common good assets that had been gifted by benefactors “in a philosophical sense”.

When Andy Wightman, supported as a speaker by the lawyer, hosted a talk and seminar at Cupar on 30 March 2006 I attended and after the talk, during a question and answer session, I asked the lawyer to explain what he meant by philosophical ownership, as to my mind I had never owned anything in a philosophical sense before. He did not clarify my philosophical ownership but invited me to meet with him to discuss the question of common good.

Soon after our meeting I wrote to him accepting his invitation of a meeting and in April 2006 I met him at Fife Council’s Glenrothes HQ. His main concern has that I appeared to want to set right all of the wrongs that have been acted out on the common good lands and buildings in Dunfermline over hundreds of years. I could see where this might be problematic for the council, and agreed that we should concentrate on establishing what common good lands still existed and protecting them for future generations. I left the meeting with his promise that he would soon set about defining the extent of the common good lands in Dunfermline in general, and in particular what was left of the 1322 gift of Robert of Crail, the Abbot of Dunfermline.

Some months followed and it became apparent that the action promised was not forthcoming. This was eventually confirmed by letter on 24 November 2006 when he stated that he could not put a timescale on the research and compilation of a comprehensive asset register for Dunfermline.

The planning officer had originally maintained that the developer had bought further land at the site, but when I pressed him on this he dropped this assertion. The developer then changed his planning application by removing the blocks of flats –
which in area together with the houses could not physically fit into the 4 acre site – revising the drawings to reflect this.

The developer’s General Arrangement Plan drawing now showed the site layout of the houses within the site boundaries on a supposed scale of 1/100, but the site area was in fact some 30% larger than a copy of the Ordinance Survey drawing of the same area, which was also to a scale of 1/100. I only found this fact out on the day of the planning meeting that considered the application but drew it to the attention of the planning officer who assured me it would be brought to the committee’s attention. The minutes of the meeting show that this did not happen.

In the event in November 2006, the planning application was rejected for various reasons but was the subject of a second application some months later.

The second planning application in February 2007 – which did not state the area of land to be developed but appeared to show the proper area of 4 acres – was recommended for acceptance by the same planners who had rejected the application some months earlier and was successfully approved by the same committee that had rejected it at earlier meetings.

Leaving aside the merits or otherwise of the application the fact that despite the fact that the expansion of the site that had been purchased – which was a necessity to fit in the houses shown on the application – must encroach into the surrounding woodland that are common good land. The council, at every level were not interested in this anomaly which to my mind should be part of their obligation of protecting the common good. In addition to sending my objections to the above officials highlighting this anomaly I also sent it to the members of the common good committee and the West Fife area Development Committee and it is apparent that the elected representatives are also not interested in this matter.

It is not my responsibility to do the council’s job with regard to common good assets, but in the case of the Townhill Woodland I have done my best, and will watch the development of the housing project with interest.

Andy Wightman highlights the case of the Waverley Market that was transferred out of the common good account (by mistake) and then leased to a developer for 204 years at the rate of one penny a year. This mistake cost the Edinburgh Common Good Fund some £20 million or more. I strongly feel that we, as citizens, have a duty to preserve the common good and maximise the income from it for future generations and I will act on my own account if the council fail to do their job.
Example Two: The Carnegie Hall and the Tiffany Window

In an effort to raise the awareness of the councillors to their obligations with regard to the common good I have sent them emails reminding them of their common good obligations, these apparently fall on deaf ears. One Councillor, the Chair of the West area common good committee – who seems to be the best of the bunch in Dunfermline – recently thanked me for sending her a newspaper article on the latest public petition to the Scottish Parliament from a Kirkcaldy woman concerned about the loss of common good, and stated that she hoped to have the committee’s “remit changed to include the oversite of common good properties etc, as well as the disbursing of monies”! I understood from the evidence of Audit Scotland, the Scottish Executive and COSLA to the Scottish Parliament that councillors already have such a remit as their legal duty.

Proving a negative of course is difficult however I feel confident that I can demonstrate that over a prolonged period I have made every effort to establish the extent of the Dunfermline common good which is stewarded on behalf of the people by the local authority. That my efforts have been largely unsuccessful and the council and the council can give me no indication when a comprehensive register of assets will be available for inspection is self-evident. I also believe I can also demonstrate that the extent of individual councillors’ obligations with regard to stewardship of the common good is not properly defined by the council as an employer.

My complaint regarding Fife Council is as follows:

**Fife Council has failed to record details of common good assets and funds of Dunfermline fully and clearly.**

**Fife Council has failed to manage the common good assets on Dunfermline by failing to properly record and insure these assets.**

**Fife Council has failed to advise members of the public of the extent of the common good assets stewarded by the council when asked.**

**Fife Council has failed to give proper advice to councillors on the extent of their responsibility of stewardship of the common good.**

I trust you will give my complaint serious consideration and should you need further information or copies of correspondence please do not hesitate to contact me.

Yours sincerely,

Tom Minogue