

Local Government and Communities Committee

Common Good Property and Funds

Correspondence from Dr Lindsay Neil to the Clerk of 9 January 2018

Dear Mr Hynd / Ms Williams

Ref LGC Committee Meeting 20/12/17

Thank you for the opportunity to clarify any points that were confusing or may not have been expressed clearly enough by me.

I congratulate you on your accurate reporting of my evidence given at the meeting.

My earlier written submission gave details of the legal decisions which simplify what is or isn't CG property. Four Senior judges at the Court of Session independently, emphatically and indisputably defined Common Good to the satisfaction of my two legal advisors, both experienced non-LA lawyers and one a QC. The fog of uncertainty manifestly afflicting local authority lawyers therefore does not extend to all lawyers. There is clearly an opportunity in the act to dispel the fog.

Re Elaine Smith MSP's question to me was regarding the legality of having a separate charity 'Live Borders' managing CG property, I hope I made my reasons clear, but to clarify further;

The 1491 Act of James IV, still extant, specifies that advice must be from the council of that town not from another body or an organisation with no townfolk on it whatsoever. Elected SBC councillors (2) are on 'Live Borders' list of trustees but neither have any specific connection with Selkirk. Also, Live Borders has no Selkirk townfolk on it at all. The 1491 act is therefore not being observed. Furthermore, Live Borders is not required to publish minutes for public scrutiny which is a demerit. The idea is a good one, but Live Borders needs tidied up legally.

The final contribution by myself referred to a 'Para 107'. What it should have said refers to the map of 1907 which was an OS map with every property in Scotland marked with a number and the ownership recorded in a register. Any incidental Common Good land was recorded as owned by 'the Provost and Magistrates of XX Burgh'. The intention was to tax countrywide the owners of property but this was never carried out. The resultant records are an indicator of what was, at least once, Common Good property. It can then be traced forward.

Please amend that record; - delete "under section 107" and insert "of 1907".*

One additional positive effect of democratising the CG management would be the elimination of predatory overcharging by Local Authorities for administration of CGs in their area. This question was not touched on at the LG Committee meeting, but I raised it in the written submissions. For example in 2010, Scottish Borders Council charged all Border Common Good Funds a total of £29,987.00 for administration; in that same year the entire Common Good income was £27,851.00. They also

charged £708.00 to Selkirk for securing a £50 pa lease which still remains unachieved.

Such blatantly covetous administration as well as inevitable conflict of interest by local councillors would be eliminated simply by enhancing local community participation in Common Good consensus management.

I shall, of course, be happy to respond to any further clarifications but my opening remarks encapsulate my views on how the management of Common Good can be streamlined to everyone's advantage. It can be anticipated that a downward cost of management of CGs curve will result from what I propose.

Many thanks,

Dr Lindsay Neil

*OS Map of 1899, 25" to the mile, modified by the Internal Revenue Service 1907. Available at Scottish Records, West Register House.