

Corporate Policy and Strategy Committee

10.00 a.m, Tuesday, 4 August 2015

Common Good Assets Register

Item number	7.6
Report number	
Executive/routine	Routine
Wards	City wide

Executive summary

On 5 March 2015, the Governance, Risk and Best Value Committee requested a report to Corporate Policy and Strategy Committee, prior to coming to Governance, Risk and Best Value Committee, on costs and timescales involved in fully updating the register of Common Good Assets, including a definition of Common Good and the Council's responsibilities concerning such assets. In preparing the report, officers were to consider the resources and skill sets required to carry out the review of the register.

This report responds to that request.

Links

Coalition pledges	P31 , P33
Council outcomes	CO19
Single Outcome Agreement	SO2 , SO4

Common Good Assets Register

Recommendations

It is recommended that Committee:

- 1.1 Notes the contents of this report;
- 1.2 Notes that further reports will be brought to Committee:
 - (a) once Scottish Ministers' guidance about common good registers has been issued; and
 - (b) to consider the implications arising from compliance with the Land Registration (Scotland) Act 2012.

Background

- 2.1 On 24 February 2015, the Corporate Policy and Strategy Committee approved an urgent motion by Councillor Burns in regard to Parliament Hall and Common Good. Consequently, the Governance, Risk and Best Value Committee of 5 March 2015, requested a report to Corporate Policy and Strategy Committee, prior to coming to Governance, Risk and Best Value Committee, on costs and timescales involved in updating fully the register of Common Good Assets, including a definition of Common Good and the Council's responsibilities concerning such assets. In preparing the report, officers were to consider the resources and skill sets required to carry out the review of the register.
- 2.2 The Finance and Resources Committee, on 29 January 2008, made a similar request, i.e., to provide a further report with an indication of the costs of an exercise to research the full extent of the Council's common good holdings.
- 2.3 In response to this, the Finance and Resources Committee on 17 June 2008, were advised that it was anticipated that a team of four staff, comprising a solicitor, archivist, surveyor and a property research officer would be required to complete the exercise over a number of years, and that the annual employee costs of such a team would be in the region of £185,000.
- 2.4 Due to the cost implications of undertaking a comprehensive review of common good assets, the Committee resolved that a review would be undertaken prior to the disposal or change of use of any property, which would enable any common good implications to be considered on an ongoing case by case basis.
- 2.5 At its meeting on 21 January 2010, the Finance and Resource Committee, having considered the 2008/09 Audit Scotland report on the Council's Common

Good account, and recommendations made by the Corporate Asset Management Group, resolved:

- 1) To note the positive report received from Audit Scotland in its 2008/09 review of the City of Edinburgh Council's Common Good Fund.
- 2) That the Council would continue with its rolling programme of reviewing title deeds to identify potential Common Good properties.
- 3) That a review of individual properties would be undertaken when a change of use or a disposal of property was proposed.
- 4) All work related to these reviews would be carried out using existing staff resources.

2.6 The above is the Council's current procedure for reviewing common good property.

Main report

Definition of Common Good

3.1 There is no statutory definition of common good, nor has it been defined through case law. Although the pending Community Empowerment Bill makes provision for how local authorities should deal with common good property, it does not provide a definition.

3.2 The reasoning for not defining common good was set out in the Policy Memorandum to the pending Community Empowerment Bill and is as follows:

“These provisions do not seek to provide a new definition of common good. Inclusion on the register or exclusion from it will not determine whether property is in fact common good. Given the complexity of the subject, there is a high risk that any such approach might not cover all existing assets which are considered to be common good, and might cover things which are currently excluded.”

3.3 Although this approach can be considered reasonable, it is recognised that a benchmark is needed against which to test assets to determine whether they should appear on the Common Good Register. Following consultation with the Head of Legal, Risk and Compliance it is proposed that the following test should be used:

Property which belonged to the Council immediately prior to May 1975, that was neither acquired under any statutory power nor held by a separate trust, *and* fulfils one of the necessary criteria:-

1. Custom: used by the general public since time immemorial;
2. Dedication: formally dedicated by the Council's predecessors to a public function; or

3. Grant: held under a title condition ensuring such a public use in perpetuity.

Council's responsibilities

- 3.4 The Council has a statutory obligation under the Local Government etc. (Scotland) Act 1994, Section 15(4)(b) in administering property held as part of the common good, to administer it having regard to the interests of all of the inhabitants of the City.

Community Empowerment Bill

- 3.5 The Community Empowerment (Scotland) Bill was passed by the Scottish Parliament on 19 June 2015, subject to Royal Assent. It proposes to place a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.
- 3.6 Local authorities are required to have regard to any guidance issued by the Scottish Ministers about common good registers. Before issuing any guidance, the Scottish Ministers must consult local authorities, community councils, and appropriate community bodies.
- 3.7 It is not yet known when the provisions of the Bill will come into force, nor when the guidance will be issued but this could be by the end of 2015. There is no timescale for completion of the register, but it has been previously suggested that it should take no more than 3 years for authorities to establish their common good registers, although not all items in the register will have their status confirmed within that time.

Land Registration (Scotland) Act 2012

- 3.8 The law around the registration of land ownership in Scotland has been the subject of recent reform, with the coming into effect, in December 2014, of the Land Registration (Scotland) Act 2012. This, together with the Government's desire that all land owned by public bodies, such as the Council, should be registered on the Land Register by December 2019, means there is also a requirement for the Council to assess the extent to which its land is already on the Land Register, and what actions and resources would be required to complete this process.
- 3.9 Any work carried out in connection with updating the register of common good assets will go some way to assist with the work associated with the completion of the Land Register. However, transferring information on to the plan/description based Land Register will require an additional resource input and it is intended to bring a further report to Committee following guidance about common good assets by Scottish Ministers.

Costs and timescales involved in fully updating the register of Common Good Assets

- 3.10 The contents of the report to the Finance and Resource Committee of June 2008 remain sound, in that, the skill sets required in order to carry out a review of the register comprise a solicitor, archivist/historian, surveyor and a property research officer, with appropriate administration support.
- 3.11 Establishing what property is common good is complex and requires a great deal of research. Since the late 1800's, most property was acquired by the Council's predecessors under statutory powers, however the majority of titles do not refer to the relevant statute.
- 3.12 Whether a property is or is not common good can only be determined by researching the particular fact and circumstances of each and every acquisition and its subsequent use. Reference would have to be made to common good reports, Acts of Parliament, Charters, titles, Improvement Schemes, Council Minutes, files, other historical records and case law.
- 3.13 It should be noted that it is ultimately up to the courts to have the final say as to whether a property is, indeed, part of the common good, as local authorities do not, presently have the ability to declare this absolutely.
- 3.14 The estimated current cost to the Council of carrying out the exercise to update fully the register, by a team of staff as per paragraph 3.5 above would be the region of £250,000pa. Given the scale of the task it is expected to take several years to complete. It has been previously suggested that it should take no more than 3 years for authorities to establish their common good registers, although not all items in the register will have their status confirmed within that time.
- 3.15 At this stage, the costs to the Council associated with updating the common good register would be an unbudgeted pressure.

Measures of success

- 4.1 A fully updated Common Good Register and a review process that will minimise the risk of an inalienable common good property being inadvertently sold.

Financial impact

- 5.1 The estimated costs to the Council of updating fully the Common Good Register, is £250,000 per annum over 3 years. At this stage this would be an unbudgeted pressure.
- 5.2 Meeting the requirements of the Land Registration (Scotland) Act 2012 will incur additional unbudgeted revenue expenditure and this will be the subject of a further report to Committee.

Risk, policy, compliance and governance impact

- 6.1 A review to determine whether a property should be considered common good is undertaken if it is identified for disposal or if a significant change of use is proposed.
- 6.2 This recommended approach was accepted by the Council's Finance and Resources Committee on 17 June 2008.
- 6.3 There is a risk that some properties are not identified as common good and are not included on the Council's asset register. The Common Good Asset Register could therefore be incomplete.
- 6.4 The risk that common good property could be unlawfully disposed of or appropriated is managed within the review processes currently in place.

Equalities impact

- 7.1 Updating fully the register of common good assets would potentially enhance the right to legal security for the citizens of the City of Edinburgh. If the status quo is maintained, whereby a review is undertaken prior to the disposal or change of use of any property, to enable any common good issues to be considered, then existing rights would be maintained.

Sustainability impact

- 8.1 As the report recommends that Committee notes the contents of this and future reports, the proposal does not have an impact in relation to the three elements of the Public Bodies Duties in the Climate Change (Scotland) Act 2009.

Consultation and engagement

- 9.1 None

Background reading/external references

"Update on Common Good" – report to the Finance and Resources Committee 21 January 2010.

"Review of Common Good in Edinburgh" - report to the Finance and Resources Committee 17 June 2008.

"Review of Common Good in Edinburgh" - report to the Finance and Resources Committee 29 January 2008.

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Links

Coalition pledges	<p>P30 – Continue to maintain a sound financial position including long-term financial planning.</p> <p>P31 – Maintain our City’s reputation as the cultural capital of the world by continuing to support and invest in our cultural infrastructure.</p>
Council outcomes	<p>CO19 – Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm.</p>
Single Outcome Agreement	<p>SO2 – Edinburgh’s citizens experience improved health and wellbeing, with reduced inequalities in health.</p> <p>SO4 – Edinburgh’s communities are safer and have improved physical and social fabric.</p>
Appendices	