

Nairn Common Good - the Story.

In response to local media articles and the current consultation about selling Sandown Common Good land a lot of questions are being asked about what exactly Nairn Common Good means and why it exists. Nairn West and Suburban Community Council have compiled a 'Common Good Story' which takes us from the 12th Century to present day. This hopefully will be interesting and raise public awareness about what the issues are and how we could all as a community become more involved in the decisions which are being taken about Nairn community's assets.

Nairn Common Good – the Story.

As Scotland emerged from the fragmented and warlike ruling system of the early middle ages, the accession of King David I to the Scottish throne led to the pattern of settlements that we still see today.

Brought up in England, he had seen the prosperity which came through trade and co-operative working between merchants, tradesmen, seafarers and farmers, and the importance of links to mainland Europe. Scottish merchants were empowered to hold markets and trade prospered between Moray Firth towns, the south of Scotland and the Continent. Fishing and shipbuilding became very important industries.

In the late 12th century, David's grandson, William the Lion, built the Castle sited on Constabulary Gardens and granted Nairn a formal charter for a separate sheriffdom, the Burgh of Nairn. The burgh was responsible for trade, law and order, markets and fishing rights.

King James VI visited Nairn in 1589 and confirmed Nairn's burgh status with a new Royal Charter, and lands granted within the Burgh boundaries stretched from Tradespark to Kingsteps. These public lands were known as 'Commonities' and could include shared grazing and farmland, peat banks, harbourage, bleaching greens, wells, areas for preparing nets and recreation. Some areas remain in the form of Common Good lands at Sandown, Viewfield, the West Links, Foreshore, Sailing Club, Dunbar Golf Club, the East Links, Caravan Site and the Maggot.

Tolls raised by bailies could be used to improve the Burgh, and therefore the concept of a Common Good Fund used for the benefit of the town was established. Sadly, corruption and grabbing of lands and assets by the magistrates became widespread, until in 1832 electoral reform law introduced proper local elections and the power to charge rates to pay for public health, housing etc. The common good fund was no longer the principal source of funding for a burgh and councils were able to add to the Common Good assets by purchasing or receiving donations of assets and land, or investing.

In 1975, as part of local government organisation, Scottish Burghs were replaced by District and Regional Councils, with district councils scrapped in 1995. The link between Common Good funds and their communities became tenuous and the new authorities had little understanding of the situation, holding Common Good assets on behalf of the inhabitants of the former burghs, but giving those same inhabitants no control over how assets were

managed or spent. Asset registers were neglected and have only recently been properly updated and adopted by Highland Council.

Fast forward to 2006 when a plan to market the remaining Tradespark Lands granted in the Charter of 1589, was drawn up behind closed doors at Highland Council (HC). Sandown Farm had been rented out with the proceeds going to the Common Good Fund (CGF).

Significant expense was incurred compensating the sitting tenant and preparing the land for sale, but as the land was protected because of the 1589 charter, HC had actually no legal right to market it without Court permission.

This had not been sought nor the required consultation carried out, therefore the attempted sale was apparently null and void. In the event the developer applied for 550 houses rather than the 300 allowed in the local plan, and was turned down by both HC and the Scottish Government reporter.

HC sought to recoup the expenses in 2013 by claiming some of Sandown Land, but this was also apparently an illegal process, and is currently being challenged.

Meantime Nairn Community Councils and others were challenging the management of the Common Good Fund and the decision making processes. Several high profile mismanagement issues had come to light, in particular the omission to raise the Caravan Park rental on a seven yearly cycle from 1993. This lost the CG fund £187,000, which HC eventually agreed to reimburse in 2014.

This brings us to who is responsible for Common Good Fund spending and decisions?

Nairn Common Good Fund is run like a trust and all 72 Highland Councillors are the 'trustees' having a duty to make decisions in the best interests of and obtain best value for the various Common Good Funds in the area. This supersedes their duty to Highland Council. Up to a certain limit, Nairn councillors can make common good decisions for Nairn, and receive financial reports, but there is no designated Nairn Common Good committee as in Inverness.

However, there is a major conflict of interest for these councillors, some of whom may also be directors of High Life Highland who are managing some of the CG assets. As HC becomes more and more in debt, the temptation to replace statutory council spending (which other areas get as a right) with CG money is significant.

Common Good assets can be used to provide public open space or community buildings, to give out grants, or support local events. Where HC uses CG land for statutory purposes like recreation it should pay rental like other users or maintenance in lieu of rent. This happens in other burghs in Highland, but in Nairn HC pays neither rental nor maintenance for the CG lands it uses to provide necessary public open space.

There is a very pressing need for Nairn to have a Common Good committee which includes neutral representatives from the community. This is the pattern in several other parts of Scotland, or even locally in Highland where at least one community council is consulted about CG decisions and spend. A Nairn CG committee was promised in 2013 by HC officials and councillors but was never delivered.

And so to Sandown again.....

Sandown Lands have been the property of the inhabitants of Nairn since 1589, over 430 years. Over the last year, behind closed doors, plans have been formulated by HC officials and Nairn councillors to sell all the land to a developer as soon as possible. (according to the Ward Business minutes), and it appears a developer may already have been approached.

The majority of our public recreational spaces in Nairn and some community buildings are Common Good which is why it is so important they are preserved and not sold off. Our common good land is also a major draw for tourists. Without it we would not be a tourist destination and a large percentage of businesses in Nairn benefit greatly. Another reason why having control over the development of Sandown is so very important. It must incorporate and be part of a leisure, recreational, tourist gateway space so that we continue to make Nairn a tourist destination and create diverse jobs and livelihoods.

The process has started with a three month consultation. Court permission must then be sought before a sale can be allowed. The rationale appears to be that more housing is required and that cashing in this property will provide a lump sum for the CG Fund. No evidence has been provided that this is needed now or in the next few years.

What are the issues for our community to consider?

Consultation or lack of it.

- Covid. Normally consultation would consist of public meetings and exhibitions. A consultation on selling almost all the assets of the multimillion Nairn Common Good Fund during a pandemic and over the Christmas period with minimal discussion and an insubstantial 4 page document which lacks any rationale for the sale is unacceptable to say the least.
- The Community Empowerment Act gives additional legal backing to the importance of consulting communities properly about use of their CG assets.

Disputed Appropriation of Land by HC in 2013 and Lack of Clean Title because this land is from the Charter of 1589.

- The land was not made legally available for sale in 2008 therefore no marketing expenses were valid.

Purposes and Alternatives.

- No rationale for the sale at this time has been explained and no cost benefit analysis has been presented.
- The legal duty to get the best price that is reasonably possible cannot be assured when there is only one option: sale of the whole of the land for volume building. This is likely to be the option bringing in the least money.
- Other options of selling plots; leasing to provide long term income streams; selling small areas only and keeping control of options for recreation, leisure and tourist gateway uses of the land would give the community long term control of their asset.

Economic Meltdown

- Between Covid and Brexit, the economy is facing the worst recession in 300 years. Investments may be decimated while land and property should be much safer.

Trustees Duties

- Land value. Sandown was valued at £14 million in 2006 with a bid of £22 million from the developer who was turned down. It was £10 million in 2010, £7 million in 2013 and now £6-7 million. Councillors have a duty to ensure that the interests of the CG fund are placed first. This is clearly NOT the time to sell land which we have had for 430 years. Councillors are thought to possibly be individually financially responsible if NCG loses most of its value by doing this.

Need for Housing

- Housing is a statutory duty of the Local Authority it is most certainly not a function of the Common Good fund. Current Scottish Government and Highland Council policy is to redevelop and renovate town centre property, not develop greenfield sites on the edge of town.

How would the CG fund be used if this land was sold.

- No case has been made for how the money would be used, and as with housing, the possible uses such as regeneration are likely to be as a substitute for HC statutory spend or regeneration grants which the taxpayers of the town are entitled to anyway.
- In particular the conflict of interest of Highland Councillors and lack of non conflicted representatives in the decision making process is completely unacceptable and needs addressing as a matter of urgency.

Conclusion:

Nairn Common Good lands are hugely important assets to the people of Nairn. Sandown has been in the Common Good for over 430 years and once sold lock stock and barrel to a single developer that is it. Gone for ever. Does Nairn need another bland housing development which profits a single developer? There are other options and we in Nairn should be having more say in what happens to our town and in plans for its long term future. What do we want? Do we want to be a dormitory town to Inverness or to be independent and thriving where 'place' and local community are our priorities?

At the moment all development decisions are made by Highland Council. In early 2021 guidance and regulations for **community led** Local Place Plans, one of the provisions of the new Scottish Planning System will be published. Why is Highland Council proposing the sale of Sandown Lands at this time? Should any talk of sale be off the table until such time as markets improve, and other options have been explored through proper community consultation under the new Local Place Plan legislation? Food for thought! This is your opportunity to make a difference to Nairn. Yes, we need some more housing but is the sale of the entire Sandown Common Good land at this point a good deal for the people of Nairn and it's future generations? In 2021 we will have the opportunity to work in partnership with Highland Council to shape the future of our town.

Get involved and have your say by submitting your comments by e mail to commongood@highland.gov.uk

or post to Sara Murdoch, Highland Council Headquarters, Glenurquhart Road, Inverness IV3 5NX.