

Consultation on Heritable and Moveable Asset Registers for former Burgh of Peebles

Appendix 1: Responses to Consultation and Officers' Considerations

Consultation Comment	SBC Response	Recommended action
<p>There is an area of wet woodland running parallel to and between Edinburgh Road and the Eddleston Water, north of Brown Brothers Showroom, which used to form part of Venlaw Estate, which was gifted to the town of Peebles and which should be part of the Common Good.</p>	<p>This area is not currently listed as being an asset of the Council. The disposition in favour of the Burgh would indicate that this is a Common Good asset.</p>	<p>Have the asset listed as an asset of the Council, and added to the Common Good register.</p>
<p>May I ask you to clarify the position regards the "Corner Field" at Jedderfield Farm? This was offered recently as part of the Jedderfield farm lease but looking at your maps this field appears to be part of the Peebles Golf Club, although separated by a hedge and not part of the active playing part of the golf course itself. The Corner Field is the most south-westerly triangular field in the second map.</p>	<p>The Council's Estates team have confirmed that the Corner Field should show as part of the Jedderfield land rather than the golf course (both assets being common good). The plans of Jedderfield Farm and the Golf course have been amended to show that the Corner Field is part of the farm and not the golf course.</p>	<p>Ensure amended plans on Register</p>
<p>Old Workshops, School Brae should be on the Common Good Register – they were once owned by Town Council.</p> <p>6-9 Newby Court – those properties were once council owned</p>	<p>These properties were acquired by the Burgh Council in various tranches from 1911 to 1960. They were not purchased from common good funds and the subsequent demolition and redevelopment of properties that were in disrepair suggests that were acquired for statutory purposes and are not therefore common good assets.</p>	<p>No action.</p>

<p>GlenCraig Cottage (next to Kingsland Road) on Neidpath Road should be on the asset register.</p> <p>and unless evidence can be provided that this was formally sold by the Town Council, rather than simply being transferred to another Council account, this should still be part of the Common Good.</p> <p>Firknowe was part of the Kirklands and Jedderfield Title and was originally listed as a Common Good asset, prior to 1974. It was sold in 1982 – can you confirm that the proceeds were paid to the Common Good?</p>	<p>GlenCraig Cottage and Firknowe were both originally part of the Kirklands title, which was common good. However, in 1959 the cottages were transferred to the Housing Revenue Account with the permission of the Secretary of State for Scotland. The value of the properties (£975 for three cottages) was transferred to the Common Good Account at this time which is evidenced in the Common Good accounts.</p>	<p>No action</p>
<p>We presume that the area of the former GlenCraig Nurseries, now part of the new Kingsland School development, is included in the Common Good lease for the school site.</p>	<p>The whole of the Kingsland school is situated on Common Good land and is therefore a common good asset, as noted on the register.</p>	<p>No action</p>
<p>Neidpath Car Park was also originally part of the Kirklands and Jedderfield title and we believe it should still be part of the Common Good, unless evidence can be provided that this area was sold by the Town Council.</p>	<p>Although it was originally part of the Kirklands and Jedderfield title, this area was acquired by the County Council in 1968 for development as a car park and filling station.</p> <p>This area was not owned by the Burgh in 1975 and accordingly does not form part of the Common Good</p>	<p>No action</p>
<p>No 1 Haylodge Cottage should be a Common Good asset</p>	<p>This property was sold to the tenant in 1990 under 'right to buy' legislation</p>	<p>No action</p>
<p>The derelict property at bottom of School Brae should be acquired by the Common Good and refurbished as a community asset.</p>	<p>Any acquisition of property for regeneration would be a decision of Council and not a matter for the Common Good.</p>	<p>No action by Common Good Committee</p>

The old drill hall – Peebles Community Centre, Walkershaugh – this asset may be a Common Good asset.	The old drill hall was not owned by the Burgh in 1975 and therefore does not form part of the Common Good. The Burgh sold the land in 1902 and it was re-purchased by the County Council in 1967.	No action
The haughland on the south bank of Hay Lodge Park was purchased from the Earl of Wemyss in 1919.	SBC would agree with this information and confirm that this asset is already reflected on the Common Good register	No action
The garage at Biggiesknowe, Peebles should be on Common Good register	28-32 Biggiesknowe were acquired by the Burgh Council under the Housing Acts and therefore do not form part of the Common Good.	No action
Tweed Green – why does this asset not include Tweedside, which it is believed the swimming pool is situated on, and which formed part of the same original title.	Tweedside Mill was acquired by the Burgh Council in 1968 with funds from the rates account for demolition and regeneration. This statutory purpose means the property (on which the swimming pool was later built) is not a common good asset.	No action
Walkershaugh allotments - were at one time included in Peebles Common Good Fund asset list in 2003 as PB043/27, but we note that this asset was subsequently removed, and now seems to appear in the Council's general asset list as PB053/01. As this property is part of the original title as above, it remains Common Good and should be classified as such.	This area was acquired in 1926 by Burgh Council. No common good declaration. 1926-27 Accounts show that the property now comprising Walkershaugh (inc. allotments and most of The Gytes Leisure Centre), Whitestone Park and Kerfield Park - was paid for from Rates - Public Parks Capital Account - and acquired for the statutory purpose of use as public park land. Although there had been an element of public donations and fund-raising, most of this occurred after the land had been purchased - and no part of the property was ever maintained from Common Good Funds.	No action
Neidpath Grazings – the area north of Kingsland school is included in the overall plan for Peebles Common Good but there appears no individual entry for this area.	The Kingsland school bounds Neidpath Grazings – both are Common Good assets. There is no separate area of land between the two titles. The plan of the school originally included in the consultation papers was incorrect in that it did not show this additional area	Ensure amended plan of school added to Register.

	to the north. The plan has now been corrected	
Haylodge park – the fishing rights (upper) would presumably have been part of the original Hay Lodge title and so should also be listed as Common Good.	The upper fishing rights are not owned by SBC, but by the Crown and cannot therefore form part of the Common Good	No action
In addition, we query that the title no longer includes the 'Rights of Way by Tweedside' which was listed in the Common Good accounts of 1974.	Rights of way would not form part of a Common good asset register. However, this would have no bearing on the existence of any public rights of way.	No action
Old Corn Exchange Rear Hall – this should be on the common good register	This is a common good asset and is on the draft register. However, the plan has been mistakenly excluded from the draft list and should be reinstated.	Ensure this asset is on register.
Cuddy Green – why is the linking riverside section between the two parts not Common Good? Presume this was Waulkmill Green, as listed in the common good accounts of 1974.	Not all of the Cuddy Green formed part of the Burgh Charter. Some areas were purchased for housing in 1973 and later sold for housing. Any areas which remain in Council ownership would not be Common Good as they were purchased for a statutory purpose.	No action
'Ground at Kingsland' was in 1917 list of Common Good assets but removed in 1999. This asset should be identified and the removal clarified.	Part of the Lands of Kingslands were acquired by the Burgh Council in 1917 and formed the old refuse tip now occupied by Violet bank playing fields. This land was sold by the Burgh Council to the County Council in 1963. As it was not owned by the Burgh in 1975 it does not form part of the Common Good.	No action
Veteran's Garden City Association houses, Rosetta Road – this asset was previously listed as a common good but removed in 1999. Its removal should be clarified.	These properties are no longer owned by SBC and are therefore not common good assets.	No action
The list of moveable assets does not include all assets in	The 2019 accounts list items such as chairs, a table and light fittings which	No action unless Committee would prefer

<p>the 2019 accounts. Please could you provide details of how the items map to the draft register.</p>	<p>have been encapsulated in the draft register as 'miscellaneous items of furniture and lighting' held at the Chambers Institution. It was felt that given the nature these items, a full inventory was not required.</p>	<p>previous list to be restored.</p>
--	--	--------------------------------------

Comments received on historical transactions of the Common Good

1. Whitestone park, Kerfield Park, Walkershaugh: We dispute the Council's claim that the adjacent land at Walkershaugh on which the Gytes Leisure Centre is built is not common good, and we reiterate our objection to the Council's decision to reclassify this land from Common Good to Council property in 2009.

Records show that the area of ground called Walkershaugh was acquired by the former Town Council in 1926 as part of a larger title including Whitestone Park and Kerfield Park, extending from the railway embankment to Kerfield, and including the Walkershaugh allotments. As was recorded in the Town Council minutes, the initiative for the transaction did not come from the Town Council in terms of the exercise of any statutory powers, but from the landowner, who had intimated his intention to sell his land. As the Council were already the tenant of Whitestone Park they declared an interest, but approached the March Riding Committee and the Cricket, Football and Rugby Clubs for financial support to acquire the whole title. The clubs set up a purchase fund which raised more than 54% of the purchase price by public subscription, with another 11% covered by grants from the Carnegie Trust and the National Playing Fields Association, while the Council raised a loan to cover the difference. With the Council contributing only 35% of the purchase price compared to the current Whitestone Park area of the original title (41%), the Council could not in fairness have claimed ownership of more than the cricket and football pitches they were already renting at the time. In terms of the test question set by Ferguson in his book Common Good Law: "Is there clear evidence that it was acquired for statutory purposes?", there is nothing in this case to show that the parts other than that already in use at Whitestone Park were purchased as such, therefore using the above proportional logic Kerfield Park and Walkershaugh, being purchased by public subscription, should clearly be Common Good. However, as Whitestone Park was purchased for a common good purpose, and as the whole of the land at Walkershaugh, Whitestone and Kerfield had been in use for a common good purpose for almost 50 years at the time of local government reorganisation in 1975 (and now nearly 100 years), we believe that the whole area should be classified as Common Good, notwithstanding the fact that the asset was held within the Parks account of the Town Council.

SBC Response

This land was purchased in 1926 by the Burgh Council. There was no common good declaration within the title deed. The 1926-27 Accounts show that the property now comprising Walkershaugh (inc. allotments and most of The Gytes Leisure Centre), Whitestone Park and Kerfield Park - was paid for from Rates - Public Parks Capital Account - and acquired for use as public park land. Although there had been an element of public donations and fund-raising, most of this occurred after the land had been purchased - and no part of the property was at that time added to the Burgh Council's list of Common Good Assets nor maintained from Common Good Funds.

Use of land as park or recreation ground is itself a statutory purpose and case law provides that where land was acquired for a statutory purpose, the land is not Common Good.

This issue has been considered by Council officers previously and no new information or evidence has come to light now which would indicate that a different view should be taken at this time.

2. Land at March Street - We understand that this narrow strip of land is the remaining part of a large area of former railway land that included the area of the former Council depot (now developed as extra care housing) and the site of the current supermarket and car park, and that was included within the Common Good account of Peebles Town Council at a substantial valuation from 1964 onwards. While we recognise that some parts may have been disposed of by the former Town Council, a significant valuation (more than half of the original) remained in 1974 and also in the later list of 1990, but this was removed in 1999. "Land at March Street" was then reintroduced in 2005 at a nil value comprising only the narrow strip that is now described in the consultation plan as PB043/36. We are aware that there were small-scale disposals to Kenmore Homes and DS Motors in 1996 which resulted in appropriate returns to the Common Good Fund, but this does not seem to account for the valuation in 1974. We would be glad if this could be clarified.

SBC response

It is beyond the scope of this consultation to reconsider historical valuations of property transactions. In respect of current valuations, each heritable asset is valued on a five yearly basis in accordance with the professional standards of the Royal Institution of Chartered Surveyors: RICS Valuation – Global Standards and RICS UK National Supplement and the CIPFA IFRS Based Code of Practice on Local Authority Accounting. Compliance with the RICS professional standards and valuation practice statements gives assurance also of compliance with the International Valuation Standards (IVS). Measurements will be in accordance with the RICS Professional Statement RICS Property Measurement (2nd Edition) which is effective from the 01 May 2018 and, where relevant, the RICS Code of Measuring Practice (6th Edition) and incorporating the International Property Measurement Standards. The basis of value will be Market Value (MV). RICS VPS 4, para 4 defines MV as: "The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion".

General comment from Peebles Civic Society:

Criteria for Classification of Property as Common Good

We wish to point out that the criteria used by Scottish Borders Council for determining whether property assets should form part of the Peebles Common Good, as stated in the introduction to this consultation, are not in accordance with the proper definition of Common Good that has been established through legal authority and common good case law, and as such we find these inaccurate and misleading. In addition, we have noted that the description of Common Good property in the introduction to this consultation differs from that stated in paragraph 3.2 of the Principal Solicitor's report to the Peebles Common Good Fund Sub Committee of 15th December 2021, ie that "Common Good property is property which was owned by the Common Good Funds of the former Burghs of Scotland", which is also inaccurate. The foundation of the accepted legal definition of common good is the judgement of Lord Wark in the Magistrates of Banff v Ruthin Castle Ltd 1944, which is that all property of a Royal Burgh or Burgh of Barony not acquired under statutory powers or held under special trusts forms part of the common good, this definition being accepted and adopted in

subsequent and more recent case law, and confirmed by the Scottish Parliament. The authoritative book "Common Good Law" published by Andrew C Ferguson in 2006, which was recommended to Peebles Civic Society by Scottish Borders Council officers during previous discussions on the matter, confirms this position in detail while also clarifying that for the application of the exception of being acquired under statutory powers or for specific statutory purposes, there must be "clear evidence" of this in the acquisition, not simply that common good property is used for a local authority purpose. Ferguson also points out that existence of a property asset in the common good account is "virtually no guide at all as to whether it does form part of the common good - although the existence of a property in the common good account might be more likely to be treated as persuasive evidence than the other way round".

Accordingly, in deciding whether or not property held on the Common Good or general fund asset lists is in fact common good, the questions to be asked are: a) was it the property of Peebles Town Council in 1975 when the burghs ceased to exist, and if so, b) was it acquired under statutory powers for a specific statutory purpose (other than for a common good purpose), or was it held under a special trust. If the answer to a) is yes, and no to b), it is Common Good, unless it was formally sold and transferred to the Council's general fund. We are concerned therefore that the draft list of Common Good assets may not include all properties that should be properly classified as such, particularly those that would have been listed on other accounts of the former Town Council of Peebles in 1974/75, and others that were removed from the Common Good Fund account by Scottish Borders Council since 1975 on the basis of the interpretation outlined in the consultation. We note that certain parts of Peebles Common Good properties have since been correctly returned to the draft list of Common Good assets following the most recent review, and we welcome this. However, we would like to see a complete review of all other assets held by Peebles Town Council in 1974/75 in terms of the established legal criteria, to determine whether any of this should have been classified as Common Good or not, along with a similar review of all assets that were removed from the Common Good Fund since 1975.

SBC Response

The correct criteria has been applied in order to determine whether the assets owned by Scottish Borders Council form part of any Common Good fund. Any perceived inaccuracy in the description of the law or process has been made in an attempt to explain the position in lay terms, and was not intended to confuse or to mislead.

The exercise of examining titles, which commenced in 2010, considered the status of all assets owned by Scottish Borders Council (whether such assets appear on the common good account, general account or any other account). It did not seek to consider the status of assets which were owned in 1975 but which have since been sold, since where any assets are no longer in local authority ownership, they cannot form part of the Common Good at this stage.