



From mountain to sea

Common Good

Common Good Policy

14 March 2024



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Introduction

What are Common Good Funds?

Common Good Funds are generally made up of property (including land, buildings, investments and movable items) that belonged to the previous burghs of Scotland.

The responsibility for administering these funds now rests with the local authorities throughout Scotland. Aberdeenshire Council is responsible for administering 17 Common Good Funds, the details of which are listed below:

| Area Committee | Name of Common Good Fund and Area Covered | Applicable Council Ward |
|-------------------------------|---|-------------------------|
| BANFF AND BUCHAN | Aberchirder | 1 |
| | Banff | 1 |
| | Fraserburgh | 3 |
| | Macduff | 2 |
| | Portsoy | 1 |
| | Rosehearty | 2 |
| BUCHAN | Peterhead | 5 / 6 |
| FORMARTINE | Oldmeldrum | 8 |
| | Turriff | 7 |
| GARIOCH | Inverurie | 11 |
| | Kintore | 12 |
| KINCARDINE AND MEARNES | Inverbervie | 19 |
| | Laurencekirk | 19 |
| | Stonehaven | 18 |
| MARR | Ballater | 15 |
| | Banchory | 16 |
| | Huntly | 14 |

These Common Good Funds, although held by the Council, are legally distinct from the Council's other funds, and any money held within these Funds, including the income from any assets which make up these Funds, are to be used solely for the overall benefit of the people who reside in the area covered by the applicable Fund.

The Council, however, does retain discretion in terms of how these funds and their income is used and, for example, may decide to acquire land for public use (e.g. formation of a public park) or maintain a publicly owned building (e.g. maintaining the local town hall) using the funds where the action taken is deemed to be for the overall benefit of the local community.

Further to this, the Council also considers applications for funding in respect of each of the aforementioned Common Good Funds, from individuals or organisations who live or operate in the area covered by the specific Fund and who provide services which are aimed at benefiting their community.

The 17 Funds listed in the table above vary in size and as a result what can be achieved in each area using these funds will differ as will the opportunity for individuals or organisations to secure funding.

The Council has therefore developed the following policy and procedures when it comes to administering these Funds.

Policy Criteria

What can Common Good Funds be used for?

The accrual use of Common Good Funds has been determined by the Courts over the years, and local authorities have a very wide discretion as to how the funds are distributed, provided that local authorities honestly exercise their discretion and that the use of common good funds is not contrary to policy¹ or for unlawful purposes².

The Courts have decided that Common Good monies may be used for the following:-

a) “Upholding the dignity of the burgh”.

This involves matters relating to civic ceremonies and related hospitality for appropriate officials and guests, such as town twinning events.

b) The prudent management, upkeep and improvement of Common Good Fund property, whether such property is used by the general public or held for investment purposes.

This relates to the management and maintenance of Common Good land and buildings for public use.

c) Safeguarding the corporate rights of the community and defending its interests.

This could be used to develop or promote a coat of arms or civic identity.

d) Granting donations to public institutions or charities.

Such donations must be granted to benefit the interests of the general public of the relevant area.

e) Any other purpose which in the bona-fide and reasonable judgement of the Council, is for the good of the community as a whole, as opposed to being for the interest and benefit of any particular group or individual.

The Courts have stated that they will “only intervene with Local Authorities discretion if its acting’s are shown to be (1) *ultra vires*³, (2) illegal, (3) contrary to public policy, (4) contrary to the general interests and welfare of the community as a whole, (5) not within their proper discretion, (6) not an honest exercise of their discretion and / or (7) *vitiated*⁴ by abuse or *malversation*⁵

¹ See: Test set out in *Graham v. Glasgow Corporation* (1936) (SLT) 145.



² See: *Kemp v. Glasgow Corporation* (1920) SC(HL) 73

³ *Ultra vires* – beyond the powers.

⁴ *Vitiated* – invalidated.

⁵ *Malversation* – corruption.

Aberdeenshire Council has determined that Festive Light Displays and Town Twinning fall into this category:

| | |
|---|---|
|  | Festive Light Displays |
| <p>The following eligibility criteria apply to application for Festive Light Displays:</p> <ol style="list-style-type: none"> 1) Groups can apply for <u>new lights only</u>. Repair, maintenance and installation and storage costs will <u>not</u> be supported. 2) Groups can source 50% of the total cost of the purchase of new lights from this fund up to a maximum of £1,500. 3) Groups can only access this fund once every 3 years. 4) Support will only be given for displays which use energy efficient technology and focus on town centres or the main village thoroughfares. | |
| Local Variation | This criteria does <u>not</u> apply within the Buchan Area of Aberdeenshire |
|  | Town Twinning |
| <p>Applications for funding <u>may</u> be acceptable for contributions towards the establishment of new Town Twinning Schemes where evidence is shown that there will be benefits to the whole community. This may include travel expenses for an initial visit only.</p> | |

Funds distributed from the Common Good will be recovered from the applicant if not used as applied for.

What can't Common Good Funds be used for?

Common Good Funds **cannot** be used for:

- Activities promoting religious or political beliefs.
- Travel costs for exchange visits or trips unless it can clearly be demonstrated that there is a benefit to the wider community.
- Administrative costs for community councils over and above their annual grant from Aberdeenshire Council.
- Applications to cover an organisation's running costs or capital investments.
- Applications for projects which another organisation has a legal right or duty to provide.
- Projects that do not benefit the wider community

- Applications from individuals or organisations that do not live or operate within the area covered by the particular Common Good Fund.
- Organisations seeking to make a profit using Common Good Funding where those profits are not reinvested back into the project.



Governance

Who makes decisions about distributing Aberdeenshire's Common Good Funds?

Aberdeenshire Council's Scheme of Governance⁶ sets out the powers available to Committees and Officers in relation to Common Good Funds within Aberdeenshire:

The power to approve policy.

Section C of PART 2A – List of Committee Powers – 2.6, gives power to the **Business Services Committee** to approve policies for the management and investment of any funds including Common Good.

The power to administer Common Good Funds.

Section B of PART 2A – List of Committee Powers – 2.1, gives **Area Committees** authority to administer Common Good Funds and trusts controlled by the Council for the benefit of their area.

Who makes decisions about Common Good Assets?

Aberdeenshire Council's Scheme of Governance sets out the powers available to Committees and Officers in relation to Common Good Assets within Aberdeenshire:

Power to determine sales, leases of over 12 months or the change of use of Common Good Assets

Section B of Part 2A – List of Committee Powers Section 2.2 gives **Area Committees** authority to determine the sale or lease of more than 12 months duration or change of use of Common Good assets within its Area before a Common Good Order is sought from the Court.

Power to finalise terms for the acquisition, sale or granting of leases, occupancy agreements or licences following approvals in principle.

The Head of Legal and People has powers in terms of **Section D of Part 2B – List of Officer Powers**, to finalise terms for the acquisition, sale, or granting of a grassum lease of heritable property or any lease, sub-lease, occupancy agreement or licence after approval in principle by the relevant Committee or Head of Property and Facilities Management.

⁶ See: <https://www.aberdeenshire.gov.uk/council-and-democracy/scheme-of-governance/>

More information on common good assets within Aberdeenshire Council can be found on the Council's website relating to the Common Good Asset Register.

Practicalities

Committee delegations.

Part 2A – List of Committee Powers – General Provisions:

Section 7 permits an Area Committee to delegate to an Officer any of the functions which have been delegated to the Committee.

Section 8 allows a Committee to delegate to Sub-Committees.

Processing of applications.

Part 2B – List of Officer Powers – Section D Business Services Section 1.4 gives **Area Managers** authorisation to:

Process applications for financial assistance requests from the Council's Common Good Funds in terms of the Council's Common Good Procedures; and to:

- (a) Determine the competency of applications in terms of the Council's Common Good Policy, following consultation with the **Head of Finance** and **Head of Legal and People**; and
- (b) Approve awards of financial assistance from Common Good Funds, following consultation with the relevant **Ward Members**, where there is majority agreement: (i) than an award can be made and (ii) as to the amount of money that is to be awarded; failing which the matter is to be referred to the relevant **Area Committee** for determination.

Administration of Trust funds.

In terms of the **Financial Regulations, Section 4.10**, the **Council** shall make the necessary arrangements for the proper administration of each Trust Fund in accordance with the conditions laid down by the Trust or other deed.

Capital Expenditure

Local Authorities have a statutory duty to keep the scale of their capital investment under review.

The Finance Service must be consulted on the implications when appraising any request which has or may have a capital implication.

Payments from Revenue

Payments made from any particular Common Good Fund in any one year should not exceed the level of income it is anticipated will be generated in that year. This is a prudent view which seeks to ensure the ongoing viability of the Fund.

There are, however, times when Members may wish to make a payment of a level greater than the income generated in that year. In order to allow for this any unspent revenue income from previous years can also be considered available to spend.

Policy Status

(circle as appropriate)

Responsible Officer**Policy Sponsor****Authorised by****Approval Date****Review Date****Version**

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