

## Town Hall court case concludes

The court case concerning P&KC's wish to sell off Kinross Town Hall and the Carnegie Library has reached a conclusion.

Having gained several concessions, Kinross CC has withdrawn its objection to the council's action. Although this means that P&KC is now free to sell the buildings, the concessions gained mean that the Kinross Common Good Fund should benefit much more from the sale than would originally have been the case had the council's petition to the Sheriff Court gone unopposed.

The council closed the buildings in January 2002 and a month later made the formal decision to sell them. In November 2003 it marketed the buildings and accepted an offer of £185,000 from a developer, Wilson Homes Ltd. However, Kinross CC and some individuals had been making the point that the buildings had been gifted to the people of Kinross in perpetuity. In effect these people were claiming that the buildings were "common good".



Common good is an ancient concept, dating back to the early burghs of Scotland. Common good describes all the property (land, buildings and moveable goods) of a burgh not acquired by statutory powers or held under special trusts. Although the burghs were abolished in the 1970s, the Local Government (Scotland) Act makes special provision for common good, and if a question arises as to a council's authority to dispose of such property, the council has to apply to the Sheriff Court for a ruling on the matter. The Act does not necessarily stop a local council from selling common good buildings, but if the Sheriff grants permission, there may be special conditions attached, such as a requirement to provide a suitable alternative.

It took until August 2005 for P&KC to present a formal document to the Sheriff Court requesting authority to dispose of the buildings. In its petition, P&KC acknowledged that the Town Hall was common good, but claimed that the Library was not. It also wanted recompense for the

cost of setting up the temporary library at the County Buildings. P&KC therefore proposed that approximately £118,500 of the £185,000 sale proceeds should go into its general funds, and only £66,500 (approx) into the Kinross Common Good Fund. Kinross CC and around twenty individuals wrote to the Sheriff opposing P&KC's request for permission to sell the buildings but asked that, if the Sheriff did grant permission to sell, then all proceeds should go into the Kinross Common Good Fund.

Dave Cuthbert and Eileen Thomas appeared at the first court hearing on behalf of Kinross CC and Sheriff McCreadie suggested that the CC represent all the objectors, if they were agreeable. The CC was named official respondent in the case. Ruth Croman, solicitor with MacNabs of Perth, kindly offered to help guide the CC through the Sheriff Court procedures free of charge. The Sheriff granted continuations of the case for two months, to allow the CC time to contact the other objectors and for P&KC to make documentation available to the CC.

Little did we know then that there would be many continuations, and that the case would take two and a half years to conclude!

A Kinross CC Town Hall sub-committee was formed. This included several of the individuals who had written to the Sheriff. They helped Dave and Eileen plough through great piles of documents, some supplied by P&KC and some arising from Freedom of Information requests.

In January 2006 the Sheriff agreed to the case being sisted (suspended) while the solicitor representing P&KC and the solicitor representing Kinross CC jointly obtained the opinion of a QC on several matters relating to the case, e.g. whether the Library was part of the common good. The opinion was to be binding on both sides. Unfortunately, due to the busy lives of Senior Counsel, the opinion was not obtained until August of that year, though it was very favourable to the CC's stance, and took the view that the Library is indeed part of the common good. P&KC then took several months – until December 2006 – to

revise its position in the light of the QC's opinion and have this ratified by various council committees.

Further delays were caused by the second P&KC solicitor to have been in charge of the case resigning his post in January 2007 (the first having resigned a year earlier). Frustrated with waiting for P&KC to present revised pleadings, Ruth Croman asked for the sist to be lifted in Spring 2007. Around this time P&KC employed legal assistance from outwith the council, including an Advocate.

Both sides re-wrote their pleadings in mid 2007, but P&KC's new legal team requested that the case be postponed until financial close on the new community campus was reached. This happened in October 2007. This meant that P&KC could claim that they were providing substitute community facilities, thus strengthening the likelihood that the Sheriff might grant permission to dispose of the Town Hall and Library.

Negotiations between the two sides continued and after various concessions had been made, the CC's Town Hall sub-committee agreed to withdraw its objection. On 18 February 2008 a joint motion was presented to Sheriff Fletcher. A court interlocutor dated 25 February disposes of the action. The court has granted P&KC authority to dispose of the Town Hall and Library on the following conditions:

(a) The petitioners (P&KC) resale from the sale agreed with Wilson Homes Limited and re-expose the subjects for sale on the open market.

(b) The proceeds of sale, after deduction of the marketing and conveyancing costs associated with the sale and one-half of the legal costs incurred by the petitioners, will go into the Kinross Common Good Fund.

Maintenance costs are also being deducted, as unfortunately the local councillors on the Common Good Fund Committee agreed in December 2006 that all maintenance costs incurred on the buildings from that date should come out of the Common Good Fund.

To continue with an outright objection to the proposed sale of the buildings would have entailed an adversarial court case, which would have delayed a resolution by several more months. The CC could not afford to hire professional representation for this and if the CC had lost, may have been liable for P&KC's legal costs, which would have risen substantially in those circumstances. Even if the CC had succeeded in getting the Court to refuse P&KC permission to sell the buildings, the council would not have been obliged to spend money refurbishing them. P&KC's only responsibility would be to keep them wind and water-tight.

However, if Kinross CC had not responded to P&KC's original Sheriff Court petition, the Common Good Fund would have only around £65,000 to show for the loss of the buildings. Based on the original purchase price offered, that should rise now to about £150,000 and possibly more.