



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 58

P1198/25

OPINION OF LORD SUMMERS

in the Petition of

MORAY COUNCIL

Petitioner

for

Authority under section 75(2) of the Local Government (Scotland) Act 1973

Petitioner: S Blair; Morton Fraser MacRoberts LLP

19 May 2026

[1] In this petition Moray Council (hereafter “the Petitioners”) seek authority under section 75 of the Local Government (Scotland) Act 1973 to appropriate and dispose of land in Roysvale Park, Forres (hereafter “the Park”). The Park is owned by the Petitioners and forms part of the common good. The Petitioners advise that they have been granted planning permission to build a new Forres Academy on playing fields at Applegrove which is adjacent to the Park. To facilitate construction a storage area (hereafter “the Storage Area”) is needed for construction materials and site parking. The Petitioners propose to locate the Storage Area in the Park. The Petitioners also advise that to enhance access to the Academy and secure public safety an enlarged pavement adjacent to the Park is desirable (hereafter “the Pavement”).

[2] The two areas are marked on plans supplied to me (Productions 6/1 and 2). The Storage Area is crosshatched and coloured orange. It occupies about 40% of the Park. The Pavement is crosshatched and coloured orange and green. The two areas overlap on the Pre-construction and Post-construction Plans. The Pavement will occupy about 10% of the common good land.

[3] The Petitioners propose to enter a licence with the building contractors and sub-contractors to allow them to use the Storage Area. Once the works are complete the Petitioners will terminate the licence and reinstate the land. Reseeding and restoration works will take about a year. The Petitioners anticipate that the land will be restored to the common good about 4 years after the commencement of construction. The Pavement by contrast will be permanently removed from the common good.

[4] There is strong local opposition to the proposal. The Petitioners consider that in light of that opposition a question has arisen as to their right to alienate or dispose of the land in question. I have a discretion under section 75(2) of the Local Government (Scotland) Act 1973 and can grant or refuse the petition on such conditions as I think appropriate. Section 75 sets out the powers of the court in relation to this petition as follows:

“75.— Disposal, etc., of land forming part of the common good.

- (1) The provisions of this Part of this Act with respect to the appropriation or disposal of land belonging to a local authority shall apply in the case of land forming part of the common good of an authority with respect to which land no question arises as to the right of the authority to alienate.
- (2) Where a local authority desire to appropriate or dispose of land forming part of the common good with respect to which land a question arises as to the right of the authority to alienate, they may apply to the Court of Session or the sheriff to authorise them to appropriate or dispose of the land, and the Court or sheriff may, if they think fit, authorise the authority to appropriate or dispose of the land subject to such conditions, if any, as they may impose, and the authority shall be entitled to appropriate or dispose of the land accordingly.

- (3) The Court of Session or sheriff acting under subsection (2) above may impose a condition requiring that the local authority shall provide in substitution for the land proposed to be appropriated or disposed of other land to be used for the same purpose for which the former land was used."

[5] The Petition has been advertised in the usual way. No answers were lodged and the petition was not opposed. That said a number of letters and representations were sent to the court from various persons and bodies. I read these letters before the hearing on 5 March 2026, and I read another group of letters that were sent to the court before the continued hearing on 11 May 2026.

[6] The second hearing was required because at the time of the first hearing the Petitioners had not completed a process of public consultation under the Town and Country Planning (Scotland) Act 1959 section 27A. The Act requires local authorities to advertise proposals to dispose or appropriate any land which consists, or forms part of a common or open space and to consider any objections received, prior to any such disposal or appropriation.

[7] One of the submissions examined on 5 March 2026 was from the Roysvale/Applegrove Concerns Group. It is a detailed document. Mr Blair on behalf of the Petitioners observed that the document was not signed and advised that the Petitioners did not know who had authored the document. Before the continued hearing on 11 May 2026, the court received a letter from the Roysvale/Applegrove Concerns Group. In light of that letter I am satisfied that the document is the work of a bona fide interest group.

[8] Although these letters are not formally before the court, I have come to the view that I should take them into account. The subject of the Petition is a matter of public interest. The various correspondents have an interest in the subject matter of the Petition. I have

considered the letters for the purpose of informing myself of matters that may be relevant to the exercise of my discretion.

Submissions

[9] The Petitioner's main concern is that the school presently serving the community, Forres Academy, is unsafe. It is in part constructed with Reinforced Autoclaved Aerated Concrete, colloquially known as RAAC concrete. It is notorious that RAAC concrete is an inadequate building material. As a result, part of Forres Academy has been closed off. In addition, the Petitioners submitted that Forres Academy is inadequate to meet the educational needs of pupils in Forres and the surrounding area. The current academy was opened in 1969 and is no longer fit for purpose. It has been designated as Grade "D," the lowest permissible level, indicating that it has reached the end of its useful life and is at serious risk of imminent failure. The Petitioners consider that Forres needs a new academy and that the best site is at Applegrove.

[10] The Petitioner's appraisal of the options is set out in a number of documents which were lodged with the court. I do not propose to go through them all. By way of example there is a Report to the Special Education, Children's and Leisure Services Committee on 27 March 2024 (Production 6/1). The Petitioners identified three possible sites for the new Academy. The site at Applegrove Playing Fields/Roysvale Park, Grantown Road and Lochyhill. Counsel explained why Grantown Road and Lochyhill were not viable. The reasons are set out at paragraph 3.10 of the Report. Mr Blair amplified the Petitioner's position at the hearings as follows. The Petitioners do not own the land at Grantown Road and the site is outside the town. At the hearing I was advised that the site at Lochyhill lay on a split title and the Landowner would not permit access to the site. As a result, it had not

been possible to conduct a survey of the site at Lochyhill. I was advised that if the owner remained opposed to acquisition, it would be necessary acquire the land by compulsory purchase. The cost of developing the site at Lochyhill would be about £4 000 000 more than the Petitioner's preferred site at Applegrove.

[11] The Petitioners explained that the plans submitted for the new Forres Academy fitted with the aims of the National Planning Framework 4 and the Moray Local Development Plan 2020. The Petitioners further advised that the Scottish Government had offered to contribute 50% of the costs of a "like for like" replacement for Forres Academy under the Learning Estate Investment Programme ("LEIP"). Mr Blair submitted that since funding is, in part, conditional on staying within the time limits of the LEIP framework the Petitioners were under financial and time pressure to begin work. I was not advised when these time limits expired. But I was advised that if the petition was granted, the Petitioners hoped to begin construction in June 2026, with the new Forres Academy opening in around October 2028.

[12] I was directed to the Minutes of the Council meetings on 22 May 2024 (11/4) and 21 January 2025 (20/1) where the proposal contained in the Petition before me was unanimously approved (see item 6 on the agenda). I was advised that on 6 May 2026 the Full Council again decided the proposal should proceed.

[13] I received a letter and memorandum from Forres Community Council. It unanimously approved the Petitioner's proposals.

[14] The Petitioner's Inventory contained the public's responses to the consultation process under the Community Empowerment (Scotland) Act 2015. Although the typeface was small and barely readable, I was able to get a flavour of the points made by members of the public in this consultation process.

[15] As I have indicated I have had regard to the correspondence sent to the court.

Mr Blair helpfully addressed me on the various objections set out in the Roysvale/Applegrove Concerns Group memorandum. He submitted that no solution had been supplied to the Petitioner's main concern namely the unsafe state of the present school. In the memorandum from Roysvale/Applegrove Concerns Group it is said that the public prefer the Lochyhill site. But there is no detailed engagement with the disadvantages outlined by the Petitioners or an assessment of the benefits of the Roysvale/Applegrove option. The correspondence indicates that there is little public support for the Grantown Road site.

[16] The letters sent to the court mention the risk of flooding; traffic congestion; noise; loss of green space; loss of school playing fields; the scale of the proposed building; the height of the proposed building; and the impact on the character and amenity of a historic area of the town. Counsel submitted that these objections and others were considered by the Planning Authority. The Planning Authority did not consider that these concerns were sufficient to prevent the grant of planning permission, although a variety of conditions were imposed to address the difficulties with the proposal. There has been no appeal against the Planning Authority's decision to grant permission for the construction of a new Forres Academy. Mr Blair submitted that all of the objections that had been submitted were ones that were or could have been taken up during the planning process. Thus, although the Planning Authority was not making a decision under the Local Government (Scotland) Act 1973, the factors I am asked to consider have either been considered or could have been considered in the planning process.

Decision

[17] Forres needs a new Academy. The current Academy is in part constructed with RAAC concrete which is structurally unsafe. Some parts of the school cannot be used because of safety concerns. The provision of a new school is an important strategic objective for the Petitioners and will inure to the benefit of the citizens of Forres for years to come. The purposes served by the application are in accordance with the purposes served by land held in the common good in that they benefit Forres. It seems to me that removing the Storage Area from the common good for 4 years is a modest price to pay for a new school that will serve the community for years to come. The benefit conferred and the short duration of the interruption in use favour the grant of this part of the petition. As regards the use of the site at Applegrove I was not satisfied that a viable alternative site had been identified by the objectors. The two alternatives were not serious rivals to the site at Applegrove.

[18] I acknowledge that by constructing the Pavement, some land will be permanently removed from the common good. But the Pavement will incorporate a drop-off area for buses and improve pedestrian access. This is part of the Petitioner's strategy to improve access to the school and promote public safety. It seems to me that this appropriation is desirable and beneficial for the community. Hence although some of the land on which the Pavement is to be built is part of the Park and is used for recreational purposes, the Pavement will simply serve the same common good albeit in a different way. The Pavement runs round the edge of the Park and does not infringe significantly on the area in the Park that is available for recreational purposes.

[19] Mr Blair advised me that the objections contained in the correspondence sent to the court were identical to or similar to those raised in the planning process. While no doubt the

application was focussed on the site at Applegrove, the Planning Authority were aware that the proposal involved taking 40% of the Park out of public use and permanently removing 10% to improve the pavement and layby provision. One of the Planning Authority's responsibilities in the planning process is to consider whether the planning application would cause unacceptable loss of public amenity. Evidently it did not consider that the changes proposed to the Park were unacceptable. The Planning Authority's approval contained various measures designed to address some of the issues raised by the public. Thus, for example there were measures designed to address the possibility of flooding and ameliorations designed to address the question of noise during construction. Some of the issues raised are short-term concerns and will end once construction was complete. Some e.g. increased traffic will endure. I acknowledge that the planning process differs from the exercise required by the Local Government (Scotland) Act 1973. I also accept that I am not bound to grant the petition simply because planning permission has been granted for the project. I accept I am performing a different exercise. It seems to me however that I can draw comfort from the fact that the Planning Authority have addressed the issue of local amenity. The planning application included reference to the proposals that I have to consider. I consider however that where the appropriation and disposal is to secure a valuable public objective, I should be slow to stand in its way particularly where measures have been put in place to ameliorate the effects of the application. The concerns raised in correspondence e.g. drainage of the Park, access to the school, public safety, the interest of war veterans with PTSD etc have already been considered by the Planning Authority. It is an expert body and considered the detailed plans and heard objections. In that situation I consider that the grant of planning permission favours the application before me.

[20] I consider that on the information presented to me there are strong reasons why I should exercise my discretion in favour of the Petitioners and no compelling reasons why I should not. I accordingly will grant the petition. I do not require to consider whether any conditions should be attached to my interlocutor since it seems to me that those that I would consider desirable have already been dealt with in the grant of planning permission.

[21] I asked to be addressed on whether the Petitioner's proposals were an "appropriation" or "disposal" within the meaning of section 75 of the Local Government (Scotland) Act 1973. The Petitioners explained that an appropriation under section 75 did not involve an acquisition of land from a third party. What was contemplated in section 75 was an appropriation of land to another purpose. The Petitioners advised me that no disposition by the Petitioners to the Petitioners was required to "wash out" the condition upon which title to the pavement area was held. The only change necessary was a change in how the land was accounted for in the Petitioner's accounts. The land would move from the Common Good Account to the Petitioner's General Account. I was further advised that the Petitioners are due to consider a proposal to pay a sum into the Common Good Account to represent the removal of this strip of land from the common good. I do not consider that such a step is necessary to the approval of this application. I do accept however that if such a step is taken and is in a sufficient sum, this would further fortify the application. In light of this explanation and in the absence of any contradictory submission I am satisfied that the word "appropriation" covers the Petitioner's proposal to appropriate the strip of land crosshatched and coloured orange and blue on the Plan appended hereto from the common good. I have therefore decided that I should pronounce the order in respect of the land in question.

[22] As regards the area of land to be used as a storage yard the Petitioners submitted that granting a licence to a contractor is a “disposal” within the meaning of section 75 of the Local Government (Scotland) Act 1973. By contrast acts of “fair and reasonable administration” or “pure acts of ordinary and reasonable administration” (*John Paterson and Others v Magistrates and Town-Council of St Andrews* (1880) 7 R 712 at 725 and 726) do not require an application to the court. Nor do “acts of management” *East Lothian District Council v National Coal Board* 1982 S.L.T 460 at 467. On balance however I consider that the Petitioners have taken the correct course. What is proposed is more than administration or management. The land is to be licensed to contractors and sub-contractors. This involves an innovation on the legal status of the land. The use of Storage Area for the storage of building materials and site parking is a change of use. In addition, the interruption in use is for a significant period. In these circumstances and in the absence of any contradictory submission I am satisfied that the word “disposal” covers the Petitioner’s proposal to licence the area of land crosshatched and coloured orange on the Plan appended hereto. I have therefore decided that I should pronounce an order in respect of the land in question.

Appendix

- Productions no. 6/1 for the Petitioner

