

## **CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL**

### **OBJECTION 1 - JOHN KELLY**

I wish to object to the proposed Private Bill – the City of Edinburgh Council (Portobello Park) Bill - that is being put before you.

My objection is to the whole of the Bill, because, it seems to me, that it undermines the law. If the City of Edinburgh Council can overturn the law simply by persuading the Scottish Government to pass a Private Bill allowing it to do so, then any council can do the same and the law becomes a farce.

What is the point in appealing to the law if a council can just ignore it with the connivance of the Government? Those concerned citizens who took the Council to court and won the appeal (despite the pressure and misrepresentation they had to endure) might just as well have not wasted their time and trouble.

My main objection to the proposed Bill is that I and everyone else cannot trust the law any more if this Bill is passed. Neither can they have any faith in the politicians who make the law. There is no point in going to law if the Appeal Court's decisions are just ignored in this way.

The loss of amenity to myself and the reduction in value to my house (occasioned by introducing large numbers of people into a quiet residential area) are of far less importance than the long-term effect of undermining the law and building on land that was designated for a park and recreation ground.

The title deed clearly forbids building on the Park on pain of losing the land to the descendants of Sir James Miller Bart. The man could not have done more to preserve the Park for future generations. Now the Council is hell-bent on renegeing on its commitment.

I object to this course of action and propose that the Council does its duty by acquiring a brown-field site and building the school on that.

I enclose with this letter a fuller account of why I am making the objection.

Here I give the fuller account of why I object to the proposed Private Bill – the City of Edinburgh Council (Portobello Park) Bill that is being put before you.

My objections date from 2006 when I attended a public meeting addressed by the then leader of the Council, Mr Ewan Aitken who announced that the Council was intending to build a school and affordable housing on Portobello Park. He also stated that the Council had identified a new site for the Golf Course.

I was astonished, because I had been told when I bought my flat at ■ Park Avenue that the Council could not build on the Park, by law. I also knew that the Council had a policy of not building on green space, confining all future building to brown field sites. This intention of the Council flew in the face of these pronouncements.

I asked one of the Council employees at the meeting how the Council acquired the Park in the first place and he told me that it was because of a feudal disposition by Sir James Miller in 1898.

I then read the relevant document and discovered that it unequivocally stated therein that the Council was forbidden to build on the Park on pain of losing possession of the land.

It seemed to me that the Council was breaking its contract and that was wrong.

Subsequently I objected several times to this breach of contract. The Council behaved, in my opinion, very deceitfully.

It denied it had any intention of building houses on the Park or of removing the Golf Course. It told me it was too early for me to object because it had not decided anything yet. A campaign to demonise the objectors was started, arguing that the Park was the only place where a new school could be built and claiming that the Council had the right to build on the park if it wanted to.

The Portobello Park Action Group was set up to protest against the Council's proposals and I at first supported it to prevent the Council from doing something wrong.

When the judge, Lady Dorrian, found in favour of the Council I was puzzled by the contradiction between her statement that the land was inalienable common good land and her decision. I was also shocked to read that the Council was claiming that the objections were time-barred because the Council had made its decision in 2006. All the reassurances to me that the Council had not yet made a decision on the matter were thereby proved false.

I gave up the fight at that point, being convinced of the duplicity of all politicians and their appointed judges. The contrast between the court decision and the words of the title deed was too stark to admit of any other conclusion.

The Portobello Park Action Group appealed the decision. This was very brave of the members of the Action Group, I thought, because they were threatened by the possibility of having to pay the Council's heavy expenses in the event of their losing the appeal.

In the event, the Appeal Court overturned Lady Dorrian's judgement and declared that the Council had been pursuing an illegal course of action.

Now the Council is seeking to change the law to allow it to break its contract.

Throughout this sorry saga the Council has metaphorically moved the goal posts several times. It literally moved the goal posts when it removed those on the football fields and ploughed up part of the Park ostensibly to look for Roman remains (what an astonishing excuse) and made the playing of football impossible thereafter. (This on an area of ground it had agreed would be used for recreation.)

I do not need, I hope, to point out that such behaviour undermines the law itself, because who could trust the law in future if it can be so easily flouted?

The Park was sold on the understanding that it would remain a park and a recreation ground for the use of future generations. The Council seeks to destroy the birthright of future generations in order to allow it to renege on its promises.

At least the promise not to build on the Park is enshrined in law. The other promises the Council has made are not worth anything. It has already gone back on its own statements several times. Who can trust it?

The Council has a responsibility to provide suitable education for the children of Portobello and district. It also has a responsibility to preserve the Park. It seeks to drop one of these responsibilities in favour of the other and has engaged in a propaganda campaign to persuade the people of Portobello that it has no alternative.

Only recently has it become known that building on the Baileyfield Industrial site is a possibility. The Council kept that dark.

There are many objections to the proposed legislation.

- It undermines the law.
- It opens the door to other abuses of Council power.
- It destroys dedicated green space.
- It deprives future generations of recreational facilities specifically earmarked for their use.

- It brings the City of Edinburgh Council into disrepute.
- It is a breach of faith.

I have not touched upon how it would affect my personal interests. I have written so far only as a citizen concerned for truth and justice, but it is obvious how it would affect my interests.

The attraction of Park Avenue as a place of residence is that it is peaceful and that we have good neighbours. The peace would be shattered by the building of a secondary school just opposite and the character of our new neighbour would change the street drastically.

At the moment only a few school pupils walk past our doors in the mornings on their way to school and they are not a nuisance. On the other hand, the stream of pupils hurrying towards the town centre at lunchtimes makes walking in Brighton Place a bit of a trial. I know one neighbour of small stature who told me she was terrified when she got caught in the flow of adolescents at that time of day. It would be a regular occurrence in Park Avenue as well as in Brighton Place on school days if the Council's plans went ahead.

We are not the only elderly couple attracted to Park Avenue because of the relative peace and quiet here.

The loss of amenity would impact upon the value of property. At the moment that would be no problem as long as we stay here as we intend, but if the noise and disturbance occasioned by the presence of secondary pupils (who are by nature much more energetic and active than we are) forced us to leave, we would find it difficult to sell. In fact I know of one example of an offer being withdrawn as soon as the would-be buyer found out about the proposal to build a school on the Park.

In any case, I believe that insisting upon limiting the objections to personal interests allows the Council to repeat its canard that the only motivation for opposition to its plan is personal. It has not been so in my case. I have consistently objected on the grounds that the Council's title to the Park is based upon its agreement not to build on the Park and that it is bound in honour and law to maintain that condition.

Other objections abound, of course, but it is not just a personal matter. It cuts to the heart of the law.

9 May 2013