

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

OBJECTION 14 – STEPHEN AND FIONA COYLE AND HARRISON AND GENEVIEVE VERNON-COYLE

I object to the whole bill being passed on two grounds.

Firstly, it will effectively remove an open area of green space very close to my and my family's home. And secondly, it would set a precedent for any council throughout Scotland to circumnavigate any land laws and property title deeds in similar circumstances where such prohibitive frameworks do not align with their planning or development wishes.

The building of a school on Portobello Park would have a direct effect on our children in terms of where they could play in the coming years. At [REDACTED] and [REDACTED] they are set to grow up within 100 metres of the park and this will be denied to them should the bill be passed.

The park was very well used by local football teams, children, fathers and sons, mothers and daughters up until the council removed the football posts and let the area grow wild.

We live on Duddingston Road (full address below) and we already experience a high level of litter created by the school children who will attend the school every morning and evening, and particularly at lunchtime just by them walking passed on the way to the current school. This will increase massively if the school is built on the park.

The legal position is highly questionable too as the City Council have clearly attempted to ignore the laws and, even if a bill is passed, the Court of Session ruling clearly states that the City Council will still not be able to build on the land.

I set this out below;

1.

CEC are looking at obtaining a Private Bill to 'simply remove the legal obstacle' of being able to build on the park. See below extract and link.

www.edinburgh.gov.uk/.../id/.../information_leaflet_december_2012)

"...A local community group challenged the Council's right to use the land for a school. This is because the park is 'Common Good Land' which means that there are legal controls over what the Council can do with the land.

The Court's decision was that the Council may be able to sell the Portobello park land (with court permission) but, as the law currently stands, we have no power to use the land for a different purpose ourselves – no matter what the merits of an alternative use would be.

We therefore propose to take a Private Bill to the Scottish Parliament that would address the current legal issue and allow the use of Portobello Park as the site for a new Portobello High School. As we already have planning permission to progress

the high school in the park, the Private Bill would simply remove the legal obstacle to using that location as planned."

2.

The council appears to think that a Private Bill will let them change the denomination of the Land to 'Common Good' land, as opposed to the current 'Inalienable Common Good' tag, and that this will effectively give them the power to build the school on the site.

3.

However, even if the Bill goes through, and the land type is altered, and the council have the powers, it can still be challenged as being beyond the scope of the title deeds which state...

"...the area or piece of ground hereby disposed shall be used exclusively as a public park and recreation ground for behoof of the community of said city and it shall not be competent to nor in the power of my said disponees or their foresaids to erect or build or give liberty to any person or persons to erect or build houses or buildings of any kind whatsoever thereon except buildings to be used as a house or houses for the park officers and gate keepers to be employed by my said disponees or for other purposes appropriate to the uses of the area or piece of ground hereby disposed as a public park or recreation ground ..."

In other words, you cannot build anything on the park.

4.

Furthermore, the Court of Session ruling has already given judgement on the matter by stating in their ruling that...

"...In our view, the circumstances of this case fall well short of the exceptional character which has, in rare cases such as Grahame v Magistrates of Kirkcaldy, been held to justify the withholding of legal remedies to which a party is otherwise entitled. And although the matter was not fully argued before us, the present dispute would also appear to fall outwith the scope of any relevant jurisdiction of the Lands Tribunal for Scotland under the Title Conditions (Scotland) Act 2003. Thus, regardless of the Council's statutory powers of appropriation, an unresolved difficulty would be the continued existence of the title restriction quoted at paragraph [2] of this opinion".

5.

So in short, regardless of the powers held by CEC, the title restriction will prevent them building on the Park.

6.

So why bother with the Private Bill if they know this, which they should. I think it is because the only other route open to them is to concede that they were at fault in not obtaining the court's authority in the first place despite being given multiple opportunities to do so by PPAG. Indeed the Court of Session ruling has damned CEC for not doing this at the offset.

If it became known that CEC knew their position was actually fallible, it would likely mean that the parents and other stakeholders of the new PHS would turn against the CEC as they became aware that the council have simply lost time and money pursuing a position which they knew to be flawed from the start. I suspect that they did know at the start as why else would they have consistently denied PPAG et al the option of going to court if they knew they could win which would then have allowed them to remove the PPAG objections long ago.

Going for a Private Bill will now allow CEC to blame MSP's and the Scottish Parliament for denying them the Bill, or if it does go through, the Court of Session for ruling against them again. Either way CEC would be left being portrayed as the wounded party. In reality, they are perhaps just spending a further £60k (a figure taken from their own publications) on a Private Bill that they know will ultimately be useless regardless of whether it succeeds or not. If this is true then it is a flagrant and known waste of taxpayer funds and should be condemned.

The real losers in all of this are the hundreds, if not thousands, of local school children, mine included, who are being denied the schools they deserve by a council which continues to waste time and money pursuing a possibly dead-end route when better alternatives exist elsewhere, just to save their own reputation.

I trust you will uphold the law of the land as your voters elected you to do so and not let a badly run and mis-guided council make a mockery of the duty we all have to pass this world, country and city onto our children in a better condition as when we inherited from our own parents.

Do the right thing and dismiss the bill.

23 June 2013