

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

OBJECTION 53 - PORTOBELLO PARK ACTION GROUP (WINIFRED AITKEN, CHAIR)

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I am writing on behalf of Portobello Park Action Group (PPAG) to object to the whole of the above bill, which is being promoted by the City of Edinburgh Council.

1 Introduction

1.1 We are objecting on behalf of our supporters, who share our concerns. Our supporters live around the park or in the vicinity, and some further afield, and use it for a variety of purposes as detailed below. Our interests would be severely adversely impacted by the loss of this a park as described below. There were 3,000 responses against the pursuit of a private bill during the Council's consultation on behalf of the Scottish Parliament in December 2012 - January 2013 and 300 objections to the planning application in 2010. At a meeting with the Head of the Private Bills unit we were advised that it is quality and breadth of objections that counts, not numbers. Accordingly so, we are following that advice.

1.2 We would also advise that we have been told by a number of supporters (including persons outwith the membership of our group) that the £20 fee to lodge an objection is prohibitive for them and we believe it is a barrier that presents some people from objecting to the bill who otherwise might wish to. Others object on principle to having to pay to make their views known. This is a serious impediment to people's right to have their views represented.

1.3 Last year three senior judges of the Court of Session ruled that the park could not be built on as it is inalienable common good land. We enclose a copy of the Court of Session's judgement of 12 September 2012 (**Document 1**). The Council were subsequently advised by Senior Counsel appointed by them to assess the Inner House's judgement that he could not support an appeal to the Supreme Court as, in his opinion, it would be unlikely to succeed. In other words, the decision of the Court of Session was extremely robust. We believe that the Council should respect the decision of the Court of Session instead of trying to circumvent it by a private bill.

1.4 We have a general concern about the Scottish Parliament enacting private legislation in order to circumvent a legal ruling by the highest court in Scotland. We also question whether it is the role of the parliament or MSPs to become involved in local affairs, which the provision of new school undoubtedly is. This is a matter that should be decided at a local level and it is inappropriate for the parliament to be involved in this. Whilst the management and usage of common good land is a matter of national importance, a new school for Portobello is not. A private bill is not the appropriate vehicle to test the law on the common good.

1.5 With the prospect of Scotland becoming an independent country, is it desirable that the message from the parliament is that an independent Scotland pays scant regard to the protection of common good assets, public parks and open space and the rights of people to access these important facilities?

1.6 It is widely acknowledged that the project of re-provisioning Portobello High School has been catastrophically mismanaged by the City of Edinburgh Council from the start. It would be helpful for the parliament to recognise this and draw a line under the attempt to build on green space, especially as suitable brownfield sites exist. We would urge the parliament to put a stop to this bill, which, if passed, would provide an easy route for other local authorities to take common good land and appropriate it for other purposes without going through the correct checks and balances.

2 Legal matters

2.1 In this section of our objection, we raise two matters. Firstly, we raise as a matter of principle the concept of using a Private Bill to override a decision from the Inner House of the Court of Session. Secondly, we question whether the Private Bill and accompanying documents (and in particular the Promoter's Memorandum) meets the Scottish Parliaments rules.

2.2 On the first issue, we would respectfully refer to the Opinion of Roy Martin QC at paragraph 18 of that opinion (**Document 2**). We would remind the Parliament that the Inner House considered the detailed merits of the issue of Portobello Park and its common good status and to effectively allow such a decision to be overturned by a Private Bill raises important questions of principle. As Mr Martin QC sets out, it does raise the issue of precedent of the use of such Private Bills, and we would question whether it would ever be appropriate to use the Private Bill procedure in any circumstances, but particularly as to whether it is appropriate in the circumstances of this case.

2.3 On the second issue, we refer to Rule 9A.2.3 of the Scottish Parliament's standing orders. This provides that a Private Bill must be accompanied by a Promoter's Memorandum. This Memorandum must contain the objectives of the Private Bill, whether alternative ways of meeting the objectives have been considered, and if so, why the approach taken in the Private Bill has been adopted.

2.4 In effect, the Promoter's Memorandum should set out the justification for why it is necessary to develop the School on land at the Park

2.5 We do not consider that the Memorandum meets with the requirements of Rule 9A.2.3. We submit that the Memorandum is misleading and wrong in a number of places, and as such, cannot properly set out a justification for the Private Bill.

2.6 At paragraph 15 the Memorandum states that if the Bill is passed, the park would remain as common good land. No explanation is given as to why this should be the case. We attach a copy of the opinion of Mr Roy Martin QC and would refer to in particular to paragraph 11 of that opinion. Mr Martin QC's opinion is clear that the park will no longer be part of the common good. It seems to us that if the Memorandum claims the park will still be part of the common good, but in fact that is wrong, this is a fundamental misunderstanding of the legal position, and that the Bill cannot be passed in such circumstances.

2.7 We also refer to the requirement in the standing orders that the Promoter's Memorandum sets out the objectives of the Bill and whether alternative ways of meeting the objectives have been considered. The objectives are set out to be the building of Portobello High School and it is said the objective is 'to address the legal obstacle' preventing the building of the school on Portobello Park.

2.8 However, the objective of the Bill is to achieve the building of Portobello High School and as such, the proper approach is to consider alternative sites for the school. This is accepted by the Promoters (see paragraph 43 of the Memorandum). The alternatives set out in paragraph 18 of the Memorandum relate to the issue of common good law only. We would draw your attention to the fact that the Promoter accepts that the Inner House opinion is correct (paragraph 22 of the Memorandum); that the Promoter accepts that the

land is inalienable common good (paragraph 25 of the Memorandum); that the Promoter accepts that any attempts to dispose of the park would have been likely to be seen as attempts to circumvent the terms of the Local Government (Scotland) Act 1973 (paragraph 29 of the Memorandum); that it would be unlawful to dispose of the land under section 75 (2) of the 1973 Act (paragraph 32 of the Memorandum) and that a petition to the nobile officium would be unlikely to be granted (paragraph 35 of the Memorandum). Whilst we accept that the Promoters require to show they have considered alternatives (and we remind the Parliament that these alternatives are only the narrow legal alternatives on the issue of common good law only) it is a helpful reminder that that of the legal structures surrounding and regulating common good. We would ask the Parliament to take from that section that for good reason, it is the case that common good has protection within Scots law, and overriding that protection (which effectively this Bill would do) calls for extreme circumstances to justify such a step.

2.9 In relation to the alternative sites for a school, we note that the Promoter's Memorandum deals with this from paragraphs 43 onwards. We consider the alternatives in more detail under the section entitled "Alternative School Sites" but raise it under this section as a reminder that again, in our respectful submission, it cannot be said that the Promoter's Memorandum meets the requirements of the standing orders. It is said at paragraph 62 of the Memorandum that the site at Portobello Park is "far and away the best location in and around the school catchment area"; that is not the same as saying such alternatives could not be pursued. In any event, much of the Council's reasoning appears to be subjective and we would question, if objective, the Council's assessment of alternative sites stands up to scrutiny.

2.10 It might be helpful to understand something of the background regarding alternative sites. The council has identified potential alternative sites; one being the existing school site and the other at a site referred to as Baileyfield,

2.11 The existing site would require the adjacent St John's primary to move so Portobello High School can utilise an enlarged site. We note that in 2003 the Council considered it acceptable (in accepting a feasibility study) for a rebuild on the current site without the need for St John's to move. This makes it difficult to understand how that position is now deemed unacceptable.

2.12 The other site proposed is a brownfield site on Portobello High Street, Baileyfield. This option would bring the school into the heart of the community and bring many additional benefits by being in the town centre. The only difference in facilities between this site and the park site would be that there would only be one full-sized pitch. However, there is the Pitz five-a-side pitches situated across the road from this site on a site owned by the council, and we would have thought that an arrangement could be made for use of this site by the school. In addition, Portobello Beach and the proposed new gymnastics centre is less than five minutes' walk away.

2.13 In insisting that this is the "only" desirable site for a new Portobello High School, and claiming that the other "fallback" sites are vastly inferior, the Council is taking a completely inconsistent approach. Two other secondary schools in Edinburgh are being replaced at the moment: James Gillespie's and Boroughmuir. They are to be rebuilt on sites of 2.2 hectares and 1.2 hectares respectively. The school rolls of each school are around 250 fewer pupils than Portobello High School, with no on site playing fields being provided. Against that background it is hard to see why the current school site and the Baileyfield site at 2.9 and 3.3 hectares respectively have been branded "too small". The fact is that

there are other means of delivering this school with the same standard of educational facilities that do not involve building on public green space, which is also inalienable common good land.

2.14 Once one council has been successful in appropriating common good land via this route how can the parliament possibly not pass other similar private bills. Other councils will make cases for the uniqueness of the circumstances under which they wish to appropriate the land, especially if it is for a function that is seen as being of public benefit, for example a school or a hospital?

2.15 There are many examples of councils trying to appropriate common good land for other purposes, for example, Coo's Green in North Berwick, on which East Lothian Council wishes to develop a car park. In Dumbarton, Postie's Park is under threat of development from the local council, who are considering constructing a new school and a care home on it. In Burntisland, Fife Council has gone ahead with building a school on common good land at Toll Park, despite local opposition. Unfortunately local residents were unable to raise the necessary funds to oppose this move in court.

2.16 There is a danger of a precedent being set if this solemn undertaking to keep Portobello Park as a park in perpetuity, as set out in the deed, as per this extract, *"That the area or piece of ground hereby disposed shall be used exclusively as a Public Park and Recreation Ground for behoof [benefit] of the Community of said leity 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 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"* is allowed to be overturned.

3 History of the City of Edinburgh's attempts to build on Portobello Park

3.1 We have provided a timeline of events as they have unfolded over the last seven years but we would like to draw your attention to certain key events **(Document 3)**.

3.2 As mentioned later under "Council's intentions to develop the whole area", the original plan by the City of Edinburgh Council was to build two schools and a substantial amount of housing on the whole area. Please see enclosed documents of 2006 about the Council's plans to build two schools and a housing development on the Park and Golf Course **(Documents 4a and 4b)**.

3.3 It was quickly determined by local residents that the park and golf course were common good land but this was denied by the Council, who continued to claim that there was no legal impediment to building on the park, even after the PPAG provided the Council with a legal opinion from an eminent QC. The Council said it had a legal opinion to say the park was not common good land but would not release it to PPAG, who had to appeal to the Information Commissioner to release the opinion.

3.4 Eventually, in January 2008, the Council admitted in a report to the Finance and Resources committee that Portobello Park was a common good asset. In April of that year, the Council announced its intention to go to court to seek permission to build on the park but then announced in December 2008 that they had a legal opinion that said they did not need to go to court and consequently prioritised PHS for funding over James

Gillespies by just half a point, even though the latter school was acknowledged to be in a worse condition than PHS and had no legal or planning issues attached to it. Again the Council denied PPAG access to its legal opinion and the group had to appeal to the Information Commissioner to release the opinion.

3.5 This mistaken decision by the Council not to go to court set in motion a delay of several years to the delivery of the school. Had the Council gone to court in 2008, as they should have done to settle the common good issue, the school would have been built by now. It needs to be remembered that had PPAG not initiated a judicial review of the decision to build on the park the Council would have proceeded with an illegal build on this inalienable common good land. The Council failed to plan properly for the the risk of a legal challenge even though they were warned on numerous occasions by PPAG that this was the intention of the group. The failure to provide a new school lies fairly and squarely at the feet of the Council.

3.6 The consultation process that led to the selection in December 2006 of the park site as the preferred site for the rebuild of the school was deeply flawed, with the consultants' information in the feasibility studies containing incorrect information and an inconsistent approach to different sites, for example one park being dismissed as it was open space and contained Millennium planting, whilst such criteria did not rule out Portobello Park. The process for registering one's views was unclear and imbalanced, for example, parents were able to register their preferences twice, once as a parent and again as a resident. The Council provided no explanation or answers to the concerns raised. Please see PPAG response to the educational consultation of October 2006 (**Document 5**). This is expanded on in the section entitled "Alternative school sites".

3.7 Similarly, during the pre-planning application consultation process in 2010, many issues were raised, particularly in relation to traffic and road safety issues, which were simply not answered or resolved.

3.8 At a recent pre-application public meeting (for the renewal of planning permission) in May of this year, many of the same issues were raised as there had been no progress made on resolving them in the intervening period.

3.9 As a precursor to the private bill consultation an "informal feedback" exercise about the pros and cons of the alternative school sites was conducted in the run-up to the 22 November full council meeting. The Council conferred with the Chair of Portobello for a new School (PFANS) who back the rebuild of the school on Portobello Park). The information provided to parents cannot therefore be seen in any way as being fair and impartial.

3.10 The informal feedback exercise conducted following the council meeting of 25 October was flawed. It was supposed to be about people's opinions of the alternative sites but failed to represent the facts accurately and without bias. It was prefaced with the statement that the school on the park was by far the best option, implying that the alternatives were deeply inferior. This was bound to influence the responses to the questionnaire. The information provided was heavily slanted towards a build on Portobello Park. This was presented as the cheapest and fastest option, despite the fact that the timescales for delivery are by no means certain given that the Private Bill may not be passed or may take considerably longer than anticipated. There is no hard evidence to support the estimated timescales or cost as no comparably contentious Private Bill has been through the Scottish Parliament up to this point.

3.11 At the 22 November full council meeting two deputations were made by parents, at which they explained that their views had not been sought on the alternative options and that the views of the wider parent body at the schools had not been sought either. Cllr. Andrew Burns was also made aware of complaints about the view gathering exercise at Duddingston Primary school. A parent had contacted him to express his great concern that neither his, nor the views of some other families of his acquaintance, had been represented in the document circulated with the “results”. The feedback gathering exercise was a flawed, haphazard and incomplete process which differed from school to school. Yet the resulting information was presented in the report to The City of Edinburgh Council (22 November 2012) as a rigorous, bona fide survey, with percentages quoted and bar charts showing the responses. This is another example of information presented by the council which cannot be relied on and has no validity.

3.12 This lack of willingness to listen to any alternative viewpoints that distract the Council from their predetermined outcome, i.e. building a new school on Portobello Park, has been repeated time and time again during the last seven years, most recently during the consultation the Council carried out on behalf of the parliament on the private bill. We have set out our concerns about this process later on in the letter under “Private bill consultation”.

4 Private Bill Consultation

4.1 The consultation process conducted by the City of Edinburgh Council during December 2012 and January 2013 failed to meet the standards in the Parliament's own advice on the conduct of Private Bills. This is a key concern because the Council was, in a sense, consulting on behalf of the Parliament, which needs to know that its decisions are arrived at on a sound basis. Private Bill Guidance states in paragraph 2.24 that: “The Private Bill Committee will wish to satisfy itself that the promoter undertook a consultation process that was open, accessible, helpful, clearly timetabled and, where possible, adopted and demonstrated innovative and best practice.” We do not believe that the consultation carried out by the City of Edinburgh Council for the private bill adequately meets these criteria, therefore it cannot be relied upon with any confidence.

4.2 The consultation process, as well as failing to meet the standards in the Parliament's own advice on the conduct of Private Bills also failed to meet the principles of the National Standards for Community Engagement to which the Council, as a member of the Edinburgh Partnership, is signed up. The consultation also falls well below the standards in the Consultation Charter of the Consultation Institute, who are currently working with the Council to develop a consultation framework.

4.3 In consultation, context is very important. Reducing complex arguments or situations to a simple yes or no answer undermines any notion of using the process to inform decision making. Success is measured in terms of the number of questionnaires returned. This emphasis on quantity at the expense of quality undermines one of the basic principles of consultation: the understanding of who says what and why they are saying it. The numbers game, especially when combined with the yes/no style of questions, can easily come to look like a referendum – which it isn't. This point was made very clear at a public meeting about the private bill in January by a council officer. The overall number of stakeholders taking part still constitutes a small percentage of the total number. In this case, 10,000 legitimate responses were received from a total population of 500,000 - a 2%

return - so claims like “76% of local residents support the school on the park” are completely inaccurate and misleading.

4.4 The Consultation Charter states that consultations should demonstrate integrity, which they define as honest presentation of information, being prepared to listen to the views expressed, should not be a token process (i.e. decision already made) or a tick box exercise. It should operate to robust standards and principles, with open questions fairly worded that don't suggest the 'preferred' response; be seen to be impartial during the process and deal equitably with all sides involved.

4.5 The Council's consultation fell far short of this standard. The Council's leaflet, presentations and displays in public places were biased and misleading. We have enclosed a copy of both the leaflet and the consultation responses form (**Documents 6a and 6b**). In order to be fair, the consultation material should present all factors fully and accurately, but this literature actively promoted the Private Bill. This has been acknowledged by local councillors who believe it is right that the consultation material actively promote the Council's preferred option (building on the park).

4.6 However to be fair and balanced, as detailed in the Scottish Parliament's own guidelines about consultation for private bills, (paragraph 2.6), all options should be clearly detailed with pros and cons.

4.7 All information about alternatives should have been provided, and facts rather than supposition should have been detailed. The information should allow people to make up their own minds. The Council's information is clearly designed to direct people towards a certain response, to a positive response to their proposals

4.8 There are many examples in the council papers of this bias including: the visual representations of the school on the leaflet are misleading and the proportions have been distorted. The view from the west corner of Park Avenue shows a low-rise building instead of the building that will rise to the same height as the ridge of the houses across the road, which are on higher ground.

4.9 The Council's description of the Court of Session ruling implies that the park could be sold with no restrictions on how it could be used. This is not accurate. The fact that there is no provision within the law to appropriate the park is overlooked and it is implied that the removal of the legal obstacle would be straightforward. The legal representative at one of the public meetings stated that the law just needed to be “tweaked” to allow the park to be built on.

4.10 There is a lack of proper analysis of alternatives, with pejorative language throughout. There is a section of the leaflet entitled: “Are there other options for the new school”, which states: “We have looked at all the options in and around the school's catchment area. The results of this review show that there is simply no other site in a good location with space to provide the same level of facilities and easy access as Portobello Park”. Only then does it mention that there are two potential “back-up “ options and goes on to say that they would be a “significant compromise and would take far longer to deliver.” Neither of these statements is objective or factually accurate.

4.11 There is no certainty about the timescale for the passage of the Private Bill and information we have received from the Non Executive Bills unit at the Scottish Parliament makes it clear that it is difficult to determine how long the bill might take to proceed. This

uncertainty is not reflected in the council literature and it underplays the risks associated with the Bill. In fact, if the Bill is not passed by February 2014, which is the Council's stated aim, then the contract for the school with Balfour Beatty will expire and the Council will have to start a re-tendering process, which could take up to a year. In the meantime, one of the other options could be progressed.

4.12 As for other sites representing "significant compromises", a similar standard of educational facilities could be delivered on each of the alternative brownfield sites. The only difference between Baileyfield and the current school site on the one hand, and the Park site on the other, would be one full-size outdoor pitch but there are five-a-side football pitches across the road on a council owned site, which lies empty during school hours and could be used. There are also Council proposals for a new gymnastics centre to be started in an existing leisure centre very close by. Please see the section entitled "Alternative school sites" for more information.

4.13 Information was included on the council website providing "pros and cons" of alternative sites. Various aspects of Baileyfield are identified as disadvantages including central location within catchment area, issues with noise and air quality, significant site remediating issues, number of parking spaces, safe and convenient user access routes.

4.14 For the consultation exercise to be fair and balanced all sites should be measured by the same criteria and reported accordingly. If noise and air quality are relevant factors they should be reported for all sites. In the case of Baileyfield there has not been any research to support the assertion that there are issues with noise and air quality, yet it is reported as a disadvantage. None of the corresponding disadvantages of Portobello Park site have been highlighted.

4.15 People were told that the private bill was quickest cheapest and easiest option, and supported it on the basis that it would be through by February 2014. However, as this bill is unique, its passage or the speed of it is not certain. The council, despite its protestations that the bill will be passed by February 2014, is in the process of renewing the planning application, which suggests that they are not confident about the bill becoming law by this date.

4.16 The inclusion in the consultation material of the question asking what facilities people wanted to be included on the "replacement green space" is irrelevant to a consultation on the Private Bill. It reads as though this is included as an inducement to people to support the Bill. The whole reason for a new park is replacement green space, so one would assume like-for-like. To create anything other than green space is not replacement. Critically, the private bill makes no reference to or provision for the designation of the existing high school site as open green space, and the common good land at Portobello Park will not be replaced. The emphasis given to the "new park" in the consultation information is misleading.

4.17 It is clear that this information does not comply with the Guidance on Private Bills, which says that "Proper, balanced, committed and participative engagement and communication with local communities can not only reduce the likelihood of objections being lodged but also create a more open and constructive relationship between the promoter and local residents." The key word here is "balanced". The consultation carried out and the information disseminated by the council cannot be described as "balanced", as it gives a one-sided view which completely ignores several important aspects of the situation and implies that there are no acceptable alternatives to building on the park.

4.18 Two public meetings were held. Both PPAG and PFANS were invited to sit on a panel and to make brief presentations following a presentation from a senior council officer. As a result there was very little discussion about the Private Bill and the Council hid behind the long held positions of PFANS and PPAG. The focus was on accusations of delay, emotional pleas about urgent need for a new school, personal questions, attacks on PPAG panel members and complaints about PPAG exercising its democratic right to object to the bill were aired.

4.19 PPAG and PFANS were deliberately pitted against each other, which made for a very hostile atmosphere. The involvement of both groups on stage removed the focus from the Private Bill and the majority of the time was spent going over established arguments and questions about the need for a new school, rather than focusing on the private bill itself and its implications. Many opponents and neutral consultees were discouraged from attending, as they were uncomfortable about the prospect of conflict. PFANS made a big effort to rally their supporters to come and attack PPAG. Opponents of the Bill and neutral people who did attend reported that they found the meetings very unpleasant and hostile, in particular the meeting at Meadowbank. This seriously failed to reflect the principles of the National Standards for Community Engagement, one of which states that: "skill must be exercised in order to build communities, to ensure practice of equalities principles". These meetings did the opposite, only serving to deepen divisions in the community.

4.20 Objectors to the planning application found the planning consultation process frustrating, with legitimate concerns not being listened to. The consultation process for the Private Bill has been similarly frustrating. Once again, the National Standards for Community Engagement were not observed, especially the principle that states: "Improving the quality of community experience requires commitment to learning from experience". There has been no evidence during this process that the council has learned from previous experience.

4.21 The minutes of the meetings were inaccurate and incomplete and we wrote to the Director of Children and Families to express our concerns, pointing out the omissions and errors. The response states that the chair of the meeting had signed them off as correct (but it is unclear how he would know as he was too busy chairing to remember all the details of the meetings) and our second e-mail has not had any response.

4.22 A second Consultation Charter standard - visibility - is described as well publicised information, widely available well in advance of the consultation taking place. The information was not widely available in advance of the launch of the exercise. The decision to pursue the private bill option and start consultation was only made at full Council meeting on 22 November and the exercise started on 3 December.

4.23 Launching this exercise in the run-up to Christmas and over the festive period when people are busy and preoccupied was hasty and ill-timed. The length of time allowed is also questionable as the consultation effectively only ran for six weeks, discounting two weeks over Christmas and New Year.

4.24 It is clear that we are not alone in believing that this is not the best time of year to launch public consultations. Here is an interesting quote from the House of Lords Secondary Legislation Committee in their 22nd Report of 2012-13, in which they wrote:

'We note that on 13 December 2012 the Ministry of Justice launched a consultation on "Judicial Review: Proposals for Reform", setting a deadline for comment of 24 January 2013, a six-week consultation spanning Christmas and New Year. We would comment that the tightness of this timescale cannot be convenient for anyone but the Government?' (House of Lords Secondary Legislation Committee, (2012) 22nd Report: *The Government's new approach to consultation – "Work in Progress"*, London: The Stationary Office)

4.24 The school communities had a disproportionate opportunity to garner support as they had a number of pre-Christmas events at which they were able to push the consultation at a captive audience. Overall, The school community had an disproportionate influence on consultees throughout this process as they had daily access to a captive audience, to which the consultation was promoted in a one-sided way at every available opportunity. There was no attempt by the council to balance this out. This does not reflect the principles of "fairness, equality and inclusion" promoted by the National Standards for Community Engagement.

4.25 The consultation period began on 3 December 2012, however a significant number of the properties most affected did not receive the Council's information leaflet until well into January, in some case more than five weeks after the commencement of the consultation period, for example in Park Avenue, Duddingston Crescent, Duddingston Park and Milton Road, leaflets were not delivered until at least 8 January 2013. The Christians estate was leafleted after 7 January and Mountcastle, Duddingston Park and Milton Road West after the first public meeting on Wednesday 9 January. It appears that no leaflets were delivered in Milton Drive. This exercise clearly failed to meet the principles of the National Standards for Community Engagement (to which the Edinburgh Partnership is signed up), which state that: "accurate, timely information is crucial for effective engagement".

4.26 The late/ non-delivery of leaflets was raised with the Council at the public meeting on 9 January. The council officer present blamed their distributors and stated that the distribution was being re-commissioned. As a result, many local residents did not receive any information until the meeting at Portobello Town Hall had passed, and the only other public meeting was to be held further away, at Meadowbank, a few days later.

4.27 Because of the very late delivery of information to those most affected the Council were asked to extend the consultation by at least a fortnight but they refused. Additional drop-in sessions were added along the way, for example at Northfield and Magdalene community centres, just before 16 January, but it is unclear when or how information about these was made available other than on the Council website, so this information was not available to people who are not online. Other events were added along the way but it is not known when these were communicated. All consultation events should have been programmed and communicated both in paper format as well as online well before the start of the consultation exercise.

4.28 The Guidance for Private Bills states that the promoter of a Bill should show "how, when, where and what did the promoter communicate to local residents who may be directly affected by a project as a way of resolving their concerns". Apart from two meetings at the Milton Court sheltered housing complex (a tiny fraction of the people living around the park), no attempt has been made to engage with those directly affected by the Bill, the residents bordering the park. No special arrangements have been made to reach them, for example a dedicated meeting to discuss their concerns. The Guidance also

states that: "A comprehensive consultation exercise, involving an open and constructive dialogue with those likely to be affected can provide helpful feedback into the design development process". This did not happen as there was no dialogue with those most likely to be affected. In addition, the fact that those living around the park only received their leaflets five weeks or more after the start of the process further highlights the deeply flawed nature of the consultation exercise.

4.29 Paragraph 2.6 of the Guidance for Private Bills states that: "Proper, balanced, committed and participative engagement and communication with local communities can not only reduce the likelihood of objections being lodged but also create a more open and constructive relationship between the promoter and local residents." The failure to properly engage with those most affected has had a significant negative impact on the relationship between local residents and the Council. There is very little trust that the process has been or will be fairly conducted and a strong sense that the Council have failed to engage appropriately with the community.

4.30 A further consultation Charter standard highlights accessibility. There should be a range of processes available for responding; efforts made to include all interested parties, including hard to reach groups

4.31 From speaking to people in the area, it became clear that many were completely unaware of the Council's plans for a Private Bill. If people are not online or have not received the council's literature, they had no way of knowing about it, other than by word of mouth. Many people were/are still under the impression that the park is now protected from development as a result of the court ruling. Conversely, parents and those directly connected to the high school and its feeder primaries were bombarded with notification about the consultation, through the school email and text contact lists, parent forum and parent council presentations, leaflets distributed in class rooms and stalls arranged in playgrounds at pick up points, gathering responses from both adults and children, some of whom were not accompanied by a parent or guardian at the time. These actions clearly go against the guidelines issued by project sponsor Billy MacIntyre on 4 December.

4.32 The boundary for the distribution of consultation documents followed closely the catchment area for Portobello High School, which does not equate to the appropriate residential area. We have enclosed an extract of the Council's report of 14 March 2013 (**Document 7**) showing this. Parents of children at the school, or who will attend the school therefore had a disproportionate influence on the outcome of the consultation despite its supposedly being an Edinburgh-wide consultation.

4.33 A wider consultation should have been done as this is an issue of interest to other residents in Edinburgh. The consultation leaflet says: "we are consulting with people in the local community and the rest of the city" but there was very little wider publicity.

4.34 The Guidelines for Private Bills state that: "It will usually follow that the larger and more contentious a project is, the more extensive the pre-introduction consultation should be." It is widely acknowledged, including by the Council, that this is a contentious proposal. It is not just a question about where a school is to be sited. The outcome, if the Council is successful, will set an example to other councils of how inalienable common good land can be appropriated, therefore the consultation should have been publicised to the wider community, across the whole of Edinburgh. The only hard copies of the consultation material available outside the local area were in the Central library but

information about the consultation should therefore have been placed in *all* libraries in Edinburgh

4.35 The consultation process was deficient as it was unable to ensure access by all groups within the community. The leaflet was geared towards those who would make an online response, as it provided a web address but no paper form was supplied with it and hard copies were not delivered with the leaflet. Anyone who wanted to complete a hard copy of the questionnaire (lots of people aren't comfortable with online forms) had to track forms down via the library or other sources. Those who did not have internet access and for whatever reason were unable to leave the house to take part in the consultation via the library or at road show events were at a disadvantage.

4.36 At a consultation meeting at Milton Court sheltered housing complex, the Council was asked to distribute hard copies of the questionnaire to residents but they declined. This does not meet the principles of the National Standards for Community Engagement, one of which states that: "Fairness, equality and inclusion must underpin all aspects of community engagement".

4.37 Additional "drop in" consultation sessions were set up at Northfield and Magdalene community centres just before 16 January. These were publicised via the Council's website only so people who do not routinely access the Council web pages were not notified of them and most of them took place during the day so were not accessible to those at work. As previously stated, a full programme of events should have been scheduled and widely publicised well in advance of the start of the exercise. As it was, events were added as the process went along and communication about these events was not comprehensive.

4.38 Another Consultation Charter standard is transparency: all aspects clearly stated from the beginning; who can take part, what, if any age restrictions/geographical restrictions exist; clear statements of the purpose of the consultation, and its limits; clear statements about the standards and principles of operation of the consultation process. Information that gives the impression that there is only one viable option, when other options are available.

4.39 As previously mentioned, although the consultation was supposed to be Edinburgh-wide, information was only distributed by the Council in an area more or less equating to the school catchment area. It would seem that this was done in order to engineer the process to elicit as high a number of responses as possible from parents and children within the school's catchment.

4.40 There was a lack of procedural clarity about the process and a lack of information and openness on how the consultation was to be assessed and validated. Given that the council had a vested interest in a certain outcome, it was publicly suggested to them that an independent body be commissioned to carry out the consultation on its behalf but this request was ignored.

4.41 There was a lack of information upfront about who the target audience was and who was eligible to take part. It only became apparent that there was no lower age limit when a question was asked about this at the public meeting on 9 January, more than a month after the start of the consultation. We felt it was perfectly reasonable for children to participate in the exercise but it should have been made clear from the start that this was the case and it was not, even within the school community. There were no special

arrangements made for consulting and engaging with children on this issue in an appropriate and meaningful manner, taking into account specific issues relating to gathering their views. This is surprising as the Council has officers who are specially trained in the engagement of children and young people and the most effective techniques and practices for doing so. This would have been an opportunity to demonstrate an innovative approach and best practice, as suggested by the Guidance for Private Bills. Best practice was most certainly not employed in this instance.

4.42 A Freedom of Information request was made by a member of the group about the methodology to be used in assessing the consultation exercise but this was refused. This goes against one of the key tenets for fair consultation, i.e. transparency. We have included the relevant e-mails with this submission (**Document 8**).

4.43 The hasty launch of this consultation in order to try and ensure the passage of the Bill before the expiry of the contract of the school has resulted in a badly designed, deeply flawed and poorly thought out consultation process.

4.44 The consultation Charter suggests that, the outcome of the consultation is published including accurate background information and made widely available. The Council has claimed that this was its most successful consultation ever simply because of the number of responses received. In fact it was not the highest number ever received and the numbers do not so much indicate success but rather the contentious nature of the matter being consulted on. The number of “no” responses received was 3,000, which shows a strong level of opposition, a level which has actually increased since the planning application consultation.

4.45 The Council’s use of the data from the consultation process did not represent a fair and accurate representation of the material. Reports, including those in the press, were focused on the total number of submissions, failing to provide information of the number that were excluded from the final analysis and often failing to inform that 3000 people objected. Constant references are made to “76% of the community support building the school on the park”, a completely misleading statement.

4.46 The Council’s own report on the consultation highlights references to objectors to the plan as “nimbys” and to the anger at a minority of residents allegedly able to delay the project for so long while the education of children suffered. It is particularly objectionable to refer to a minority of residents causing a delay when the reality is that it was the result of a community group acting to ensure that the Council operated within the law. This should not be interpreted as malevolent actions of a minority group.

4.47 We submitted 2600 forms recording a “no” response and there were other responses made by e-mail, on paper and online as well. The council told us that nearly 200 of the responses were from out of Edinburgh, which we dispute. Even if this were the case there would still have been at least 2400 valid responses (they had been checked for legibility and complete details) in that batch and more from other sources, plus 598 valid online responses and 26 valid e-mail responses. This amounts to a total of at least 3024 valid “no” responses but the total quoted in the report is only 2977. So far the Council has not given us a satisfactory response as to why the total of “no” responses is not recorded as the higher figure.

4.48 We enquired as to the reason for discounting 20 out of the 46 e-mail responses expressing an objection to the private bill proposal and received the reply that 17 had been

rejected because of ‘incomplete details’. Council officers referred to the planning consultation process more than once during the public consultation meetings so it was reasonable to assume that this process was seen as similar. Therefore when people made consultation responses without giving full name and address the Council should have e-mailed them back asking for their details. This is what happens when people make comment on planning applications by e-mail; the recipient at the council e-mails back and asks them to supply their details. We were informed that this was impossible as the respondents’ details were incomplete. However they must have been valid e-mail addresses, so they could have easily contacted people in order to get full contact details from them.

4.49 Many online forms were rejected but normally this type of form is set up in such a way that it cannot be submitted without all the required information, so how can the system have allowed people to submit incomplete forms, unless it had been incorrectly set up in the first place?

4.50 It is clear that many valid responses were lost through inefficiency or badly set up systems.

4.51 The consultation results were not widely distributed. They were available on the council’s website but to our knowledge were not distributed via libraries or other public places. Again, those not online were at a disadvantage in terms of accessing the results of the survey.

4.52 It would appear that PFANS had advance warning about the results of the consultation, which suggests collusion between them and the Council. An e-mail was sent to a member of our group by [REDACTED], at that time the education reporter of the Edinburgh Evening News asking for a quote about PPAG’s response to the consultation report. A one-sided article had already been published with only a quotation from PFANS about the results of the consultation and PPAG has asked the reason for this. She admitted that she had been contacted IN ADVANCE of the publication of the report by [REDACTED], PFANS member and chair of Portobello High School parent council with a press release about the results, as this quotation from an e-mail of 8 March shows: *“Regarding [REDACTED] comment, PFANS sent me a press release yesterday after hearing that the results were positive, so that’s why it was included. I didn’t contact them for a comment and did not tell them what the results were”*. We have enclosed a copy of the e-mail exchange (**Document 9**). This is another example of inequitable treatment by the Council and evidence of connivance between the Council, Edinburgh Evening News and PFANS.

4.53 There is no evidence of innovative practice (as recommended by the Guidance on Private Bills) demonstrated. The “road shows” held at libraries, and other venues, were in exactly the same format as that used for the planning consultation in 2010 and the council acknowledged that it was following the same model for this consultation. As previously mentioned, there was an opportunity to employ innovative practice in order to engage children and young people and garner their views in a meaningful way but this was missed.

4.54 According to Section 2.33 of their report of 14 March 2013, the Council claims that PricewaterhouseCoopers (PwC) were asked to carry out “independent validation” of the data. Their report is enclosed (**Document 10**). This was not a proper validation but a simple mechanical checking exercise. The City of Edinburgh Council relied on the fact

that they commissioned PwC to undertake some checking of the consultation responses, to lend validity to the reported analysis. The procedures undertaken by PwC were however limited, and they did not consider whether the information supplied for review was complete. It is not even clear as to whether their sample was representative of the population.

4.55 If entries had been omitted from the spreadsheet passed to PwC, it would not have been detected by the checks they undertook. PwC make it very clear in their executive summary that their checks do not constitute an audit, and they give no opinion on the consultation as a whole.

4.56 The reality is that the way the consultation was set up made it impossible to verify any of the responses. There was no way of knowing the age of the respondents or indeed if they even existed, as the council said that the names and addresses of respondents would not be published so there was no way for the public of checking the respondents

4.57 The consultation responses were very easy to manipulate. Anyone could have taken a bundle of forms and fill them out using electoral register, or indeed done this online with the technical know-how. As the names and addresses of respondents were not published there was no way for the public of checking the respondents. Indeed the Council official made it clear at public meetings that there would be minimal checking and that a proposal for both “sides” to oversee checking was not accepted.

4.58 There was the potential for a very large number of the responses submitted to be either by or on behalf of children, and these responses were evaluated with the same weighting as adult responses, given there is no way to distinguish, despite the possibility that in some cases the children will be below the threshold for legal capacity. While we welcome the inclusion of the views of children, the lack of distinction between the views of various groups within the community makes the consultation a very blunt and unsophisticated measure and discredits its outcome.

4.59 The council used the argument that there is no lower age limit for people to respond to planning applications and therefore that makes it acceptable to have no lower age limit for this consultation. However, all respondents’ names are published for planning applications but the council has not published names and addresses of respondents so as previously mentioned there is no way for the public of checking the respondents.

4.60 The Council chose the parameters, undertook the data collection and evaluated the consultation responses with no independent assistance or scrutiny. A request for an independent body to be commissioned to carry out the consultation was ignored, and the process has been biased and chaotic, including a failure to even distribute leaflets to many affected residents until six weeks into the eight week process.

4.61 In summary, the Council’s consultation on the private bill proposal fell far short of the Parliament’s own standards for consultation as set out in the Guidance for Private Bills. We do not believe that it provides a sound or reliable basis on which to proceed with the private bill.

5 Alternative School Sites

5.1 The City of Edinburgh Council (CEC) have been inconsistent in options appraisal for the redevelopment of Portobello High School. Much of the current proposal has been

driven by personal agenda, and a great deal of subjective material produced. Some options have been ruled out without adequate justification, working backwards from the council desired outcome (to build on Portobello Park).

5.2 In 2003 CEC invited consultants, Atkins, to produce a feasibility report to address the accommodation issues for Portobello High School. The conclusion of the report was that the school could be rebuilt on site and all the necessary facilities for a modern education could be provided. The report was detailed and included site plans, cost breakdowns, decant strategy, accommodations schedules and timescales. The Council also decided at that time that PHS would be one of the schools included in their PPP2 programme. At that stage, the neighbouring Holy Rood High School was identified as in need of upgrade, but not a full rebuild.

5.3 Shortly after that report, CEC revisited the assumptions and scorings used to rank the schools in terms of need and PHS was then ranked eleventh on the list, and was replaced by Holy Rood which has since been rebuilt on site, and has now been open for four years. Other schools which were assessed at that time as being in worse condition than PHS were also ranked higher.

5.4 At about the same time the feu superiority condition that protected Portobello Park and golf course fell as a result of land reform legislation. This, in effect, allowed the council's Director of Development to formulate the plan of providing a site for the new schools, including St.John's Primary, on a Greenfield site with land released for housing to pay for the building of the schools, there being at that time no prospect of the Holyrood government providing more subsidy to the council. It was seen as a win-win-win situation for the council as it got new schools, much needed new housing and a capital receipt from the sale of the current sites for even more housing. Please see enclosed documents of 2006 about the Council's plans to build two schools and a housing development on the Park and Golf Course (**Documents 4a and 4b**).

5.5 That is why the council moved away from a rebuild on site and, having created a ground swell of support from some vociferous parents, including those with professional ties with the council and its arms-length company, they do not want to seriously consider alternatives that have the potential of greater benefit to all in the community and not just those who attend the school.

5.6 There was a feeling amongst some supporters as demonstrated by the enclosed e-mail (**Document 11**) that the council was not managing the project well even at this early stage and this perhaps explains why such a successful marketing campaign has been conducted from within the community which has grown simply by reiterating the same message that the school is crumbling and that there is no alternative. It is not crumbling, having had much money spent on it and there are feasible alternative sites identified by the council.

5.7 In the face of much opposition to their plan the council then reconsidered its approach by commissioning option appraisals into 15 selected local sites. In their eagerness to give the impression of considering all options, greenbelt sites, other parkland and even an artificial island in the Firth of Forth were included, all of which were subsequently discounted with the exception of the existing site, the park and golf course, which became the subject of an educational consultation.

5.8 We have serious concerns about the option appraisal into the 15 potential sites for PHS, and we believe that the conclusions were predetermined. The council frequently referred to the report as an independent study, despite defining the parameters they were to work within and the council clearly had an input to the report conclusions.

5.9 Some of the sites were discounted for factors such as loss of open space and loss of millennium planting and no neighbourhood gain, but these factors were not even listed when considering Portobello Park and Golf Course. Subsequently, at the planning stage it became clear that half the millennium planting on Portobello Park will be destroyed should the development go ahead.

5.10 Some sites were ruled out because of poor access. For example Bingham Park was ruled as being surrounded by “narrow and tortuous” roads, but again these factors were ignored for Portobello Park and Golf Course. Again for Bingham park it was noted that there were no direct public transport links, which is completely inaccurate as the site is less than 5 minutes walk from Milton Road which is the main road from Musselburgh to Edinburgh and is well served by buses, and one bus service runs along the road adjacent to Bingham Park and the former Lismore Primary School site.

5.11 There was a great deal of language bias in the report, and it completely ignored other factors in the landscape at the time, such as the proposed closure of Lismore Primary School. One of the reasons against building Portobello High School on the Bingham Park site was the proximity to another school (Lismore Primary School – a feeder primary with a roll of less than 100), despite the fact that the school was likely to be closed, the closure of the primary school would have provided brownfield land on which the high school could be built.

5.12 Another example was that Figgate Park adjacent to the existing school site was ruled out as it was on a flood plain. For purely illustrative purposes, PPAG showed how a primary school could be provided and that the consultants were inconsistent in the factors and scoring used to assess the various sites. (If that part of Figgate Park was flooded then the water would cover the whole of Portobello). For clarity, this was an illustration only – PPAG have never supported building on Figgate Park.

5.13 Overall, the impression was created that many sites had been chosen to enable the claim to be made that the option appraisal was wide and all encompassing where in fact it had been designed to arrive at the three sites the council had already chosen, the Park, the golf course and the current PHS site.

5.14 One fear was about the impact on attainment levels from a decant of pupils if the high school was redeveloped on its current site despite the fact that decants have been widely adopted across the city. When it suits their purpose, the council maintains that decant arrangements do not affect pupil attainment when properly organised.

5.15 Much of the case for the large site at Portobello being the preferred option focuses on the requirement for two full-size artificial pitches, yet the benefits of this have not been properly assessed. There has been no analysis of the sports provision across other city high schools in the context of the current PE curriculum.

5.16 In many schools it seems that the use of full size pitches is limited, with sub divisions to create multiple smaller areas being common practice, and given our Scottish climate, there is frequently a desire for greater indoor facilities for PE lessons, especially during the

winter months. Much of the current bussing off-site of PHS pupils for PE at the moment is to accommodate indoor activities, and in fact the proposed new school has no more in the way of indoor sports facilities than the current building. There have in fact been questions raised that the proposed new indoor facilities are inferior to the current school. We question the view that two full-size artificial pitches are essential. As has been documented elsewhere in this letter, there were up until fairly recently two grass football pitches on Portobello Park, which were well used by local groups, but never used by the school.

5.17 The alternative site options would accommodate one full size artificial pitch and both the current school site and the Baileyfield site have good additional facilities close by. The current site is adjacent to the Figgate Park, and the Baileyfield site is adjacent to the Pitz five-a-side pitches and the beach, both of which would offer excellent opportunities for physical education and for encouraging active lifestyles.

5.18 There has been no business case prepared for the out of hours use of the pitches, including the practicalities of making them freely available to the public, a promise that has only been added in to the proposal very late on in the day, after the court ruling, and as a further incentive to those undecided about the private bill, and one which we do not believe is deliverable.

5.19 Since the unanimous Court ruling from three senior judges that the council's decision to appropriate Portobello Park was ultra vires, the council has been forced to look again at viable options for replacing PHS. Two options have been identified which are, firstly, a rebuild on the current site and secondly, building on a brownfield former industrial site. There is some irony in that the council is still considering rebuild on site ten years on from their original intention which, if the original priorities had been followed, would have resulted in a new school for the young people of Portobello in which they would be learning by now.

5.20 Throughout this whole process the council has made arguments that suited a particular circumstance and when necessary has reversed their opinion without giving the rationale for such a change. One example highlighted elsewhere in this objection is the ruling out of replacement open space on the existing site because it was in the wrong place and a waste of public money in 2010. In 2012 the council said it would replace the open space but there is nothing to stop them reneging on this again.

5.21 Concentrating attention on the brownfield site at Baileyfield which has the advantage of not requiring a decant of pupils during construction, many advantages over developing green-field common good land exist for this option. The council does have a viable option that they have identified especially as the site is on the market at significantly less than its value when the original option appraisals were undertaken.

5.22 The size of the site is sufficient to allow one full size sports pitch, and all other facilities would be provided in a building shown by the council in their indicative sketch to be only three storeys high. One less pitch is the only disadvantage in comparison to the Portobello Park site but there are five-a-side pitches across the road and it is less than five minutes walk from the Council's proposed state-of-art gymnastic centre next to the expanse of the beach.

5.23 Whilst the site is not in the geographical centre of the catchment area it is on direct travel routes from the main households from which pupils travel. These areas are Willowbrae, Joppa and the streets along Portobello High Street. **(Document 12)**. There

are direct and very frequent bus services with connections to good cycle routes which aids the desired sustainable travel plans.

5.24 Much has been made of the industrial nature of the Baileyfield site and the possibility of contamination on the site. The site was a former clay pit that has been infilled over the years and a recent desktop survey identified that there is a high risk of contaminants on site. This is not to be confused with a statement that the contaminants pose a high risk which some detractors believe. The contaminants are likely to be products from the ash infill from the former power station along with oils from the more recent uses. These can be dealt with and the council had no concerns when it was proposed that 770 flats were to be built on site.

5.25 One benefit that the Park site cannot bring is the regeneration of this part of Portobello and the contribution made to the vitality of Portobello High Street. The site is far more in the heart of the community at Baileyfield, with greater accessibility for residents especially by public transport. It also has the potential to provide an iconic building at this important gateway to Portobello which vastly improves the public realm rather than skulking away on the park far from the centre of town.

5.26 Despite the public being told at a meeting on 9 January of this year that there would be a decision on the sale of this site by the end of January once again being told about a month ago that a decision was imminent, and despite repeated requests for information about the progress of the sale of the Baileyfield site, no substantive information has been forthcoming. It is clear that the Council has been less than transparent on the subject of the ongoing negotiations on the sale of Baileyfield.

5.27 It is essential during consideration to understand what the council says and does with regard to rebuilding other schools. It has already been stated that a decant of pupils is considered satisfactory for other schools but is ruled out for PHS. Let us look at some other factors especially in connection with the other two proposed secondary schools, James Gillespie's and Boroughmuir.

5.27 At James Gillespie's a rebuild on a proportionately smaller site per pupil than Baileyfield, involving a decant, is nearing completion. Parking provision for half the number of cars as allowed at Portobello helps to achieve this although the public transport links are worse.

5.28 There is no on-site sports pitch but physical activity can still be accommodated in this school's timetable through bussing of pupils to appropriate sports pitches. Boroughmuir has one small pitch proposed for its roof. The council prides itself on this innovative solution, however bussing to full size pitches will still be provided.

5.29 Baileyfield is criticised by the council for not being in the centre of the catchment area, however, the proposed site for Boroughmuir is so much to one side of its catchment area that the boundary has had to be re-drawn to encompass it.

5.30 Again Baileyfield is said to have problems with noise from the adjacent road. The buffer of a very quiet cul-de-sac of Baileyfield Road is overlooked by the detractors as is the fact that traffic along Portobello High Street, the side that the school is located travels slowly. The fact that the proposed site at Portobello Park is actually on the main feeder road from the east, the former A1, is ignored by the council when making a comparison over traffic.

5.31 The biased presentation of Baileyfield (**Document 13**) prevented a balanced discussion ever taking place in the community about an option that will provide a fantastic school for the 21st century where pupils will learn in an enriching environment whilst enabling those same pupils the freedom to enjoy an unspoiled Portobello Park.

5.32 The three sites now identified by the council as being options for providing a new high school are shown in comparison to the two other secondary schools in the council's Wave 3 programme for new schools (**Document 14**). Comparisons are against the site at Portobello Park. For instance, the pupil number at PHS is 1400 and 1150 at Boroughmuir giving a 18 percent difference.

6 **Loss of open space**

6.1 The local community has been denied a voice on the subject of the loss of open space, as it was never allowed to be publicly debated. During the initial phase of consultation on sites for the schools local residents were told that the appropriate time for discussion about the loss of open space would be when the planning application was lodged. However, during the pre-application consultation meetings, members of the public were firmly told that they could not mention open space issues in relation to other sites and that the purpose of the meetings was merely to discuss the provision of the new school on the park site.

6.2 Portobello Park is designated a City Park, one of only two City Parks on the east side of the city. This type of space with its variety of flexible uses is in extremely short supply in the area. The whole area of Portobello Park, including the Golf Course, is of outstanding landscape value, encompassing as it does protected views to Arthur's Seat and views from Milton Road down to the Firth of Forth and Fife. Even for motorists, it provides a welcome view of green space before entering the city.

6.3 This much-loved public park, if built on, will lead to a reduction of 25% of Portobello's parkland. The council acknowledge in its planning application that the loss of the park would result in it not meeting its Large Greenspace Standard of houses and flats being no more than 800m away from a significant accessible greenspace of at least 2 ha; this means that some areas of Portobello will not meet the standard and as it is, several areas of Portobello do not meet the standard. The park has been very well-used in the past and was regularly used by local football teams for matches at weekends and also for training in the evenings. Following the granting of planning permission in 2011, the football teams were evicted from the park and an archaeological dig was carried out. The grass was seldom cut and the park was left in a state of total neglect.

6.4 The park has been used for running, walking, exercising dogs, parties, picnics, exercising and informal games of football, cricket, rugby and rounders. Local elderly residents have told us they need this park close at hand to enable them to get out, get fresh air and keep fit. It is the only park in the area which is large enough to let a dog off the leash for a run. During the consultation, one dog walker told us this was the only place she could take her dog where it wouldn't be attacked by other dogs and that having a dog had helped to lift her out of depression. Another resident told us that they needed the park for exercise and for their mental wellbeing whilst in remission from cancer. The benefits both physical and mental that accessible green space bring are incalculable and proven by research. Yet it will not be possible to use the park in this way if the school is built there. Only 8% of the land area will remain (possibly) as freely accessible open space and it will

be impossible even to walk a circuit around the site as there will only be one path across. It will not be possible for dogs to have a run and the opportunities for games will be very limited. Not only that, the corner of the park allocated to be left as open space will be right next to the busy A1. There will be supposedly “free” access to the synthetic pitches but they will be bookable, so casual access is unlikely and not everyone plays football.

6.5 One of the arguments used for building on the park has been that it is allegedly seldom used. It is surprisingly well used, given its appalling state of maintenance. Requests to hold events such as running races on the park have been turned down by the Council. Strangely, during the objection period for the private bill, the Council has suddenly decided to make good the damage done by the archaeological dig and the tree felling works, which had left deep ruts and a dangerous and uneven surface on the park. They have recently re-seeded it as the enclosed photographs show **(CD 1)**. Is this so they can now claim that the park is usable but people still don't use it? After two years of it being in an appalling state, people are not going to return to the park overnight.

6.6 The enclosed photos and film **(CD1 and DVD 1)** show the park as it used to be when football was allowed and parties were held on the park and then the state of dereliction it has been left in since the planning permission was granted.

6.7 The Council commissioned a Park Usage Audit prior to lodging the planning application, presumably to try and show that the park was expendable and therefore justification would be made for developing it. **A full critique of this Audit can be found in section 2.8.4.5 of our letter of objection to the planning application (Document 15).**

6.8 One major inaccuracy was the claim that there were only football matches played on the park during the months of August and September. This is categorically untrue as football matches, when they were allowed by the Council, were played at weekends all year round, as well as training sessions being held on the park during the evenings,

6.9 Another problem is that there is no assessment of other similar parks to act as a control and to compare with the usage of Portobello Park. A survey taken during normal working hours may not give statistical certainty as to what is being portrayed in the consultants' report.

6.10 **The decision by full Council in December 2006 to identify Portobello Park as the preferred site for the school was conditional upon replacement open space being found in the area, to compensate for the loss of the Park.** Please see the minute of the decision **(Document 16)**. The Council then voted in March 2010 to renege on its promise to provide replacement open space. There was no consultation of local residents on this and the decision was taken before the planning pre-application consultation period began. This amounts to a breach of the trust of the community.

6.11 During the consultation by the Council for the private bill, the promise of a “new park” on the existing site of the current school was revived, we believe as an inducement to people who were uneasy about the loss of open space to support the principle of the bill. This is supposedly to compensate for the reduction in open space that would be created by building on Portobello Park. This move was surprising to us as, when the Council voted to renege on its undertaking to provide replacement open space in March 2010, the current school site was dismissed as unsuitable for a replacement park. The report of March 2010 to full Council **(Document 17)** said:

6.12 Paragraph 3.32 "Were the original intended approach to be followed there are a limited number of sites on the Children & Families account which could be provided as compensation, the most obvious being the site of the existing Portobello High School. **This site is not necessarily in the right location to mitigate the effects of the reduction in open space at Portobello Park.** It has recently been valued by City Development (Corporate Property) at £3.9m; this is based on a cleared site as the costs for the project to build a new Portobello High School already (sic) include an allowance for demolishing the existing school buildings. **If this site was converted to open space the potential capital receipt of £3.9m would be lost to the Council. This is not considered an efficient use of Council assets, particularly given the unprecedented financial difficulties and pressures on capital budgets."**

6.13 During the private bill consultation period, Council officers were reminded of these statements but they could not give any answer as to why the Council had changed its mind on this matter and why something that was considered inappropriate and undesirable less than three years previously had now become acceptable.

6.14 It is clear that this is not the right site for replacement open space as, whilst we would welcome in principle the restoration of green space that was lost when the existing PHS was built on playing fields, one area would be deprived of accessible green space and more would be added to an already sizeable park, Figgate Park, which is adjacent to the current school site. Moreover, a new park on the current school site would only be a third of the area of Portobello Park and it would not be common good land so could be open to development at any time of the Council's choosing.

6.15 As recently as April 2012, at a full Council meeting at which the Council moved to appropriate the park, a decision that was later ruled ultra vires by the decision of the Inner House of the Court of Session, the Green group put forward an addendum, **(Document 18)** proposing the creation of a new park on the current school site but the Council administration refused to back it, saying that part of the site was needed for a new St John's primary school, the rest was to be sold off and that compensatory improvements were being made to the paths around the park and golf course and also to Magdalene Glen. It is clear that the proposal to create a new park, which suddenly emerged in only six months later in October 2012 when the proposals for a private bill had been suggested, was a cynical ploy to garner support for the private bill. Interestingly, the proposals for the new park do not form part of the new bill proposals, so even if the bill is passed there is no duty on the Council to deliver on this undertaking. Therefore, given its vacillation on this matter we remain sceptical that even if the bill is passed the "new park" being promised on the existing school site would ever be provided by the Council.

7 City of Edinburgh Council's intentions to develop the whole area

7.1 The Council seems to be prepared to go to extraordinary lengths to build the school on this park, despite there being credible, suitable alternative sites and despite the Court of Session's ruling that the park cannot legally be built on.

7.2 One reason that may explain this determination to build on the park, seemingly at all costs, is that at the outset of this plan, the Council was going to build two schools and a major housing development on the park and golf course, as per the enclosed leaflets **(Documents 4a and 4b)**.

7.3 At the start of this process Andrew Holmes, the Director of City Development at the time, admitted at a public meeting in 2006 that the Council's intention was to develop the whole area of the Park and Golf course. The report that went to full Council in March 2010 (**Document 17**) says in appendix 3, p12, that: *"At this stage, there are no plans to change the golf course itself or for any development in the area."* The inclusion of the phrase "At this stage" in a report by Council officers indicates that the long term objective is to develop the whole of the park and golf course. So in other words, it will be developed in the future, in spite of politicians' promises to the contrary in the 2006 decision that there would be no housing built on the park or golf course. During the recent consultation meeting about the renewal of the planning permission for the school, it was stated again that there were no **current** plans to build on the rest of the area, not that it would never be built on. The Council could lay the threat of housing on the golf course to rest by giving a cast-iron guarantee that the golf course will remain open recreational ground in perpetuity but to date it has failed to do so.

7.4 It appears that building support for a much-needed school has been a "soft" way of beginning development of the whole area. We believe that if the school is built on the park then the whole area will be developed as per the Council's original plan and there will be the loss of three public common good assets: the park, the playing fields and the adjoining municipal golf course. The fact that the planning application boundary, as approved, encompasses the whole area of the park and golf course leads us to believe that the Council could indeed erect the school wherever it wishes within that boundary and we have not been given any credible explanations by the Council as to why the boundary goes right around the whole area and not just the park.

7.5 The golf course has been considered for closure on more than one occasion over the last seven years. If the school is granted planning permission on the park, many school children will follow the "desire line" straight across the golf course, instead of using the paths around the edges, and the course will deteriorate to the point where it becomes unplayable. It is a fair assumption to make that the course will then close and the plans for other development on the rest of the area will come to the fore again. St John's primary school is to be replaced and the original plan was to rebuild it on the park along with PHS. This plan could be resurrected if the golf course closes, leaving the City of Edinburgh an even larger cleared site where the schools are currently situated to sell off for redevelopment, as per its original plans.

8 "School versus park"

8.1 It has suited the City of Edinburgh Council and proponents of building the school on the park to portray this issue as "school versus park", by saying that the park is the only realistic option for the school implying that people have to choose between a school or a park. People were told during the consultation for the private bill to say "yes" if they wanted a new school, as a school on the park was the only option. People who object to the park being built on have been portrayed as being anti-school, yet we all support the need for a new school and there are many parents among our supporters.

8.2 Some of the replies we have received from our communications with MSPs suggest that the issue has been described to them as a choice between getting a new school or preserving a park. This is completely inaccurate and misleading, as there are credible, suitable alternative sites for the school on brownfield sites, as identified by the Council, that would provide equally good educational facilities as those proposed for the park site, so why lose a park unnecessarily when there is no need to? The money is assured for the

new school and there are alternatives so why should we have to choose a school or a park? Surely for the benefit of the vast majority of the people in the community the best option for all is to build the school on a brownfield site and retain the park. That way we get the best of both worlds.

8.3 There are many parents and children who support the campaign to save the park in spite of the fact that their children/they will be users of the new school, wherever it is built. Many children and families use the park or did so when it was in a usable condition therefore the needs of school children and park users are not mutually exclusive.

8.4 There has been an attempt by the Council to “sell” the school on the park, with the promise of free access to the outdoor pitches, use of other facilities such as the swimming pool, etc, but this is disingenuous, as these facilities would be provided on any new school site, not just the one at the park and it could be argued would provide more benefit to more people if they were situated on the town centre site at Baileyfield.

8.5 The promise of “free” access to the synthetic pitches by the community of Portobello at the new school on the park has been used as an inducement to people to support the construction of the school there. However, we believe that this would be unworkable as the community of Portobello is not clearly defined, it is not known how this will be budgeted for in terms of say staff or floodlighting cost, or how it will be managed when people from outside want to use the pitches. Other areas will no doubt complain that they are being treated unfairly by having to pay. If this measure is ever implemented we believe it will not endure for long before budgetary constraints are cited as a reason for putting a stop to the arrangement.

9 Amenity issues

9.1 There are many amenity issues that concern us about this plan, **fully outlined in our letter of objection to the planning application (Document 15)**, as follows:

9.2 Obviously, the loss of a public park with all the benefits it brings to the local community is the main amenity issue, as described above but there are many others.

9.3 *Visual impact*

This park has outstanding landscape value. It is a wide open space, with stunning views across to the firth of Forth and Fife and also to Arthur’s Seat, making it unusual in an urban environment. Many of the houses around the park enjoy these views and their private views, the reason why many of the residents chose to buy houses in this location, will be destroyed.

9.4 The Environmental Assessment for the planning application identifies that: “the townscape assessment indicates there will be **significant adverse impacts** upon the townscape of localised parts of the study area. There will also be significant adverse impacts on the visual amenity afforded from many locations from within the immediate area of development”. This will remain the case for 15 years. The study of views in the vicinity of the Park does not even assess the impact on the protected view of Arthur’s Seat from Hope Lane. The erection of a school, parking spaces for 110 cars, astroturf pitches, fencing and lighting columns would irrevocably change the nature and character of the area.

9.5 The surrounding of the site with green plastic coated welded mesh fence of varying heights up to five metres will detract from visual amenity. The protected view from Hope Lane to Arthur's Seat would be destroyed by it and the building beyond it. Other fences would be of varying heights, for example, 1.2m, 2.4m, 3m and 5m, plus steel gates.

9.6 Floodlighting columns of 13.5 m in height are shown on the drawings for the planning application. These coupled with fencing of five metres in height would have a considerable negative visual impact.

9.7 *Light pollution:* it is proposed to have 13.5 metre high lighting columns around the perimeter of the site, introducing a high level of lighting to an area which is largely in darkness outside daylight hours. Added to this is the floodlighting for matches played on the football pitches during the hours of darkness (16 x 1000 watt 10 metre high lighting poles). There has been no assessment of the lux levels for the floodlighting. This will result in considerable light pollution and light spillage into neighbouring properties, particularly houses at Hope Lane. The spill of light can cause significant negative impact on amenity over long distances in winter.

9.8 *Traffic:* The goods vehicle entrance on Park Avenue will introduce HGVs, LGVs and school coaches onto a quiet, narrow residential street. There will be an increase in traffic noise in Hope Lane, Stanley Street and Park Avenue, as well as an increase in the number of vehicles and attendant air pollution. **We have many traffic and road safety concerns which are detailed in section 2.6 of our letter of objection to the planning application.**

9.10 *Noise pollution:* the siting of the school here will introduce noise to quiet residential streets, from traffic, school activities, especially at starting and finishing times, from school plant, as yet unquantified as the design of the plant has not yet taken place, and the sport pitches, which will cause a significant noise nuisance to neighbours, sometimes late into the evening, particularly the elderly residents in the sheltered housing scheme (Milton Court) at Hope Lane. The noise report demonstrates that at times the noise levels from the pitches will exceed safe levels recommended by the World Health Organisation. Also noise from the pitches will deter bats from visiting the site.

9.11 *Height of building:* whilst the height of the school will be the same as the ridge line of the Duddingston Crescent properties, as the land slopes down it will be half as high again as the properties on Park Avenue, which will be much closer to the building. This will dwarf the houses in the top section of Park Avenue and will also cause privacy issues, especially the overlooking from the large window opposite No 9 Park Avenue. No account has been taken of any plant which might be situated on the roof of the building.

9.12 *Operational disturbances:* There will also be many operational disturbances for residents, for example, day to day deliveries, refuse collection, additional traffic in normally quiet streets, hundreds of additional people travelling through the streets, on foot and by bike, and littering. This is not to mention the disruption, noise, dust, additional traffic and general inconvenience for residents during the construction period.

10 Loss of wildlife and biodiversity

10.1 We have a number of concerns about the loss of biodiversity and wildlife on the park, should this build go ahead.

10.2 The Council's planning application clearly shows that around 50% of the Millennium planting would be lost and at least 18 mature trees would be felled. This would lead to loss of habitats for the birds and mammals on the park. There is a lot of wildlife observed on the park, including bats, foxes, sparrow hawks and woodpeckers.

10.3 The Council's planning application acknowledges that bats commute and forage on the park and recent sightings suggest they have set up a roost in the disused (since the Council evicted the football teams) changing rooms. The application states that if bat roosts are found they will be destroyed following the granting of a licence by the Scottish government.

10.4 There is conflicting advice in the planning application, for example Scottish Natural Heritage advises low levels of lighting so as not to disturb or deter the bats from using the park, whilst the Secure By Design (SBD) report by the police advises what would seem to be excessively high levels of lighting for security purposes. It seems pretty certain that the management of the school will want to put security first, so in all likelihood the SBD proposals will be adopted and the bats will be deterred or destroyed, leading to diminished wildlife in the area.

11 Summary

11.1 The premise on which the City of Edinburgh Council is advancing this Bill is flawed: the legal implications are serious, far reaching and could have damaging unintended consequences: the consultation exercise does not meet the standard laid down in the Guidelines for Private Bills as laid down by the Scottish Parliament, was poorly designed and executed and cannot be relied upon as an accurate indication of the views of Edinburgh residents with reference to the objectives of this Bill. We therefore ask the Parliament to reject this Bill so that the City of Edinburgh Council can proceed with providing on new school on a suitable site.

11.2 Will you please provide the committee appointed to oversee the progress of this Bill with a full copy of our letter of objection and all associated documents.

24 June 2013

The documents referred to within the objection will be copied to the City of Edinburgh Council (Portobello Park) Bill Committee members and to the promoter.

Copies of all the documents cited are held by the Clerk and can be made available on request subject to meeting the Parliament's policy on the treatment of written submissions.

LIST OF DOCUMENTS HELD

1. Court of Session judgement
2. Legal opinion of Roy Martin QC
3. Timeline
4. (a) CEC Members' Briefing 71 and (b) A Better High School for Portobello
5. PPAG response to the educational consultation of October 2006
6. (a) Consultation leaflet and (b) form
7. Extract from the Council's report of 14 March 2013 showing consultation boundary
8. FOI request about the methodology for analysing the consultation responses

9. E-mail exchange with [REDACTED] of the Edinburgh Evening News
10. PwC report
11. E-mail correspondence on announcement (2006)
12. Distribution of Portobello High School pupils
13. Council information sheet about the Baileyfield site
14. Comparison of Portobello High School options with other secondary schools to be replaced in Edinburgh
15. PPAG letter of objection to planning application for the school on Portobello Park (November 2010)
16. Minute of meeting of City of Edinburgh Council on 21 December 2006
17. City of Edinburgh Council report 11 March 2010
18. 26 April 2012 – Green group addendum