

## CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

### OBJECTION 57 – DR MAIRIANNA CLYDE

I write to lodge a formal objection to this bill. I object to the whole bill.

*How will this affect me?*

This will affect me in three ways.

- (i) Firstly as a citizen of Scotland and Edinburgh because what the proposers wish to accomplish is nothing less than a trampling on general citizen rights to public parks which nineteenth century social reformers campaigned hard to obtain. Prior to this Scottish kings since the time of David I made available to the commons certain 'common good' land in royal burghs to which they would have unfettered access.

I object very strongly to these rights being eroded. As a citizen of Scotland I have campaigned hard for over 40 years for a Scottish Parliament to be set up and the basis of this activism was that I believed that a Scottish Parliament would defend citizens' rights and the integrity of the Law of Scotland better than if we had no home rule. Never did I imagine that a new Scottish Parliament might through long inexperience or ignorance of its own legal history, and prompted by the machinations of local politicians looking for a short-term fix to a pickle they have got themselves into, become an instrument of oppression against the common rights of the people of Scotland and act to corrupt the Law of Scotland. So this for me is a very, very, important principle, and no minor matter.

I urge the committee to give this very close scrutiny. An important legal and constitutional principle is at stake. If this goes ahead, a threshold in the erosion of common rights will have been crossed. **This bill will set a precedent. My amenity and that of others across Scotland will be eroded if public parks can be encroached upon by Councils, appropriated, and fenced off. It will mean less green space for open air, free, public recreation for walks, sports, and general enjoyment, less space in crowded cities for children to run around in, less clean air, as parks act as green lung for a city.**

Public parks are not just any bit of land, but land which was gifted in trust by act of parliament for citizens for the purposes of healthy outdoor recreation. As such they are governed by the particular statute setting them up and also by ancient common good law going back to David I (1124-53). *They are the most protected bits of green space that we have.* If public parks can be appropriated then anything goes. They are an absolute cornerstone of citizen rights to green space and amenity. As we become more urbanised this becomes more important.

When the case went to the Court of Session in September 2012 Lady Paton examined the law carefully and upheld the objectors' petition that the City of

Edinburgh Council had no right to appropriate a large section (about 1/3) of this park for building a school on. In her judgement Lady Paton noted that if the common good land of public parks could be appropriated in this way then *no public park anywhere in Scotland* would be safe from the encroachment of developers acting for local councils.

A school, she said, would represent 'appropriation' as it would be for a different use than public recreation, that of education. Although a school is 'public' in the wider sense, in practice the public does not have unfettered access to a school. A school is for a particular section of 'the public', one that is highly protected and limited in terms of public access, especially since Dunblane. A school also requires ancillary building for classrooms, assembly, dining, parking etc., but the initial deed (1896) stipulated that no buildings were to be erected except for the park-keeper's hut or house. The Council is proposing appropriating at least 4.3 ha. for its school.

- (ii) As a resident and member of Merchiston Community Council. Our community council area is one of the most densely populated in Edinburgh, with densities of up to 116 persons per hectare (the city average is 8 per hectare – *Scottish Neighbourhood Statistics* website). We have only one public park for over 20,000 people, Harrison Park, along the Union Canal. This popular park is much used by people in the surrounding tenements yet pressure to appropriate it is constant. It was acquired in stages between 1886 and 1930 by the City of Edinburgh Council, and we fear that if this bill goes ahead, what is to stop the same legal pathway being used by the City for anything it wishes to do in Harrison Park? There have been Council suggestions for allotments on Harrison Park (a private use) also for a 'community orchard' on the former bowling green (Steiner School) more moorings along the canal (Canal Strategy) backing on to people's houses and requiring facilities, also a cafe. Merchiston Boys Club wanted to buy a section of the park to build a new clubhouse on, and the Forth Canoe Club who use the canal, are also looking for building land nearby. All these uses are worthy, but it is a small park, and as population densities continue to rise, and new housing is mainly flatted and has smaller rooms and tiny or non-existent gardens, we feel strongly that this green space needs protecting. But that would be threatened if this bill went ahead. In particular, we worry that a part of it might be appropriated to be fenced off for all weather school playing fields.

**If this bill goes ahead, my amenity and that of 20,000 others in the neighbourhood of Harrison Park could be severely threatened by loss of valuable green space in a strikingly similar way to Portobello, as already there is talk of using parts of Harrison Park for school fields sports for the proposed new Boroughmuir High School. There would be less land for children and people to run around on, less space for outdoor recreation, less grass to be a green lung cleansing the air.**

The new BHS will be built on the former Fountainbridge Brewery site a short distance away along the canal towpath. Shared use of an unfenced pitch on a public park is one thing (I would have no objection to that), but fencing off a large area to provide an all weather football pitch such as is proposed at

Portobello Park (where TWO 3G pitches are proposed) would constitute appropriation and mean that this fenced off land would be permanently lost to wider public use. At present there are two public pitches at Harrison Park used by Merchiston Boys Club but these are unfenced so are accessible by the public at any time when there is not actually a match going on (which is most of the time).

Since dog walkers also use the park, the boys are necessitated to walk the pitch before a match to remove any dog mess. Most dog owners who exercise their animals in the park are responsible and pick up after their pets. I have taken part recently in a Day of Action with Environmental Wardens to ascertain this fact. The irresponsible ones are those who appear furtively at night when wardens are not around and let their dogs off the leash for five minutes. We feel that because the small number of irresponsible dog walkers causing dog mess cannot be 100% eradicated, shared use in a densely populated area would not be accepted by a school on the grounds of health, **so that the effect of a school requesting these pitches for compulsory school field sports would result in a section being permanently fenced off which would represent a considerable loss of amenity for others using this small but much loved park. Thus the precedent that would be set by Portobello Park being acquired for 3G pitches is a real and present threat to our amenity too.**

As regards the proposed new Boroughmuir High School (capacity: 1200) the Council has acquired a lot of brownfield land from the former owners Scottish Newcastle Brewery, ample enough for a nice new school, yet it has decided to confine it onto a tiny 0.9 ha. site even though Scottish Government rules would advise that a minimum area of 2.3 ha. would be needed for a school of this size. The Council has sought special permission from the Scottish Government to relax this rule. The new Boroughmuir High School will be five storeys high (including a basement storey) and have no pitches. It will have an indoor sports hall in the basement and a small outdoor sports area on the roof (about 22mx30m). This school is very much a work in progress. Final drawings will not be available until after the summer and many key arrangements are still to be worked out. The current proposal is that field sports will be undertaken at Meggetland some distance away, requiring pupils to be bussed out, an arrangement deemed wholly unacceptable at Portobello, whereas Harrison Park is a pleasant ten minute walk away along the canal towpath. How can we rule out that this will not be changed and that Harrison Park will never in the future be appropriated for 3G pitches in the same manner as Portobello Park? The only thing to prevent this is the law on common good and public parks. But if the law is negotiable, what protection is it? At Portobello, the land the Council now wants to appropriate consists of public football pitches which the school has rejected for shared use, claiming that the use by dog-walkers makes it unacceptable for use by the school.

At the new Boroughmuir High School will also be no on-site parking provided for staff. A small public park (0.6 ha.) that was promised to replace the one that the Council sold off to a developer on another part of the site will form

part of the wider area but it too looks likely to be informally appropriated by the school.

How can the same Council that is seeking this private bill to acquire a very large part of a public park (4.3 ha.) for a school of 1400 justify – indeed, celebrate - putting a school of 1200 pupils on a 0.9 ha. site in another part of the city and claim that this is perfectly OK? This is total hypocrisy and I urge the committee to use their common sense to investigate the Council's case closely. It doesn't stack up!

All in all, public green space is under threat in all parts of Edinburgh. The provisions about maintaining public green space laid out in the Local Development Plan are not being adhered to. If this private bill goes ahead then other less protected public green space looks sure to be lost to development, representing a considerable loss of amenity to local residents.

- (iii) In terms of civics. I am very concerned at the way the City of Edinburgh Council has handled this whole sad prolonged affair. It has had ample opportunity to build a school for 1400 pupils at Portobello in the last ten years. Why it persists in pushing the park option when smaller brownfield sites that have become available would do, such as the Baileyfield site, is beyond my ken. But how can it argue that a school for 1200 pupils is perfectly feasible in Merchiston on a 0.9 ha. brownfield site (when it owns land adjacent and could make this available if it wanted) when a smaller site than 4.3 ha. is 'totally out of the question' at Portobello? It has bitterly divided a community in the process and I deplore that. It has stood by and allowed two mutually antagonistic groups, PFANS, and PPAG, to slag it out in a public arena when a more responsible civic leadership would try to reach a compromise and heal rifts in the community. The things that are being said on social media about this issue shame Scotland. The Council has encouraged this bun fight by constantly taking the side of PFANS with whom it liaises closely, because they are advocating the Council's agenda. I find this absolutely deplorable.

This is the culture of the bully, and I did not fight long and hard for a Scottish Parliament for it to reward bullies.

Dear members of the private bill committee, please consider all sides of this closely and fairly. There is more going on than meets the eye, and wider ramifications for the whole of Scotland.

24 June 2013