

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

OBJECTION 60 – PAMELA BARNES, CONVENER OF THE FRIENDS OF INVERLEITH PARK

I am writing as Convener of the Friends of Inverleith Park to object to the above Private Member's Bill. From 2010 - 2012, the Friends of Inverleith Park fought off a bid from the CEC to sell part of the original parkland for '*luxury private housing*', the CEC having, without consultation, changed the status of this land from open space to urban space. It is clear to us that local authorities all over the UK are using, or selling off, open space (including parkland) for development as they come under financial pressures as a result of the banking crisis. If this Bill goes forward it will create a precedent and open the way for other Common Good land to be developed in similar ways. It will put Inverleith Park under increased risk of development, along with other open spaces in Scotland.

The Friends of Inverleith Park are dedicated to protecting our own park along with other parks and open spaces, and we object to the Bill on the following grounds:

- i. Inverleith Park is Common Good Land. If the Bill changes Common Good status to enable the Council to build a school on one park in the city then it is a precedent which may be cited to allow the council to change the Common Good status on Inverleith Park in the future and to allow them to develop part of it for a school or any other purpose they deem worthy such as a home for the elderly etc. This would deprive the Friends of Inverleith Park and local people of the use of that part of the park as a result of the change in Common Good status. This would constitute a loss of amenity to us and to all local residents. This argument is also true for other Common Good areas that might be changed in a similar way anywhere in Scotland as there would be a loss of use of these open spaces to members of the Friends and to other citizens should they wish to visit any such areas.
- ii. This Bill will affect the process and treatment of Common Good land like Inverleith Park and so create risk of community discord to us in similar circumstances.
- iii. To change the law after a clear judgement from the Courts on a particular issue affects groups like ourselves across the city in terms of the security of the Common Good status of our parks. It affects our ability to have access to fair treatment, trust in the system and access to fair and proper process. It is, in effect, creating a new planning process which can be used where a development is found to be unlawful.
- iv. In this case, a Private Bill is being used to change the law *ad hoc*: in effect to support one side over the other in a community dispute. This is inappropriate and a serious misuse of legislative powers. The law should provide an impartial arbiter in community disputes. We greatly sympathize with the Portobello school parents and children who clearly need a new school. Another solution must be found. There are, however, other options than the current Portobello Park option. It saddens and worries us to see the fight between members of the same community some of whom want the new school in a specific park and others of whom want to use the park for children to play, for its views across Edinburgh or for relaxing, recreation and

fitness. If our own community became divided in this way it would cause great harm to us. This is surely a problem that can be solved without undermining the standing of the courts and existing laws in this way which is detrimental to the whole of society.

- v. Parks are a free resource, available to all regardless of wealth or where someone is from. In the case of Portobello Park, it is the only local green space available to many relatively low-income households living nearby who will lose this amenity as will all other citizens of Edinburgh too. The provision of parks affects the whole city and its wildlife, not just local people. The provision of good schools is essential to a community and its future and should be included in the Council's planning and budgeting processes but these processes should be governed by the law.
- vi. It is a matter of serious concern for our communities that an attempt is being made to change the law specifically to allow one portion of a community to benefit through loss to another portion of a community, despite that change already having been found to be unlawful. This change of law is likely to pit one part of a community against another in other similar cases that may be put forward and is likely to create community discord across Scotland. A bill that is likely to create community discord should be subject to a very high level of scrutiny particularly so when, as here, the bill is not just an individual planning decision, but the creation of a new process that other councils could follow.
- vii. The Court of Session has already ruled that Portobello Park is *inalienable common good land*. The City of Edinburgh Council had opportunity to request leave to appeal to the Supreme Court and even assessed the possibility of seeking declarator or invoking the *nobile officium*. The CEC decided against pursuing these avenues and as such accepted the decision of the Court of Session, presumably because they held no reasonable prospect of success. The principle of *res judicata* is a cornerstone of any legal system yet the CEC seek to overrule the rule of the courts by changing the law to suit their own needs. The legislative power of the Scottish Parliament should not be used to circumvent the rule of judiciary, *especially on a case-by-case basis*, nor should our Parliament attempt to interfere in the exclusive jurisdiction of the courts. Indeed, if the argument is framed as a question of constitutional law – for example whether the Scottish Parliament has authority to overturn specific court decisions in a retrospective manner – then there is significant ambiguity as to whether the Scottish Parliament has the power to enact such legislation because the Constitution is a reserved matter. For the Parliament to undermine the Courts in this way would be to damage the reputation of Parliament and this would undermine the political system that the public relies on.
- viii. The original feu disposition from Sir James Miller stated explicitly that the land should be “... *used exclusively as a public park and recreation ground for behoof of the community*”. It is incredibly disappointing that the CEC has gone to such great lengths to sequester use of the land for a purpose that runs contrary to the desires of the original donor. The Scottish Parliament has a duty to uphold a sense of integrity, honour the wishes expressed in the original disposition, and to prevent a local authority riding roughshod over law and judicial process.
- ix. The Bill has the potential to invite subsequent similar applications in the

future and could seriously undermine the already precarious *common good* protection. Green space is already under serious threat throughout Scotland, if the Parliament is willing to entertain individual applications, then it not only undermines the reputation of the Parliament and our courts but invites numerous further Bills any time a local authority or developer dislikes a court judgement.

- x. The consultation data collected by the CEC and presented to demonstrate support for the Bill is open to criticism. The consultation reports approximately 70% in favour of the proposals. Given the bulk of the consultation was performed in the local area – some 62% of valid responses were from the local area, with a corresponding higher “in favour” result – then the question of balancing local interests against national interests must be considered. The desire amongst local people for a new school is understandable and we sympathise with them but it must not take precedent over the authority of our court system nor should it be the sole consideration. Outside the local area, the majority drops to around 58%, which is far less conclusive. If one works only on the figure outside of the local area, it is not a clear majority: given the likely standard error in the method of canvassing used, it is arguably a 50-50 result and certainly not sufficient to enact legislation that overrules the Inner House decision. The consultation also excluded submissions from outside of Edinburgh despite the issue having potential national implications.
- xi. The report published by the CEC on the 14th March 2013 states there are no human rights issues, however that is incorrect: the CEC, by seeking a private members' bill, is contravening Article 6 because the issue has already been decided upon in the Court of Session.
- xii. To enact this Bill would be depriving Edinburgh of yet another green space. There are other options for a new or replacement school, they are however proving less popular but new schools elsewhere in Edinburgh, e.g. Boroughmuir, are being built on much smaller spaces than those rejected by some Portobello parents and by CEC politicians. Law should not be re-written for short term considerations: it is perfectly possible for the CEC to replace Portobello High School and provide suitable educational facilities to meet the needs of its pupils without changing the law on Common Good. Portobello Park, on the other hand, cannot be recovered once built upon.

The importance of open space in cities and of parks in particular has been shown over and over: they contribute hugely to the well-being and health of all. There is continual erosion and this green space when gone is gone forever. We urge the Scottish Parliament to resist this Bill in the strongest of terms

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