

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

OBJECTION 65 – BEVERLEY AND DEBORAH KLEIN

This objection was signed by the objectors and reproduced in typed (electronic) form by the clerking team

We are objecting to the Portobello Park Private Bill, which is being promoted by the City of Edinburgh Council. We object to the whole of the bill.

To provide some context to our reasons for taking this step, we hope the following information is helpful to you in acknowledging 'where we are coming from'. We are sisters; one is the parent and the other the Aunt of [REDACTED] who will attend Portobello High School; the latter also has three sons, [REDACTED] of school age. One of us is also a former pupil of the school as were our [REDACTED] and [REDACTED] Aunt. As a parent in particular, I have decided to put my head above this particular parapet, with considerable reservations. This has prevented other parents, who oppose building on the Park, from 'going public'. No doubt you are aware of the sad level to which this debate has sunk and the most unfortunate schism it has created within hitherto enviable community relations. Our desire to see the completion of a new school is as great as anyone else's. However, given the basis upon which our decision-making process operates, particularly where it applies to our children, and status that 'active citizenship' rightly has within the Curriculum for Excellence, we feel sure that you would not wish to circumvent accepted democratic standards and processes. If we cannot demonstrate to the next generation that we can act in a civilised manner by accepting that which we find distasteful as well as what we support, it may be very difficult to expect the same from them. A lengthy and protracted debate has taken place over many years; it is time to accept the final legal ruling in this case and proceed to 'plan B' and build our new school elsewhere in the community.

Our reasons for opposing this Bill are as follows:

1.a The Council's conduct over many years has unduly distorted the entire debate about the future of our new school and its motives appear highly questionable. In particular, Mr. Billy McIntyre, the Bill's sponsor, has acted with apparent bad faith. He holds a senior position within the Council and has certain obligations which we believe he has failed to meet. For example, at a meeting of Northfield/Willowbrae Community Council in December 2012, he publicly stated that there had been no intention on the Council's part to use the Park and public golf course. This is not true; initially Council plans included a new build for St John's Primary school and social housing. Mr. McIntyre later conceded this point under explanation that he was not a Council employee at that time! At a public meeting in Meadowbank Stadium in January 2013, in response to a question about the number of out of catchment children attending PHS, he said that the figure was around 160. He later e-mailed to confirm the actual figure of 321 pupils. This represents around 24% of the current 1,309 roll and, in our view seriously impacts on the Council's argument that the new school cannot be built on the existing site due to the need for a 1400 capacity. Not only does this have repercussions for social inclusion which we understand the

Scottish Parliament is totally committed to, it undermines our right to expect total honesty and good faith from public authorities and officers.

b It is also worth mentioning another senior Council officer's role in this matter. During the public consultation period, Mr. David Wright authorized the text of Parent Council notices, sent out in pupil bag-drops in at least two local primary schools, approx.. 600 pupils. Said notices referred to those **“who oppose the school”** and invited parents to attend a public meeting at Meadowbank. We consider this to be a serious breach of trust as it misrepresented the position of those of us who have merely opposed building on our Park, not the need for a new school.

c A local councillor, Stefan Tymkewycz, following a public meeting at Meadowbank stadium, Tweeted that everyone who had attended the meeting, where a huge range of views were aired, were in favour of building on the Park. This [REDACTED], by a public figure, is critical and indicative of the level the debate has reached for some. It is very worrying.

d The manner in which the Council 'managed' the consultation process was, at best flawed. Many problems arise out of the way this was handled. Among these, and despite the Park belonging to all the people of Edinburgh, the failure to distribute publicity material in all city libraries, rather than just Portobello and Piershill, is a worrying demonstration of the Council's attitude to proper, city-wide engagement. Following the concerns of the electoral commission on the wording of the independence referendum question, we would have hoped that some of the lessons arising from that would have been learned. However, the wording of the questions appeared specifically designed to elicit a pre-determined response, i.e. in favour of the Council's long-held agenda. Despite this and other concerns being raised with Mr. McIntyre, highly questionable practices were adopted and even the votes of children appear to have been 'counted'. This has very possibly resulted in parents or adults who are, for whatever reason, not on the electoral register, having their views discounted but some children, as young as five years old, being included in the figures. This, again, has serious implications for our city, democracy and local accountability and, in our view, discredits the entire process.

2. Three senior judges of the Court of Session unanimously decided last year that our Park cannot be built on as it is inalienable common good land. The law has spoken and should be abided by. The Park was given to citizens of Edinburgh in perpetuity and with the express purpose of recreational use; this original purpose should be retained and respected. Whilst we can fully acknowledge the occasional need for certain bequests to be set aside, that would be in exceptional and limited circumstances, for example, where the intended use was no longer of any social merit (no-one would expect a bequest to fund a workhouse or home for 'fallen women' to be carried through in the 21st century). We respectfully submit that that does not apply here. The Council appears to be pursuing a private bill to get around the court's ruling. Furthermore, we consider the Council's decision to bypass the Supreme Court route is an implicit acknowledgement that its aims in this regard are unlawful. Indeed, two of its own appointed Counsel did not agree on the chances of success in London. The considered and thoughtfully-reasoned decision of three of our highest-placed judges should not be effectively overturned lightly. That said, we do not consider that the supremacy of Holyrood's legislative function should be

replaced by the courts or their two roles blurred. However, we believe that the Appeal Court's decision was based in law; was well-reasoned and should remain. Otherwise, what certainty can we have?

3. The council has identified other suitable sites for the rebuild of the school, i.e. the current site and Baileyfield at Portobello High Street; both brownfield land. One of these options should be progressed instead of trying to build on public parkland that belongs to us all.

4.a This Bill, if successful, would set an example for other councils to consider following and place common good land at risk of inappropriate development. Given what we understand to be Holyrood's implied understanding that green land should not be built on, this could set a precedent that would put common good land and green space across Scotland under threat. Indeed, given that Edinburgh City Council itself concedes that the new Portobello High School's projected lifespan is only forty years, what then? What site will be earmarked in 2056? We may ask, what green space or common land will be left? Our interests, and more importantly, our children's, will be affected if a precedent is set in this case which could be used again by Edinburgh or other councils to change the use of common good land.

b Our access to this particular piece of green space will be removed forever. Our grandparents lived in the Christian's council scheme when we were growing up and until our Grandmother's death a few years ago. We lived in a tenement and could not play outdoors safely at home. We visited our grandparents' home frequently and were able to play in the Park without adult supervision which was a unique experience for us. Whilst we can acknowledge the argument that the Park is used by dogwalkers, it was ever thus. However, in our youth, and until **very** recently when the Council failed to restore the Park to a safe state following archaeological investigations (as well as its woeful failure to ensure that basic standards relating to grass-length and litter collection be maintained), our Park was also a hive of organised and informal sporting activity (both at weekends **and** in the evenings), bee-hunting and general, natural childhood exploration, to mention a few. The Park's position as a large area without a playpark gives it a status unlike others in the immediate vicinity. It is a haven of peace and tranquillity, treasured by many. A key point we wish to emphasise is the Park's location next to two Council schemes. Many children, who may have little or no regular access to some of the city's other open spaces, live nearby and will lose their right, which we had and continue to cherish, to play in that Park. **It is their Park too.** To lose it could send them a message that their local facilities are not worth retaining in their name and for their futures. In an age when childhood obesity and chronic health concerns abound, we believe all of our children have a fundamental human right to access open spaces in which they can play. The proven and significant health benefits of the activities they could lose out on will be put at risk if our Park, and potentially other green space, which we and our children both need and use regularly, are put under threat by the Council's Bill. For us, this would lead to a reduction in our amenity and impact negatively on the health of all of us, both physical and mental. Personally, it would affect our ability to share vital childhood memories with our children. Recent Park visits with our family have been filled with joy and pleasure in the outdoors in a marvellous, natural environment, filled with memories that they may never be allowed to experience there. It has also afforded us the opportunity to foster a

community spirit and lead by example in demonstrating our active participation locally. I also believe that my interests as an Edinburgh resident and co-owner of the Park, which forms part of Edinburgh's common good, will be seriously impacted upon.

Please take our objections seriously and reject this Bill.

23 June 2013