

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

PPAG RESPONSE TO THE PROMOTER'S WRITTEN RESPONSE TO CONVENER'S LETTER DATED 11 OCTOBER 2013

We are writing to clarify some points made in the above letter from the City of Edinburgh Council to the committee.

1. Height of the proposed school building

The Council's letter claims that: "The Section Key also shows the north-south cross section through Milton Road, illustrating that the school building would be lower than all the houses and the existing tree line on Milton Road." The council has previously given the height of the school as being at the ridge line of the houses in Milton Road, as shown on the attached drawing (top image, from planning application), and this does not take into account any installation of plant on the roof of the building. This is why we have repeatedly challenged the drawing on the consultation leaflet looking along Milton Road as a misrepresentation of the relative height of the buildings.

The drawing included with the Council's letter appears to be a new one, the school building appears to be set lower down but it is difficult to ascertain this as no datum levels are provided. On the new drawing supplied by the Council the section line DD is taken at the most advantageous point for the Council's attempt to minimise the height of the school in relation to surrounding homes, as in reality the bulk of the school would be higher than shown. This can be clearly seen from our attached drawing from the planning application.

2. Access to football pitches

We would make the following points:

The Council states that: "notwithstanding the need for the school to have exclusive use of the pitches at certain times, the pitches would still enable much greater use than is made of the existing pitches on the park. The new pitches could be used all year round and, because the land would be levelled out, would not suffer from the sloping terrain that affects the existing pitches."

No use is currently made of the existing pitches since the Council evicted the football teams and ploughed up the pitches, so of course installing new pitches would increase usage from the current zero position. They say that the new pitches could be used all year round, but so could the existing pitches had they been properly constructed and maintained (the Ironside Farrar report, referred to in our letter of 17 October made it clear that they were poorly constructed and maintained). In addition the goal posts were removed at the end of every football season, which prevented usage during the summer holidays.

What the Council is offering is two pitches but if the park was left intact there is room for two full-sized pitches and two pop-up pitches, (particularly attractive for use by local primary schools and U10 teams) enabling four matches to be played concurrently, as has been the case in the past. If the park's pitches were also levelled off and properly constructed this would allow far greater usage than what is proposed if the school is built on the park.

The definition of the "local area" given by the Council is by and large the catchment area for the school, not just Portobello. The system of "free" access described by the Council is unworkable, for example, there is nothing to stop a resident of the area from booking the pitches free of charge for a friend or relative who lives outside the area. Moreover, with 25% of pupils coming from outside of the catchment area, will these children be denied use of the school's facilities outside of school hours, despite the fact that they attend the school? What if a pitch is booked, the lessees are late arriving and the pitch is casually accessed via the "catflap" by others? Who will be on site to manage such situations?

Normally, if school facilities are used outside school hours there are janitorial costs to be factored in, along with floodlighting costs, and it is usually these costs that make the use of school facilities unaffordable. The Council should explain whether janitors will be needed for out of hours access, how much this will cost and how it is to be paid for.

If this is viable why is it not available for ALL school pitches across Edinburgh? It is highly likely that there would be complaints of unequal treatment from other school communities about the apparently special treatment afforded to residents of the Portobello High School catchment area. The Council has been talking about this supposedly "free" access for at least a year now and yet still cannot give any clear detail on how it would work.

There is no indication in the Council's response about how long such an arrangement would be likely to endure and a future administration are not likely to retain arrangements put in place previously, especially if budgets are tight.

As most school premises are locked up after a certain time it is not clear how security on the site will work or how the car park would be accessed to allow use of the pitches. Interestingly, on a visit to Castlebrae High School on Saturday 13 November 2010, which is supposed to operate a similar system of access via "catflaps", we found padlocked gates preventing access. Please see the photograph on page 33 of our letter of objection to the planning application for the school, which was submitted in June as document 15 with our objection to the private bill.

3 Alternative approaches

The Council claims that the Private Bill process requires significant consultation and notification of interested parties and yet, by its own admission, its notification process was problematic. It also says it is considerably easier and cheaper to object to and participate in, yet the private bill process is unknown to most people and has not been easy or clear to follow, even for people who are used to participating in the planning process. A £20 charge for objecting is hardly cheap to many people and actually put numerous people off objecting.

The Council implies that it chose this process for these reasons rather than a court-based process but the reality is that there was no prospect of success for the other legal remedies, otherwise the Council would have had no hesitation in following them. We understand that the project sponsor was keen on an appeal to the Supreme Court but was strongly advised against it on legal grounds.

The claim is made that in estimating the likely timescales for the Private Bill process it took into account the high degree of existing awareness of this matter among those most directly affected by it. The high degree of awareness relates to the issue of the plan to build to the school on the park, not of the private bill process itself. As we have previously

mentioned, many people we spoke to during the consultation process were unaware of the private bill and thought that because of the Court of Session ruling that the park was safe.

In the paragraph commencing: "we assume that the Committee's reference to timescales for public bills ... " the Council seems to be asking to be made a special case, yet the report to the City of Edinburgh Council meeting on 14 March 2013 at which the decision to promote the bill was taken states on page 54, appendix 3, paragraph 2.1.6 that: "*The decision of the Inner House of the Court of Session leaves this Council, and other local authorities in Scotland, with a legal anomaly*". This indicates that there is a belief by the Council that legislation change is needed.

The Council claims that Professor Robert Rennie did not identify any other alternative courses of action that were reasonably open to the Council but in his evidence he says in paragraph 6.1 (f) that: "I am myself of the view that given the decision of the Inner House the current legislation will require to be examined and changed". This is a course of action that is open to the Council, as it acknowledges, although a wider-ranging and longer term one. In any case, if legislation change is needed then a piecemeal approach should not be undertaken via a private bill.

Andrew Ferguson also makes the following points in his evidence: 8.5 "*My only comment on the alternative approaches would concern the other legislative routes and, in particular, the proposal that appropriate legislative measures could be included in the Scottish Ministers' draft Community Empowerment and Renewal Bill.*"

And "*Although the issue of common good has been raised as part of the consultation paper, it may well be that the Scottish Ministers consider that reform of common good law itself is a matter for separate, if related, legislation.*"

The Council states that "it is important to stress that the Council is not pursuing the Private Bill as a means to reform the general law of Common Good nor to establish any sort of precedent that could be used in respect of any other inalienable Common Good land." At no time has it been suggested that the Council intends to set a precedent but there is strong evidence that a precedent will be set for other inalienable common good land, regardless of the Council's intentions.

This has been made clear by the legal opinion of Roy Martin QC. Also, Sue Bruce in her letter of 9 October 2012 (enclosed with our letter of 24 October), says: "*For these reasons we would wish to explore whether there is Ministerial support for legislative change that will enable our project, **and others of similar value**, to be taken forward.*" She goes on to say in the last paragraph on the same page that: "*Whilst this request is being made on behalf of the City of Edinburgh Council, **we are sure that this matter will be of interest to other local authorities***". (Our highlighting in bold). This makes it clear that the Portobello Park decision would not be one made in isolation; it would be one which would have wider repercussions throughout Scotland.

Andrew Ferguson also recognises that this is not a one-off issue in paragraph 9.1 of his evidence "... However, I do think that the issue confronted by the City of Edinburgh Council in Portobello is one which has even more general application."

Also in paragraph 9.4: "I do therefore think that the circumstances which led up to the bill, and the issue confronted by the City of Edinburgh Council, is likely to be a relatively frequent issue in some parts of Scotland over the coming decades."

He also made it clear in his evidence on 11 September that he could not say with any certainty that if the private bill was passed that it would not be used as a test case by other local authorities.

The paragraph commencing: "Relying on a Public Bill being taken forward..." goes on to say that it would result in several years of further delay and Portobello High School needs to be replaced sooner than that would be likely to allow. The Council has been saying the school needs urgent replacement since 2006 yet they delayed its delivery by not addressing the legal issues sooner. Moreover there is a complete failure to recognise that the Council has identified two suitable alternative sites for the school, which would deliver the same standard of educational facilities and could be progressed far sooner than public legislation would allow.

There are other options for the Council to achieve its objectives but it appears to be asking the Scottish Parliament to ignore its own guidance and rules for private bills.

4 Traffic management issues and planning permission

The Council does not give any adequate explanation of how traffic problems are to be mitigated, merely referring the committee to the planning portal. There is a contradictory statement with reference to Hope Lane where it says "this matter was raised and reviewed fully with the Council Highway Department who re-iterated the view that the conditions in the originally approved proposal remain sufficient" but then goes on to say however the project team... will, if the bill is enacted, keep this issue under review with the Council Highways Department..." We believe that the Council's failure to address fully the many traffic and road safety concerns that have been raised will lead to money from other traffic budgets being used to rectify the problems that will be caused by siting the school on the park. This represents another potential and hidden cost of this project.

We enclose a copy of a summary of Traffic and Road Safety issues by a qualified and experienced Transport Engineer.

These were raised at a local residents' meeting in Portobello High School in August 2010 and were not addressed by CEC when they awarded themselves planning permission in February 2011.

At a pre planning application meeting on 15 May 2013 in Portobello Town Hall, these road safety and traffic issues were raised both by supporters and objectors to the new school. Scott Castle, a member of the project team, was embarrassed with the lack of action on these issues as was former Deputy Chief Constable of Lothian and Borders Police who chaired the meeting.

These road safety and traffic issues have not been addressed by CEC.

With regard to the the current renewal of planning permission for the school, we would point out that the Council is attempting to award itself planning permission for a site on which it is illegal to build and we would question whether it is within their power to do so.

Please do not hesitate to contact me if you require any further information or clarification on these issues.

11 November 2013

PORTOBELLO HIGH SCHOOL

SUMMARY OF TRAFFIC AND ROAD SAFETY ISSUES

1. A199 Milton Road is a Greenway & District Distributer Road (DDR) and is the strategic route for all users into and out of the city from east Edinburgh, East Lothian, Midlothian and the south (A1, A68).
2. Milton Road is a 4 lane carriageway, however it acts as a single carriageway when the bus lanes are in operation. During the AM peak (around 0800 -0900 hours) the westbound (city) traffic is constantly queued back east of the proposed new access to the school to the pedestrian crossing at Hope Lane and often to the Milton Link from the Milton Road/Duddingston Park traffic signals.
3. This currently results in frustration for drivers and causes a significant number of drivers taking the following evasive actions (photographs in report)
 - Abusing the bus lane
 - 'rat-running' down Hope Lane or Park Avenue
 - 'rat-running' through Magdalene past the primary school
4. The proposed development of Portobello High School for 1400 pupils with a direct vehicular access and pedestrian access onto Milton Road would generate significant additional car and pedestrian trips. **These turning movements and pedestrian crossing delays would occur at the peak morning traffic flows and would cause further queues and delays on Milton Road and would cause queues on a daily basis back to Milton Link.**
5. **As a result this will cause traffic chaos in the morning peak for the traffic including buses from the east and south heading into the city centre and north Edinburgh. It would also result in devaluing the multimillion pound public transport corridor funded by CEC and Scottish Ministers.**
6. **It would also encourage drivers to take further evasive action as stated in 3 above and this will result in a severe accident risk for pupils walking and being dropped off for school, local residents and other vulnerable road users on Milton Road, Hope Lane, Park Avenue and Magdalene Drive.**
7. **Major Developments with complex traffic movements require traffic models to demonstrate that the traffic with the new road layout will operate effectively and efficiently after a development is constructed. A traffic model has not been developed for Portobello High School.**
8. **In addition a road safety audit should be carried out on all proposed major developments where there will be a significant change to the road layout. A road safety audit has not been carried out for the proposed Portobello High School. Significant road safety risks would exist at a number of locations including**
 - **Milton Road/Duddingston Crescent – pupils/pedestrians, car accessing and egressing properties on Duddingston Crescent**
 - **Milton Road/Duddingston Crescent – pupils/pedestrians walking on narrow south footpath, crossing road at new vehicular/ pedestrian access**

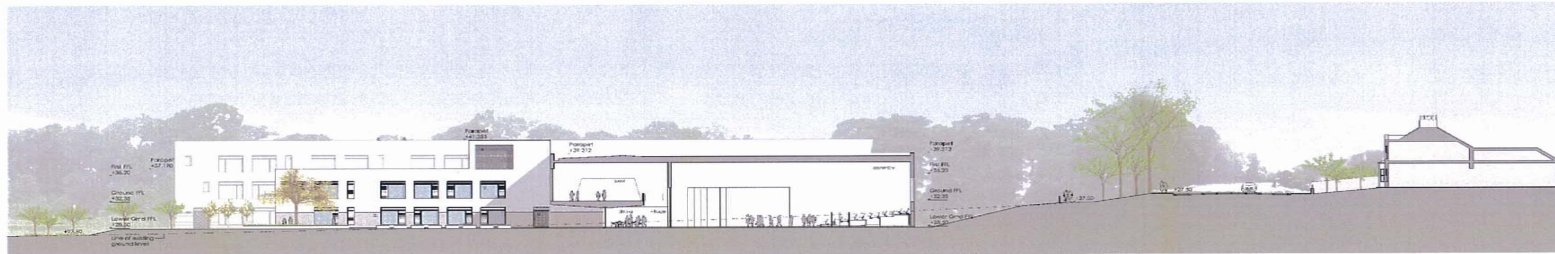
- Milton Road – pupils/pedestrians, walking on narrow (less than 1.5 metres) north footpath between Duddingston Park and Park Avenue
 - Milton Road – lack of refuge/harbour areas at crossing points for pupils, pedestrians and the disabled
 - Hope Lane – pupils/ pedestrians being dropped off/picked up on narrow road which is unsuitable for predicted traffic
 - Park Avenue - pupils/ pedestrians being dropped off/picked up on narrow road which is unsuitable for predicted traffic
 - Park Avenue – at new secondary access which is unsuitable for goods vehicle traffic
9. I have spoken to the Road Safety Officer and the Road Policing Unit at Lothian and Borders Police. I was advised that the Police had not been consulted on this application. When I described the direct access onto Milton Road they were very concerned not least as the Police have had to resolve a number of road safety issues on recent new schools in Edinburgh. The Police were keen to know whether a road safety audit had been carried out.
10. A recent planning application to turn a house into a nursery at 26 Duddingston Crescent was correctly refused in my opinion on road safety grounds – however the road safety issues associated with the proposed new Portobello High School are major and far more serious in road safety terms and should be refused.
11. The Transport Assessment was clearly not carried out by engineers who understood the traffic movements in the vicinity of the proposed school. Examples of this are
- 4.6.7Harry Lauder Road is the main connector between Milton Road and Portobello
 - 7.7The assessment indicates that the Park Avenue/Milton Road junction operates well within normal acceptable limits during the weekday AM and School peak periods. **In the morning peak there is a 400 metre westbound queue!**
 - The issue of the queues through the new access in the morning and evening are not discussed

Statements like that question the credibility and competency of the authors. In addition many of the issues listed above were discussed with the CEC Project Manager and Transport Consultant at a meeting in Portobello School in August 2010.

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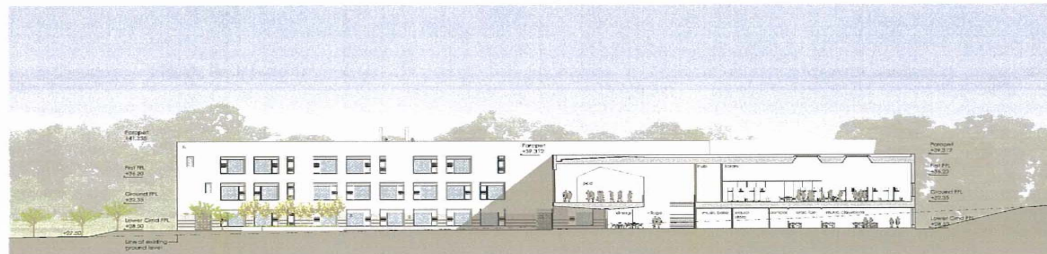
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- Workability
1. Review
 2. Finish Coat Stone Back
 3. Cladding
 4. Insulation
 5. Curtain Walling
 6. Rough / Unweathered Glass
 7. Glazing
 8. Panel / Service Extract
 9. Glass / Polycarbonate
 10. Screen / Metal Door
 11. Structural



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 Second Extension - School 1 & 2
 The City of Edinburgh Council

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