

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

PPAG SUPPLEMENTARY WRITTEN EVIDENCE FOLLOWING 9 OCTOBER MEETING

We welcomed the opportunity to give evidence on the principles of above private bill promoted by City of Edinburgh Council (CEC) and we trust that what was presented and the answers to questions were of assistance in your consideration as to the merits of this proposed bill. We could have given fuller answers to questions but tried to limit our comments to be brief as requested.

We reiterate our belief that there are other ways of providing a new Portobello High School other than the passing of this bill and we would like to clarify a few points that were raised on the day. We note that the evidence given by PFANS did not address the principles of the private bill.

Legal issues

As Mr Martin explained in his evidence, disposal of inalienable common good land cannot take place unless the land has ceased to be used for the purpose for which it was intended and would be subject to court approval, as would appropriation when a council wants to use the land for a different purpose from what was intended. Clearly, contrary to what Mr Watters claimed, it is not a “quirk” that section 75 (2) of the Local government Act allows for disposal of a site but not appropriation.

The consultation

When we were asked how we thought the council could have improved on the consultation, it was unclear as to whether this meant how could they have improved the consultation they carried out or whether the whole exercise could have been done differently. If it was the former, we would make the following points:

- The consultation form should have had a tear-off section for people to complete and return by freepost. The fact that those not online had to travel to access a form means it militated against those who could not easily access places where there was a supply of forms. The residents of Milton Court sheltered housing complex, for example, asked the Council to deliver forms to all residents but they refused.
- There should have been a longer consultation period, especially given the fact that the consultation ran over the festive period.
- The Council should have ensured that those living closest to the park received the leaflet early on in the consultation period. This did not happen.
- We were asked where the delivery area for the leaflets should have been and replied that it should have been to the whole of Edinburgh. The consultation leaflet states that “*we are consulting with people in the local community and the rest of the city*”. The consultation area selected clearly shows they did not do that.
- Regarding the alternative sites, we would again refer you to the consultation leaflet and form which we submitted with our objection in June. The section entitled “Are there other options for the new school?” starts by saying: “*We have looked again at all the options in, and around, the school’s catchment area. The result of this review shows that there is simply no other site in a good location with space to provide the same level of facilities and easy access at the site at Portobello Park*”. It goes on to say that this site would be the quickest and cheapest option but provided no evidence for this claim. Only then does it mention two potential “back-up” options, which it claims would be a “significant compromise” and take far longer to deliver. This is not a balanced appraisal of the options, as required by the Scottish Parliament’s Guidance for private bills.
- The Council should have used the public meetings to identify the pros and cons of the alternative sites upfront, and engage in a debate with the public on their merits.

Instead they hid behind PPAG and PFANS and did not explain the private bill process, why the park was supposedly the best, quickest and cheapest option, nor did they inform people of what the options were if they did not go for the private bill. For example, the following question was asked at the public consultation meeting on 17 January: Q24 [there are two Q24s and this is the second one] - *“How can people make an informed decision when they do not have information about the other sites?”* To which the answer by project sponsor Billy MacIntyre was: *“This consultation is about Portobello Park and not the other options”*. A copy of the minutes of both meetings is attached.

- There was hostility at the public meetings, with verbal attacks on PPAG members on the panel. This could have been avoided by not having PPAG and PFANS sitting at the top table, pitted against each other. It should have been the Council only at the top table to explain why the school project was in this situation and about the private bill process.
- With reference to the question by Mr Dornan about paragraphs 4.28 and 4.29 of our objection letter, we would reiterate that it is the parliament’s own guidance that states the consultation must show how the promoter communicated to those who may be directly affected. In our view, dedicated meetings should have been set up with all affected residents to hear their specific concerns
- There was no lower age limit for the consultation. As children were obviously expected to take part, special arrangements should have been made to engage them in a meaningful way, as is normal council practice when children are included in a consultation.

As to how the consultation could have been done differently, given the contentious nature of the project, it could have been carried out by an external provider, as we suggested to the Council. However, once again, the Council seems to have been driven by timescales and launched the consultation quickly and at a busy time of year, instead of taking a more considered approach. **We would refer you to section 4 of our letter of objection for a full list of our concerns about the consultation.**

Consultation - PFANS evidence

A PFANS member claimed to have carried out consultation herself on the private bill but the results of this have never been published anywhere to our knowledge.

The claim that PFANS were “an hour behind PPAG” canvassing at people’s doors is incorrect to our knowledge and we were certainly not out canvassing two days into the consultation period as claimed. We only started to canvass to any degree in the new year when it became obvious that PFANS were working to skew the consultation outcome.

Contrary to PFANS’ claim that “The idea that local residents were unaware of the consultation is not remotely credible”, some residents we spoke to did not know about the proposals for the Private Bill. There was an erroneous assertion made by PFANS that if people were aware of the long-running debate over the school site they would automatically be aware of the private bill consultation. The comment by PFANS that people asked “are you for or against the school?” demonstrates the mistaken public perception of the consultation, i.e. it was simply about being for or against a new school, rather than being about the private bill.

The reality is that if residents were not online, did not read the local press and did not visit Portobello library they had no means of knowing about the consultation other than by the Council’s delivery of leaflets, which, it has been admitted, was defective. A number believed that the park was now safe because of the legal ruling, were shocked by the proposal being put to Parliament and many regretted the potential loss of the park. Many did not know that there were alternative sites for the new school. You will see from the enclosed Council

report of 14 March 2013 (p 52) that from the Magdalene and Christians area the response was as follows: total responses received 1,216. Those in support 736 and against 480, giving a percentage of responses in favour of 60.5% so the support for the private bill is not as overwhelming as was made out.

The claim by PFANS that each group was out canvassing to the same extent and in the same way is incorrect. As mentioned in our evidence, PFANS had a ready-made audience through the schools network and numerous pre-Christmas events at the high school and feeder primaries, at which the consultation was promoted, and also set up stalls in school playgrounds. PPAG had no such opportunity.

The claim that 70% support is overwhelming would not be recognised as such by most people. PPAG has substantial support from the community, with 3,000 “no” responses to the private bill consultation, letters of objection signed by more than 500 people and a petition with 1800 signatures having been submitted to the Scottish parliament.

Park usage

PFANS’ statement that: “the park lies empty 99 per cent of the time and is used only by dog walkers” was not backed up by any evidence, is not measurable and would only be relevant if the same methodology to gauge usage was employed on other parks as a comparison. Quite clearly, from the evidence you heard and also from viewing the film on disc that we submitted with our objection, the park has been used for numerous activities over the years. This year alone, there was a park clean-up by local residents in May and the party on the park in September. As you heard, permission has been withheld for other events.

One PFANS member’s comment that: “There were a few football games now and again, and the occasional bit of training”, was contradicted by another PFANS member who quoted information obtained from the Council that there had been 180 matches played during the season, i.e. not just “a few”, and this in spite of the acknowledged poor construction and maintenance of the pitches.

In PFANS’ evidence it was stated that there were four pitches and, based on booking figures, potential usage in the season could have been up to 500 times. This is misleading as there were only two full size pitches that were bookable, therefore the maximum number of times the pitches could have been used would have been 250. The other two small pitches were temporary, with mobile posts and nets for under 10s, and for more casual use.

It was implied by PFANS in their evidence that the neglect of the park only started after the archaeological dig in 2011 but pp 4-5 of the Ironside Farrar (IF) report on the quality of the park (appendix of the CEC report of March 2010, of which you have a copy) clearly shows that the park was in a poorly maintained state long before that. For example In the sports pitch assessment, it was acknowledged that Portobello Park had a lower maintenance specification, that the management of the park was rated as “very poor” and several weaknesses were identified, ranging from “poorly maintained park” to “no play facility” to “litter” and “two benches require removal”. These are all factors which are within the remit and the control of the council and which they neglected.

Mr Martin in his evidence made it clear that local authorities have a duty to maintain inalienable common good land for the benefit to the community and that if it does not do so a council could be seen to be in breach of this duty.

Scrutiny of the park usage survey (p 12 of IF report) clearly shows that most of the times surveyed it was either raining, people were at work or at school, and it was outside the football season. A survey carried out during the football season would have shown far different results.

Open space issues

PFANS claimed that 35% of the park would remain as open space, however you saw for yourselves at the park site visit that this would not be the case. It was disingenuous to include the artificial pitches as open space as that area of the park would be fenced off and would not therefore remain as open parkland. The claim in this context that the loss of open space would be offset by the proposed “new park” is inaccurate as this proposal is not part of the bill. We attach a plan of the site showing how little usable open space would remain.

The claim was made by PFANS that Brunstane school playground is used for recreation. This is because there is play equipment there. You also heard that many more people would visit Portobello Park if it had play equipment on it.

School facilities

Much was made by PFANS of the new facilities the school would offer but these would be provided wherever the school is built and would be comparable to facilities at the existing school.

It is clear from PFANS’ evidence that in order to gain support for the private bill misinformation was circulated, for instance, the claim that the swimming pool will be open access for all. The pool will not be available for casual use and will be limited to group lets and swimming clubs, just as at the existing school.

Evidence was given about the current bussing off site for school sports lessons. The vast majority of the bussing off site is for indoor activities, and the new facilities proposed on the park do not provide superior indoor facilities, so in all likelihood the bussing will continue.

Alternative sites

PFANS acknowledged in their evidence that there are suitable alternative sites. The marginal benefit of the park site would be one additional pitch.

Mismanagement of the project

PFANS admitted that they lobbied the council hard in 2008 to ensure that Portobello High School was prioritised first for replacement before any other school. This pressurised the council into looking for a way to avoid going to court to seek clarity on the common good issue and resulted in their obtaining a legal opinion that was used as justification for not going to court in 2008, despite their announcement earlier that year that they would do so (see enclosed letter from Marilyn MacLaren dated 16 April 2008). The Council’s actions as a result of this pressure led to a four year delay to the project.

The point was argued that before 2008 Portobello Park was not on the Common Good account but this is simply the failure by CEC to accurately record and act as guardian of common good assets. The land had the characteristics of common good since 1898 regardless of any recognition by CEC.

It was stated that building on the park was the quickest and cheapest way of providing a new school. However, it appears to be the quickest way only because the Council has done nothing about the twin track approach of progressing other sites as promised and, secondly, it is only the cheapest because they are comparing a competitive tendered price (which is unlikely to be delivered) with standard costs and excluding the ongoing cost of the bill.

We hope the above is helpful and if you require further clarification please do not hesitate to contact us.

Winifred Aitken
Chair, Portobello Park Action Group
18 October 2013

Note by Committee clerks on documents referred to within PPAG supplementary written evidence

Some of the documents referred to within this supplementary submission have not been incorporated into this document, as they are already available on the Committee's web page and elsewhere (including the [Promoter's Memorandum](#)).

The promoter's [written submission](#) (dated 30 August 2013) to the Committee provides a link to the full report to the City of Edinburgh Council on [14 March 2013](#). That report contains or provides links to the following information:

- the consultation leaflet (provided as a link on page 5 of the report, but also included within the promoter's written submission)
- record of public meeting held on 9 January 2013 (page 26)
- record of public meeting held on 17 January 2013 (page 42)
- report to the full Council, 11 March 2010, incorporating the Ironside Farrar report (provided as a link on page 57, paragraph 2.2.11)
- the consultation leaflet and the Ironside Farrar assessment are also included in the promoter's written submission dated 30 August 2013

• EDINBURGH •
THE CITY OF EDINBURGH COUNCIL

Councillor Marilynne MacLaren
Convener - Education, Children & Families

Date 16 April 2008

Your ref

Our ref MM/RW

New Portobello High School

Thank you for your letter regarding the siting of the new Portobello High School. As you know there was extensive public discussion and consultation on the location of the new school two years ago, and strong views were articulated both for and against building on the Park. The results of the formal consultation were reported to the Full Council on 21st December 2006. The decision was then made to relocate the school on the south western corner of Portobello Park, while still continuing to provide public pitches on the western part of the park.

Because this is the agreed Council position we have to tackle the issue of whether the Park is Common Good land and whether, if it is, the Council could build a school on it. This will undoubtedly have to be pursued through the Courts and I have asked our legal department to look at what will be necessary here. If the Council are successful, a planning application for this site will be submitted to include an options appraisal of all other sites within the intended catchment area, and a consideration of the potential loss of open space and sports pitch provision, with note taken of the views of Sport Scotland. As you know, there are complex planning issues to grapple with concerning this application, and there is the prospect of a public local inquiry before a final decision is made.

I hear your point over re-visiting the decision made by the previous Council, however this would delay any potential re-build even further and would lead, I believe, to deepening divisions in the local community.

Yours sincerely

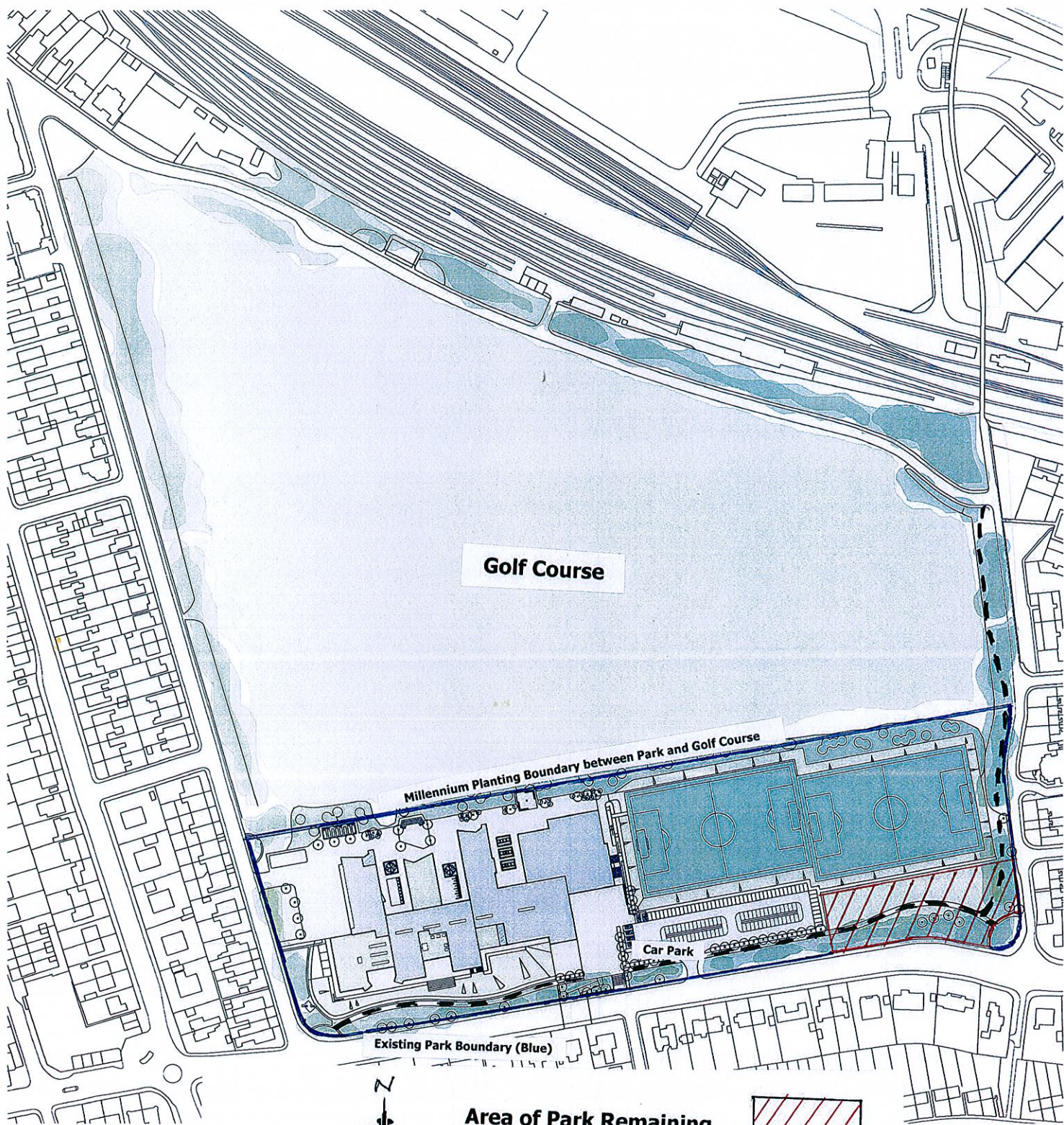
Councillor Marilynne MacLaren
Convener - Education, Children & Families

City Chambers High Street Edinburgh EH1 1YJ
Tel 0131 529 7494 Fax 0131 529 7494
E-mail:marilynne.maclaren@edinburgh.gov.uk



INVESTOR IN PEOPLE





Golf Course

Millennium Planting Boundary between Park and Golf Course

Car Park

Existing Park Boundary (Blue)



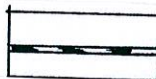
Area of Park Remaining



(Including wooded area)

As delineated by tape at site visit

Cycle Path



Required for safe access routes to school