

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE

APPROACH TO CONSIDERATION STAGE

Purpose

1. This paper is based on the one considered by the Committee at its meeting on 16 January 2014 and reflects the decisions which were agreed in relation to the Committee's approach to, and indicative timetable for, Consideration Stage.

2. The overall purpose of Consideration Stage is to consider the detail of the Bill. However, it should be noted that, at this Stage, Rules 9A.9.2 and 9A.9.3 require the Private Bill Committee to invite all remaining objectors to be heard, either individually or by means of a nominated person speaking on behalf of a "group" of objectors, regardless of whether they are whole-Bill or part-Bill objections. (This relates to all objections which have not been rejected at Preliminary Stage.)

Background

3. Consideration Stage has two distinct phases - consideration of objections, followed by consideration of amendments (if any).

4. Procedures for the first phase are set out in Standing Orders Rule 9A.9 and require—

- grouping the remaining objections (where appropriate);
- choosing one or more "lead objectors" from each group to give evidence on the group's behalf;
- inviting the promoter, lead objectors, and objectors whose objections have not been grouped to give evidence;
- deciding whether to invite oral evidence, written evidence or both.

Phase One

5. The first phase involves the Committee meeting in a quasi-judicial capacity to hear evidence on the remaining objections to the Bill. The Committee's role is to act as arbiter between the promoter and objectors. This involves allowing differences between the parties' views to be resolved by negotiation but also, where that is not possible, choosing between them.

6. Before it can do so, the Committee must ensure that each party has had a fair opportunity to present its own case and to question the opposing case. This may involve the leading of evidence and the cross-examination of witnesses and their evidence.

7. Objections are "grouped" for the purposes of attending Phase One proceedings, and objectors are asked for input regarding the nomination of

lead objector(s) before they are formally appointed to speak on a group's behalf.

8. Following consideration of the evidence on objections, the Committee has the option of preparing a report to the Parliament explaining its decisions on the objections. This is not a requirement of the standing orders, however, and the Parliament would not be expected to debate such a report, or to endorse its conclusions. (Consideration Stage, like Stage 2 of a Public Bill, is taken entirely in committee.) A Consideration Stage report may also indicate areas where the Committee expects the Bill to be amended during phase two of Consideration Stage.

Phase Two

9. The second phase involves the Committee meeting in a legislative capacity, to consider and dispose of any amendments to the Bill. Only members of the Committee may lodge, move and dispose of amendments at phase two.

This paper focuses on the approach to phase one.

Phase One detail

10. The first phase involves the Committee considering all remaining objections made to the Bill and the following approach is suggested.

Grouping of objections and lead objector(s)

11. The Committee has the right to group objections to facilitate Consideration Stage proceedings. The purpose of grouping is to ensure that all legitimate arguments are considered by the Committee, while avoiding unnecessary repetition. Normal practice is to give objectors an opportunity to comment on provisional groupings, but it should be noted that it is for the Committee to take a final view in this regard. **In order to expedite the progress of Consideration Stage, the Committee agreed that the Convener be delegated responsibility for finalising groupings and lead objector(s), after considering any comments made.**

12. Once the provisional list of groupings and lead objector(s) has been agreed, objectors will be asked for any comment. Where no comments are received, it will be assumed that individual objectors are content with the groupings and lead objector(s) proposed.

13. The objections have generally been grouped using the following initial criteria—

- On a geographical basis – with objectors grouped who:
 - live immediately adjacent to the Park;
 - live in the surrounding area, either to the north or to the south and west;
 - live further from the Park – including some who live outwith Edinburgh
- Portobello Park Action Group (PPAG) and associated objections.

- one special interest group (golfers).

14. **The Committee agreed—**

- a) suggested groupings and lead objectors and that these be published on the Committee’s webpage;**
- b) that the clerks write to all objectors inviting any comments on the provisional groupings and lead objectors;**
- c) to delegate to the Convener responsibility for finalising groupings and lead objectors, after consideration of any comments received.**

Supplementary written evidence

15. Normal practice is to give objectors an opportunity to submit written evidence which can help to clarify their grounds of objection, thus enabling the oral evidence to focus on the key issues that remain outstanding between the parties. In addition, there may be objectors, or whole groups of objectors, who do not wish to give oral evidence, and would prefer to set out in writing all the remaining points that they wish to make to the Committee at Consideration Stage.

16. However, objectors should not feel under any obligation to provide written evidence. Some objectors, for example, may consider that they have already set out their case in full in the original objection.

17. **The letter to objectors will make clear that any written evidence must relate solely to issues raised in the original objection and should only be provided where there is supplementary information available or it is felt that clarification is required.**

18. **The letter will also set a fixed deadline for all supplementary written evidence from individual objectors.**

19. Where there is a nil response, the Committee will assume that the objector is content for the information provided in their original objection to stand.

20. The approach is set out in more detail below—

Step 1

The clerks will write to all objectors and the promoter informing them of the outcome of this meeting and of the Committee’s decisions on suggested groupings. This will include suggestions for a lead objector within each group.

21. The function of a lead objector is to speak on behalf of the group as a whole. To do this, they can be expected to co-ordinate the views of individual

objectors within the group (and may also submit written evidence on behalf of the group, or suggest expert witnesses, as appropriate).

22. Although the suggestions which will be published will identify potential lead objectors, these are based on an examination of objections where, for example, the suggested lead objector has covered a range of the issues raised by other objectors in the group, or is the lead signatory on an objection lodged on behalf of a number of objectors in a specific location.

23. A person identified as a lead objector may not wish to take on this role or the group may collectively decide that another person would be better placed to take on this role.

24. The letter to objectors will invite—

- Comments from individual objectors on the groupings (as it affects them) and the nomination of a lead objector (or lead objectors) for their particular group;
- Any supplementary evidence that objectors wish to provide in support of their objection (which must be limited to the issues detailed in that objection).

25. The letter will also advise the suggested lead objector that, where they are appointed, they will be responsible for—

- Advising whether their group will wish to provide oral evidence. (A deadline for doing so is provided in the indicative timetable.);
- Coordinating the provision of oral evidence (if the Committee/group wishes oral evidence to be given) on the issues raised by objectors in that group and an indication of what these issues will be (it may be the case, for example, that the objectors in the group agree not to raise orally issues where an objector has indicated that they are prepared to let matters stand as they were presented in their original objection);
- Provisional, collated witness lists (ie the group's witnesses, indicating the name, designation of each witness and on what issue they will be appearing as a witness. The number of witnesses may be limited.);
- Arrangements for any expert witnesses to appear on the objectors' behalf.

26. A letter will also be sent to the promoter, informing it of the draft groupings and lead objectors. The promoter will also be invited to indicate who will appear on its behalf and whether there are expert witnesses it wishes to invite.

Step 2

- On receipt of any written evidence from objectors, a copy will be forwarded to the promoter.
- The promoter will be asked to provide a written submission to the Committee for each group, responding to the issues raised in all objections as well as any supplementary written evidence, by one week before the meeting when oral evidence is expected to be taken for the objections in that group.

27. Lead objectors, once confirmed, may wish to submit written evidence on behalf of their group as a whole. Such evidence could help to clarify, in advance, the points to be made orally, or may be an alternative to oral evidence. But the same deadline as that for individual responses may not be realistic, so the deadline for written evidence from the lead objector on behalf of a group is also set as a week before the meeting when oral evidence is due to be taken.

28. For some groups, it may be that neither side wishes to give oral evidence. In that case, an alternative deadline for the lead objector to submit any written evidence would need to be set.

29. For all groups, the deadline for the promoter to respond in writing (where necessary) to any written evidence from lead objectors will be one week before the meeting when the Committee will make a decision on all objections.

30. It should be noted that it may be necessary to revise the notional deadlines for submission of lead objectors' written evidence and the promoter's response at the Committee's next meeting when it should be clearer what evidence sessions will be required.

Oral evidence

32. Oral evidence-taking at phase one of Consideration Stage is more adversarial in style than normal Committee evidence-taking (which is generally inquisitorial). As such, it is more akin to court proceedings, to reflect the context (i.e. the resolution of a dispute between two parties, with the Committee serving as neutral arbiter).

33. Groups may decide to employ legal representation (at their own expense) to appear on behalf of their group, or they may represent themselves.

The Committee agreed to consider at its next meeting timetabling for oral evidence sessions. The Committee also agreed to delegate to the Convener to finalise witnesses for each session, as appropriate, if these details have not been finalised in time for its next meeting.

34. There is a further mechanism by which oral evidence-taking could be made simpler. Where there are different groups whose objections raise similar issues, the Committee may, where possible, take these issues/groups together in order to avoid unnecessary duplication. **The Committee agreed that it was content for this approach, where it is administratively appropriate to do so, to be adopted and to delegate to the Convener authority to implement such an approach, where appropriate.**

Proposed format for evidence sessions

35. The proposed format for hearings for each group of objections is as follows—

- (a) Opening statement by the lead objector on issues in the group, including evidence from objector witnesses;
- (b) Opportunity for the promoter to cross-examine the objectors and objector's witnesses;
- (c) Statement by the promoter - general response to the objections in the group, including evidence from promoter witnesses;
- (d) Opportunity for the lead objector/appropriate witnesses to "cross-examine" the promoter;
- (e) Opportunity for Committee members to ask questions of any aspect of witnesses;
- (f) Opportunity for objectors and promoter to provide any brief final comments.

36. It is envisaged that Committee members would generally take a "back-seat" – i.e. so that it is mostly conducted as an exchange between the two sides, with the Committee as the audience – rather than the normal arrangement for subject committee evidence-taking, which is a dialogue between the Committee and the witnesses. The Convener would manage the discussion, including by setting time limits where appropriate.

Timetable

37. It should be noted that the provisional timetable is likely to vary once any further written evidence is received and the length of evidence sessions can be estimated more accurately.

38. The Committee agreed an indicative timetable and that it be published on the Committee's web page.

Committee decisions on objections

39. Once the Committee has considered all further written and oral evidence, the Committee may—

- reject an objection in its entirety;

- uphold an objection in its entirety. Given that all the objections in this instance are objections to the whole Bill, upholding any objection in its entirety is tantamount to recommending that the Bill be rejected at Final Stage.
- recommend measures that could be taken by the promoter to address specific issues raised by an objector (i.e. to mitigate an adverse impact of the Bill). This may include, for example, recommendations to amend the Bill at the second phase of Consideration Stage (subject to the usual rules on admissibility).

Summary of decisions

40. The Committee agreed—

Groupings/lead objectors

- a) the suggested groupings and lead objectors and that these be published on the Committee’s webpage;**
- b) that the clerks write to all objectors inviting comments on the provisional groupings and lead objectors;**
- c) to delegate to the Convener responsibility for finalising groupings and lead objectors, after consideration of any comments received;**

Written evidence, comments and timescales for responses

- d) the process for inviting further written evidence, comments on groupings and lead objectors;**
- e) timescales and arrangements for written submissions from individual and lead objectors (where necessary/appropriate), and from the promoter in terms of addressing all issues raised in objections and supplementary evidence;**

Indicative timetable

- f) the indicative timetable and that it be published on the Committee’s web page;**

Oral evidence

- g) the procedures for taking oral evidence from the objectors and the promoter (and their expert witnesses) as outlined;**
- h) where it is administratively appropriate to do so, for arrangements for “grouped groupings” to be adopted and to delegate to the Convener to finalise and implement such an approach in due course and if appropriate.**

- i) at its next meeting, to agree which groups are invited to attend evidence hearings and provide oral evidence, and to timetable such sessions. The Committee also agreed to delegate to the Convener responsibility for finalising witnesses for each session, as appropriate, if these details have not been finalised in time for its next meeting.**

Phase One report

- j) to have a Consideration Stage report;**
- k) that the Committee's approach paper to Consideration Stage, reflecting appropriate decisions, form the basis of a paper to be published on the Committee's webpage.**