

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE

CONSIDERATION STAGE

PPAG comments on promoter's follow up statement (15 May) following the oral evidence session on 7 May 2014

We wish to briefly comment on the paper submitted by City of Edinburgh Council on 15th May, following the evidence session of 7th May.

1 Funding of the Park reinstatement costs

The written confirmation from a council officer dated 4th March (already submitted) clearly states that £13,243 was spent on remedial works to the archaeological dig. If Mr MacIntyre now asserts this is incorrect then this confusion is symptomatic of this whole project where time and again inconsistent information has been provided by the council.

2 Comment on Planning Report on reduced access to open space in the local area

It is disingenuous of the council to say that because it has run down the standard of Portobello Park over the years "to a fair quality" that it can no longer count when assessing access to parkland. The council could invest in the park to raise its standard. The reasoning employed to say that the loss of Portobello Park is not a loss of parkland because the council has not maintained it as parkland, nor wants to, is Orwellian. The bottom line is that, if the park is developed, there will be a reduction in the number of households with access to open space and it is acknowledged that a number of people will have further to travel to access parkland.

The benefits to the whole community of a new school would accrue from a new school wherever it was built.

3 Whether the council can take steps to guarantee free access to the pitches.

The council is aware that a future administration can withdraw the concession of free access to the pitches at any time or impose other conditions, such as paying for access to the changing facilities, which renders the commitment to free access as worthless. As an example, the council has already experienced conflict at South Queensferry between Edinburgh Leisure, who operate leisure facilities for the council, and the Children and Families department over replacement of worn out playing surfaces. The argument being why should the schools budget pay for maintenance of facilities used by the community. It is astonishing that the promoter is not aware of this.

Parliament can decide as it wishes on this matter and the council could accept an amendment to the bill which would require them to provide free access in perpetuity, as promised, but enshrined in legislation. The council promised replacement open

space in 2006, then reneged on this in 2010 only to change its position again in late 2012. But it is only a promise and, on its past record, there is no trust in the council keeping any commitment given in pursuit of this private bill.

It is noted that in a report to the Education, Children and Families Committee today (20 May) a hastily inserted paragraph makes reference to free access to the pitches should the school be built on the park. However, it is further noted that the equalities impact assessment makes no reference to how this might affect those living in socio-economically deprived areas of the city where residents will have to pay for access. Whilst there are pockets of deprivation in some parts of the area defined for free access, there are larger parts of reasonable wealth in Portobello.

4 Further points of clarification/correction

(a) Disclosure of Counsel's opinion of August 2008

The legal opinion of August 2008 was never disclosed to councillors and they were not made aware that the council knew of the certain risk of a challenge to appropriating Portobello Park. Therefore it **was** hidden from them. There is no public record of this opinion until the Freedom of Information request unearthed it. So it was buried.

The opinion has never been withdrawn and, whilst not tested in Court, is similar to the PPAG opinion, which was supported by three senior judges at appeal. It can therefore be inferred that this opinion of August 2008 would have been supported if tested.

The revisiting of the opinion by Counsel was prompted by the council asking a different question, to which a different opinion was given. The council has never released the two questions that were asked, despite having been requested to do so, and have claimed that there is no written correspondence between it, its solicitors and Counsel regarding the change of approach to the legal impediment following the August 2008 opinion.

(b) Proposed decant to Holy Rood RC High School

The issue is that the option to build on Portobello Park in December 2006 was taken by the council on the condition that it was legal to do so, something that PPAG had challenged since March 2006. It became clear to the council in August 2008 that it was a high risk strategy to build on the Park. If the council had heeded that advice in August 2008 it would not have been too late to have a partial or full decant to the Holy Rood buildings. The council overlooks the past proposal to site both schools permanently on a joint campus at the Holy Rood site.

(c) Dates of the Park usage survey

It is seven occasions outside normal school hours when the small sample of only ten visits was taken. However, on one of these occasions there was heavy rain and on two other occasions it was showery. To say that the first day of the school holidays,

when many families are on or preparing for their main annual holiday, is typical is stretching the point.

What the council has not done is to provide a comparator for usage of other similar parks in the city at the same times, for example how did Portobello Park compare with Inverleith Park or Leith Links or any of the other valued urban green spaces? By comparing like with like it would have been possible to get a more accurate representation of the usage of Portobello Park.

d) Fields in Trust

The question posed on 7 May was clear and the council has now changed its answer. No explanation is given as to why an agreement with Fields in Trust is stronger than protection given by an Act of Parliament and the reply does not explain that disposal of common good land is subject to examination by the Courts.

e) Promoter's threat to sue PPAG

The promoter is fully aware of what was said in the Council Chamber about the threat to sue PPAG at the meeting of 26th April 2012 by the Convener of Children and Families and the Convener of Finance. This was after the lodging of the appeal and the council knows full well that as litigation was still in course there was no mechanism for recovering expenses. At previous council meetings the Deputy Leader of the council, amongst others, had been similarly belligerent.

Most people believe that the council is controlled by the councillors, especially those in the administration. This threat cannot now be denied by officers of the council. We have submitted a link to a council press release advising that the council intended to pursue PPAG for expenses, so the threat of financial sanctions came from council officers as well as from councillors. There is no past history of a council in Scotland pursuing a group of local residents for legal expenses so these were extraordinary threats made to intimidate the group and try to influence PPAG into dropping the appeal to the Inner House at that time.

We are willing to supply any other information in support of our objections that the committee requires in its consideration. We would also welcome the opportunity to comment on any amendment that the committee may bring forward.

Portobello Park Action Group
20 May 2014