

**CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE
CONSIDERATION STAGE**

PROMOTER'S RESPONSE TO QUESTIONS FROM GROUP 1

ADDITIONAL QUESTIONS FROM THE GROUP 1 OBJECTORS

The witnesses for Group 1 submitted a number of questions to the Committee in writing following the final oral evidence session on 7 May. The responses of the City of Edinburgh Council (the "Council") to those questions are set out below.

We note that a number of the questions that have been submitted are ones which the objectors in this Group have already put to the Council's witnesses in the oral evidence sessions on 23 April and 7 May. Moreover, the Convener has already advised the objectors that some of the questions and/or issues are irrelevant to the Bill process. It is disappointing that the objectors in Group 1 are attempting to pursue through their written questions issues that they have already been advised they could not pursue in oral evidence.

The Council has identified below questions it believes have already been answered in evidence or relate to matters which the Convener has already decided are irrelevant to this process. If the Committee takes a different view and considers that it would want to have the requested information, the Council would of course be happy to provide a response.

Category 1

- 1 Will the council confirm that they are aware that in some circumstances, Fields in Trust agree that green space need not be preserved?*

The Council's views on the high degree of protection that will be afforded by Fields in Trust status have already been set out in detail on a number of occasions in evidence to the Committee (see the Official Reports of 12 March (column 135-136) and 7 May (column 360-362)). The Council also addressed the issue of Fields in Trust in its letter to the Convener of

31 January 2014 and in its written submissions in response to the objectors in Groups 1, 2 & 4 and 3 & 6.

As the present Private Bill process makes clear, there is no legal status that can be conferred on a piece of land that will make it immune to the possibility of change. At best that can be made subject to third party consent, whether that consent is required from the Court, the Scottish Parliament or an entity such as Fields in Trust.

2 According to Secured By Design, lighting and security should be arranged to exclude access when there are no “capable guardians” present. What does this mean and how will it work?

That is a question for Secured by Design and, in any event, as the lighting and security of the building are planning matters they are irrelevant to the Private Bill process. Ian Alexander nevertheless answered the objectors’ questions on how Secured by Design principles had been incorporated into the school design at the Committee hearing of 7 May 2014 (see column 356 of the Official Report).

3 Will this have an impact on unsupervised access, especially by children?

The Council will implement its commitments on accessibility of the pitches for local residents as outlined in oral and written evidence, and in previous reports to and decisions of the Council’s elected members.

4 If individuals from the local area can book the proposed new pitches for free, can teams that currently pay to book other pitches book Portobello instead if they have a single team member from the local area?

That would be the case, as long as the booking was made by the resident of the Portobello area.

5 What activities will be allowed on the pitches?

The new pitches will accommodate a range of sporting activities. The permitted activities would be those ordinarily permitted on such pitches, wherever located in the city, as may vary from time to time.

6 If there is vandalism and littering, what will happen regarding future access?

Any vandalism or littering which might happen in the future would be dealt with accordingly, however that would not change the already-approved access arrangements.

7 The promoter's response to the convener's letter of 11 October asking about access to artificial pitches (among other things) says "Informal access to the pitches through "cat flaps" would also be available at any time when there were no pitch bookings. Again the actual management of this will be finalised at a later date" Does the council still believe this to be workable in view of the Secured By Design guidance and the Community Access To School Facilities report?

Yes. The Secured by Design guidance would not preclude the already-approved access arrangements and the Community Access to School Facilities report to which the objectors referred on 7 May 2014 is not inconsistent with those arrangements, as explained in the Council's letter of 15 May 2014.

8 Can you provide details about number of respondents who made suggestions for the new replacement park on the existing school site? Were these all respondents who had also supported the Private Bill proposal? What % of total responses was this?

There were 3,866 respondents who made suggestions, not all of whom supported the Council's proposals. This represented 32.17% of the total responses received of 12,018. The details of all suggestions received were published on the Council website in March 2013. However, the link is not available at the time of writing. That will be rectified, but in the meantime a copy is enclosed with this letter.

Category 2

9 At what stage in a large development would the City of Edinburgh Council usually

require a Road Users Safety Audit?

The necessity and timing for such an audit would be very much dependent on the nature of each project and the local circumstances. Ultimately it is for the Council's transportation department to determine for each project. Road safety is also a matter upon which the Council's planning department must be satisfied before recommending that a project should be approved by the Development Management Sub-Committee.

Issues of transport and road safety have been explored in detail on a number of occasions, both as part of the Private Bill process and during the two planning application processes undertaken in connection with the new school. Mr MacIntyre explained in evidence to the Committee on 26 March (Official Report, column 187-188) and again on 23 April (columns 263-268) when would be the appropriate stage for carrying out a road safety audit in respect of this project. This is also reflected in the Council's written submission in response to the objectors in groups 2 & 4 and 3 & 6.

10 How many pupils are expected to cross Milton Road or Duddingston Park at lunchtimes when no temporary speed restrictions will apply?

Gillian Dunn asked essentially this question on behalf of Group 2 on 26 March (column 193), and this was addressed in the Council's letter of 14 April 2014 to the Convener with follow-up points from that meeting. Mr MacIntyre then gave further evidence to the Committee about the issue of road safety at lunch time on 23 April (Official Report, columns 262-263).

11 In common with all other areas in Edinburgh the pedestrian controlled lights at the crossing outside the school entrance will have to be linked to the lights at Duddingston Park so they will not respond immediately, encouraging pupils to cross when the lights are at green. How has the council assessed this safety risk?

Matters of traffic and road safety arising from the project have already been considered in detail and fully assessed by Council's transportation department. They have also been the subject of extensive evidence to the Committee. A road safety audit will be undertaken if the project goes ahead, and the detail of the identified road safety measures, including the

timings of the lights at the toucan crossing, will be considered as part of that process.

12 Why is it that the busy A1 at Milton Road is not regarded as a concern by the council?

This is a rhetorical question. The Council has already made it clear that issues of road safety were a paramount concern as part of the development of its proposals for the new school (see in particular Mr MacIntyre's evidence from column 261 of the Official Report of 23 April).

13 Where will parents drop their children off when driving them to school?

The Council has already given evidence on school drop-off in oral evidence – see the Official Report of 12 March (column 132) and 26 March (column 188-189). Council policy is to not create formal drop-off zones at schools, and any parent who elects to drop off their children is responsible for doing so safely.

14 The city of Edinburgh has the tenth worst road safety record around schools in the whole of the UK as evidenced by an article in the Edinburgh Evening news of 30 August 2013 (<http://www.edinburghnews.scotsman.com/news/education/edinburgh-10th-worst-uk-city-for-school-road-safety-1-3067997>) which shows a complacent attitude in this regard. Why do the council continue to downplay the road safety risks posed by siting this school on the A1?

The Council does not accept the premise of the question, the accuracy of the article referred to or its relevance in the context of the Private Bill. If the Committee would nevertheless like the Council to address the terms of that article then the Council would of course be happy to do so.

Road safety risks have been fully assessed and the necessary mitigation measures identified, as explained in the Council's written submissions in response to the objectors in Groups 2 & 4 and 3 & 6 and also in oral evidence (see the Official Report of 26 March – column 185-189, 23 April – column 262-264, and 7 May – column 369). The Committee has a copy of the extensive Transport Assessment which was undertaken.

Category 3

15 Why were to scale photomontages not provided as part of the planning application for the school to show people an accurate image of the impact on the surrounding area and the protected view?

Both the original planning application and the most recent application to renew planning consent provided the required information. Ian Alexander gave evidence for the Council on 7 May (column 371 of the Official Report) explaining that accurate photomontages were prepared as part of the planning application.

16 Why was the protected view of Arthur's Seat from Hope Lane not included in the assessment of views carried out as part of the planning application?

The Group 1 witnesses asked this question, and the Council's witnesses answered it, on 7 May (see columns 370-371).

The protected view to Arthur's Seat was expressly considered in the report to the Council's Development Management Sub-Committee on 4 December 2013 (available [here](#)) which, on page 10, stated "In order to reconcile the juxtaposition of the land uses, the proposal takes cognisance of the character of the general area by keeping the building height low across the site and maintaining views to Arthur's Seat from the east. While the school will be visible in the viewcone, the overall impact will be minimal as the view is maintained."

17 Why has there never been any representation of this protected view showing the disruption to the view by the high fencing round the pitches and elsewhere within the site?

The photomontage produced was an entirely accurate representation. See columns 370-371 of the Official Report.

18 Does the council have any comments to make about the significant view identified in the Parks and Gardens Strategy across the golf course to the Firth of Forth, and the

impact of the loss of this view?

The Group 1 witnesses asked this question, and the Council's witnesses answered it, on 7 May. See columns 371-372.

The question was expressly considered in the report to the Council's Development Management Sub-Committee on 4 December 2013 (see the link at question 16) which, on page 10, stated "Similarly, the views across the site from the south to the Firth of Forth will be retained as far as possible due to the low levels of the buildings and the difference in ground levels."

19 The impact on two out of 12 of the viewpoints assessed in the Environmental Statement (chapter 6) of the planning application was rated as "major adverse" even after 15 years and the impact of a further six out of the 12 viewpoints assessed was rated as either moderate or minor adverse. The townscape impacts assessment also identified that the impact on Portobello park and Golf Course would be "major adverse" remaining so for 15 years. However, the promoter stated at column 261 on 23 April that: "I explained at the previous meeting that the new school has been designed to fit sympathetically with its surroundings". How can these two contradictory statements be reconciled and why does the promoter assert that its view takes precedence over a considered professional assessment?

Issues relating to the visual impact of the school, including the design quality, its scale and height and the impact on residential amenity (including loss of views) were considered in full as part of the planning process.

The planning report of 4 December 2013 (see question 16) stated that "[t]he school building has been designed to reflect the positive characteristics of the surrounding area", and described it as having a "diverse and interesting elevational composition [...] minimising the visual impact of the school. The external finishes comprise a simple palette of high-quality materials that complement the building and surrounding area." Architecture and Design Scotland commented on the proposals during the pre-application stage of the original planning application. They thought that the building may be an example of an exemplary development and, as the planning report notes, "further commented that the level of quality

detailing was supported, and felt that the building responds skilfully and sensitively to the surrounding context.”

Overall, the Council’s Development Management Sub-committee considered that *“the scale and siting of the building takes account of the landform and prevailing townscape, minimizing visual intrusion and disruption of open views.”*

Category 4

20 The pitches will be sunk down and lower than Milton Road. The floodlights will be about the height of the ground floor windows of houses in Duddingston Crescent. If deflectors don't work, as in other parks, what will the solution be?

Issues of light pollution and the design of the floodlights were considered in full as part of the planning process, and the Council also commented on them in its written submissions in response to Groups 1, 2 & 4 and 3 & 6. The floodlighting assessment carried out as part of the planning application process confirmed that glare would not affect nearby residential properties and that light spillage would be within acceptable limits. The lighting has been designed to include the use of light shields which will restrict backward lighting and fitting of specific optics to accurately direct the light. The planning report of 4 December 2013 (see the link at question 16) concluded that there would be no adverse impacts as a result of the floodlighting, or any other lighting within the site.

21 In other residential parts of the city floodlighting is subject to a 9 pm curfew but it is proposed to have floodlighting on the pitches at Portobello Park until 10 pm. Why?

This condition was set by the Development Management Sub-Committee.

The hours of operation of the pitches have not yet been determined, but would likely be similar to those currently in place at other schools with similar high quality facilities, a number of which are currently open until 10pm due to the demand for their use.

22 How will you mitigate any problems experienced as a result of light spillage from the

floodlighting?

See response to Question 20 above.

23 Plant design has not taken place yet so noise levels are as yet unquantified. How will you mitigate the noise levels?

Questions of noise and noise pollution have now been considered twice through the planning process. This included a projection of the anticipated noise impact from the proposed sports pitches and noise from building services plant. See the report to the Development Management Sub-Committee on 4 December 2013, page 14 (see the link at question 16). The issue was also addressed in the Council's written submissions in response to Groups 1 and 2 & 4.

24 How can you guarantee that plant noise won't be a nuisance?

See the response to Question 23 above.

25 What impact will the increase in traffic plus 1400 extra children and over 100 teachers travelling to the site every day will have on noise levels in the surrounding area?

See the response to Question 23 above.

*26 There is a goods entrance planned for Park Avenue and LGVs and HGVs will use that. In the promoter's response to Group 1, 4.2 they say that: "The volume of traffic on Park Avenue resulting from deliveries, etc. once the school is operational is **likely** to be low. Other smaller delivery vehicles would be **likely** to use the car park entrance on Milton Road to drop off supplies." What does likely mean in this context?*

The Oxford Dictionary defines 'likely' as meaning 'Such as well might happen or be true; probable.'

27 The planning application identifies that bats commute, forage and perhaps roost on the site. What will happen to any bat roosts found on the site?

Extensive information on bats, including mitigation proposals, was considered as part of the planning application processes in 2010 and again in 2013. A Bat Activity Survey Report was carried out as part of the Environmental Statement for the project. The planning report of 4 December 2013 (see the link at question 16) stated that the mitigation measures proposed in respect of bats were acceptable (para 2.3g on page 17). Scottish Natural Heritage commented in respect of the original planning application that the mitigation proposals for bats were “robust”, and reiterated those comments for the renewal in December 2013.

28 In the Environmental Impact Assessment, it is recommended that in order not to deter bats from the park that light levels be kept as low as possible. Yet in direct contrast the advice on lighting in the Police Secured By Design (SBD) report suggests an even higher level of lighting, including floodlighting of the school site (as opposed to the pitches) and a high uniformity of light. How have these two contradictory bits of advice been reconciled?

There is no “contradictory advice”. The lighting design proposals will ensure that light levels will be kept as low as possible while still achieving the minimum levels required to meet the Secure by Design guidance. The final lighting positions, levels and any directional screening will meet the minimum key requirements for the proposal but will take full cognisance of the Environmental Impact Assessment. This will be considered as part of the Landscape Management and Habitation Plan (see the following question), and all recommendations and mitigation measures shall be implemented prior to the occupation of the development.

29 The current planning permission is conditional. For example: "Submission of a fully detailed landscape plan and habitat management plan, including full details of the extent of the removal of Millennium Planting on the site's northern boundary will be submitted to the Planning Authority for approval". Has this been done yet?

This would only be actioned if the Private Bill is passed; the project to build a new Portobello High School on Portobello Park can then be progressed and a contractor would be appointed to prepare the plans required under this planning condition. This is clearly a planning matter and not relevant to the Private Bill process.

30 How many tall trees will be felled and what is the commitment to replacing with tall tree species?

No definition of “tall trees” has been provided, so we cannot provide a comprehensive response to this question. However, the removal and replacement of trees as part of the proposals was fully considered during the two planning application processes undertaken in connection with the new school. The issue of tree felling and replacement was addressed on page 17 of the planning report of 4 December 2013 (see the link at question 16). This is in any event clearly a planning matter and not relevant to the Private Bill.

31 You will recall that in the assessments of other sites for the school they were marked down as they contained Millennium planting yet there was no mention of Millennium planting on Portobello Park. How much of the Millennium planting will be removed? (as a % of the total amount)

The question does not specify which “assessments of other sites” the objectors have in mind, so it is difficult to know to what the question refers. However, we have assumed that it relates to the analysis of site options undertaken by Smith Scott Mullan Associates in August 2006 and updated as part of the original planning process in June 2010; a copy of the updated report is attached hereto. While the existence of Millennium planting was mentioned in this report for some sites, it was not one of the many measures used in the comparative assessment exercise in section 5.3 of that report.

It is estimated that approximately 62% of the existing Millennium planting on Portobello Park would have to be removed to accommodate the new building and structures. However, re-planting will be carried out as part of the new landscaping for the site, as outlined in the landscape proposals approved through the planning process.

Removal of Millennium planting was specifically addressed as part of the original planning application and the later renewal process. See the planning report of 4 December 2013 (see the link at question 16), on page 12: “[...] the proposal has been rigorously assessed in terms of the loss of open space and the impact of the proposal on the city's landscape and town-

scape character. Although there will be some loss of the Millennium planting, the overall biodiversity will be enhanced due to the additional tree planting and sedum roofs.” The report further stated on page 17: “In addition, mitigation measures are proposed which will maintain and enhance the existing woodland areas around the periphery of the site, which will help protect and improve the amenity of the wider area. Compensation in the form of additional planting is proposed to mitigate against the removal of some Millennium planting and trees, as well as protection and improvement of remaining woodland and trees; and bringing the woodlands into an active management programme. Overall, the impact on ecology and nature conservation has been assessed and while the proposal requires the loss of some Millennium planting, the proposed mitigation measures compensate for this.”

Note also the planning condition set out at question 29 above.

Category 5

32 The Atkins Report of 2003 confirmed to the council that it was possible to rebuild Portobello High School without moving St John’s RC Primary School. When and by whom was the decision made that Portobello High School could only be rebuilt on its current site if St John’s moved first and where is this decision recorded?

The Group 1 witnesses asked on 23 April when that decision was made, and Mr MacIntyre and Mr Strachan both confirmed that they did not know. There was significant further discussion of the Atkins report at that session (columns 323-328). Mr MacIntyre also gave evidence to the Committee on 26 March about the Atkins study and the reasons why it was discounted – see the Official Report of 26 March (columns 206-208).

As Mr MacIntyre has already stated in evidence it is not known either when, or by whom, this decision was originally taken. Decisions of this nature would not necessarily be recorded. The decision was, however, obviously taken in advance of the statutory consultation regarding site options in 2006, as none of the three options included a rebuild using solely the existing High School site.

In any event, the Council is free to choose what it considers to be the best alternative option

to siting the new High School on Portobello Park. It chose a phased rebuild on the combined High School and St John's site, on the basis of extensive and detailed consideration of the various options on several occasions. The option of building the new High School on the Park remains far superior to a phased re-build.

33 Have council considered rebuild of PHS with St John's in situ with longer term plan to use St John's area for artificial pitch if/when St John's is rebuilt elsewhere?

Due to the many constraints associated with the location of the current buildings on the existing site, St John's RC Primary School would have to be relocated to allow a phased build of Portobello High School to be undertaken on the existing combined site. The delivery of a new St John's RC Primary School on an enlarged site of 1.3 hectares at the earliest opportunity is in any event also a priority for the Council, and there would be no justification for compromising that.

34 Do the council acknowledge that in both 2003 and 2004 there were plans to rebuild on site, and if this option had been adopted in 2009 when funding became available the school would be built by now?

This is a rhetorical question, the premise of which the Council does not accept for reasons already given in evidence.

35 Which councillors knew about the August 2008 legal opinion regarding the need to seek court permission to build on the park?

The August 2008 opinion is irrelevant to the historic decision-making process in respect of this project, for the reasons explained by the Council in evidence on 23 April (columns 307-311), in our letter to PPAG of 30 April (copied to the Committee), again in evidence on 7 May (columns 339-341) and again in our letter to the Convener of 15 May.

The Convener has already advised the Group 1 objectors (Official Report of 23 April, columns 310-311) that this issue is historic and of no relevance to the Private Bill.

36 Can we see written correspondence, records of meetings, telephone calls and emails between council officials and any legal advisers involved in either of the QC opinions regarding these opinions?

The information held by the Council in respect of these issues was provided on 2 April 2014 to Elizabeth Manshuri, who the Council understands is a member of PPAG, in response to a freedom of information request. The Council's response to that request is available [here](#) and [here](#). The Council believes it is this response to which Ms Connelly referred on 7 May (see the third full paragraph of column 339 of the Official Report).

It is in any event not relevant to the Bill, for the same reasons that the August 2008 opinion itself is irrelevant (see response to question 35 above).

37 In 2009 when funding was identified, both legal opinions were in council possession. Did the council consider the risk in deciding to pursue park option rather than rebuild on site, given there has been no evidence for discarding that option?

See answer to question 35 above. This question is also irrelevant, in line with the Convener's previous comments on this issue.

The question implies that the two opinions were competing, which is not correct; the later opinion superseded the earlier one, as previously explained in oral evidence and in writing.

In any event, the decision to proceed with a new Portobello High School on Portobello Park was first taken by Council in December 2006.

38 Why was legal risk not factored in when funding became available in 2009?

See the responses to questions 35 and 37 above.

39 Does the council agree that a school with similar accommodation, with exception of artificial pitches was proposed in the Atkins study?

The Committee has already heard evidence on the reasons why the Atkins study was dismissed as being unachievable and offering a significantly compromised design. See the response to question 32 above.

40 Does the council agree that it is satisfied with the design and facilities that are being provided at Boroughmuir and James Gillespie's, and that there are highly regarded school buildings on constricted sites elsewhere in the city?

The Group 1 witnesses asked about these other schools on 23 April, and Mr MacIntyre addressed their questions (see columns 328-329). The Convener advised the Group 1 witnesses at that time that the questions were not relevant to the Bill.

Nevertheless the Council can confirm that it is, indeed, very satisfied with the design of the new James Gillespie's and Boroughmuir High Schools, even though for each school the Council would have ideally wished to have been in a position to deliver external sports facilities to the same high standard as those proposed for the new Portobello High School on Portobello Park. However, the lack of suitable and available land in each of the respective areas unfortunately meant that this was not possible for either school.

41 In previous evidence it was stated that all physical education would be provided on site. What are the areas of physical education that are not currently provided on site?

The proposals for a new Portobello High School on Portobello Park include provision for two full-size all weather pitches to allow for all outdoor PE activities to be undertaken on site. The limitations of the very small pitch at the existing Portobello High School site were set out in the additional information provided by the Council following the evidence session of 26 March 2014.

42 Can the council provide a list of the off-site facilities that have been booked in the past year in respect of physical education?

The off-site facilities used by Portobello High School in the past year are:

- Jack Kane Centre
- Meadowbank
- Castlebrae Community High School facilities
- Power League
- Duddingston Recreational ground

43 Does the council have more detailed cost analysis information with fully disclosed assumptions available for scrutiny? We have made various requests to the council for figures to support some of the comparisons of costs but have had very limited feedback.

The Council has received a number of freedom of information requests relating to the comparative costs of the options for a new Portobello High School, and has responded to all of those to the extent possible (i.e. subject to the limitations applying to commercially sensitive matters such as the amount of the Council's bid for the Baileyfield site). Particular reference is made to the Council's very detailed response to Diana Cairns of 28 February 2014 (a copy of which accompanied the Council's written submission in response to the Group 1 objectors), to which no follow-up questions or queries have ever been received by the Council.

44 Can the council guarantee that it will not have to re-tender this project, particularly given the very high level of contractor interest in the original tender?

Mr Hawkins asked this question in the oral evidence session on 23 April (see column 322 of the Official Report), and was advised that the matter had already been covered in the previous session. The question is not relevant to the Private Bill process; the Convener has already noted (Official Report of 26 March at column 213, and 23 April at column 322) that the Council's compliance with its obligations under procurement law is a matter for the Council and not the Committee.

45 The council indicated at the last evidence session that they put a notice in OJEU to advise previous unsuccessful bidders in Feb 2014 and that they have had no expressions of concern. Can the council confirm that they made this notification

because they are aware that changing the terms of a contract can lead to challenges by previously unsuccessful contractors?

See above. The Council's compliance with its obligations under procurement legislation is a matter for the Council, and is not relevant to the Committee's consideration of the Bill. As has been repeatedly stated in evidence before the Committee, the Council is aware of its obligations under procurement law and will comply with those.

46 Can the council provide a copy of the Notice in the OJEU?

All OJEU notices are publicly available online. The notice in question is accessible via the following link: <http://ted.europa.eu/udl?uri=TED:NOTICE:49236-2014:TEXT:EN:HTML>.

47 Can the council advise if they were aware of this requirement to notify potential contractors when they provided the information regarding the tender/procurement during the consultation in 2012/13 and the introduction of the bill in April 2013?

See above. Procurement matters are not relevant to the Committee's consideration of the Bill, as the Convener has confirmed more than once.

16 May 2014