

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

WRITTEN SUBMISSION FROM JAN AND DAMIAN KILLEEN

We are writing to express our concern at the City of Edinburgh's proposed Private Bill to change the legal status of Portobello Park. We would be grateful if you would bring this letter to the attention of the appropriate scrutiny committee. Our principal concerns are for the proposed breach of the inalienability of the common good status of this land, the inadequate nature of the consultation process undertaken by the Council and the precedent that could be set by the approval of this Bill.

We are not commenting here on the suitability or otherwise of this site for the replacement of the Portobello High School. Our son attended this school some twenty years ago and we were aware then of the need for significant action to be taken to provide an adequate learning environment for local children. We regret that the inadequate performance of the City Council in this regard over many years has led to the current situation in which the community has become unhappily polarised. This Bill brings into the national parliament a matter that, with good stewardship from the local authority, should have been resolved long ago within the community that it primarily concerns.

There is Common Good land and Inalienable Common Good land. Portobello Park has been found to be Inalienable Common Good land by the Court of Session. In our view, that should be the end of the matter. The inability of the ownership of this land to be passed to any other party extends to a restriction on the ability of the City Council to transfer it to another of its Departments to be used in a way that was not intended when Sir James Miller sold the land. The only exception to this would be if the need to override the legal position were so critical that no alternative could be considered. The Court of Session has judged that this is not the case in this situation. It is difficult to see why a national parliament would seek to reverse this legal position unless it could be demonstrated that there is an over riding, critical consideration that the Court did not take into account. In our view, the Edinburgh City Council has not demonstrated this. We are concerned at the City Council's ongoing attempts to subvert the law with regard to the status of Portobello Park and we do not think that the Scottish Parliament should be complicit in this.

Secondly, we are concerned about the inadequate nature of the consultation undertaken by the City Council. In particular, we are concerned that it does not meet the standards for consultation set out in the Scottish Parliament's Guidance on the process of a Private Bill. This is summarized as;

'2.6 Proper, balanced, committed and participative engagement and communication with local communities can not only reduce the likelihood of objections being lodged but also create a more open and constructive relationship between the promoter and local residents.'

There are numerous ways in which the Council's failure to meet the Parliament's standards could be identified. At a meeting convened by the Portobello Community Council, which one of us attended, for example, it was apparent that close neighbours to the site had not received written information from the Council, though

this was rectified later. The Council's representative at the meeting, the Director of Education, focussed almost exclusively on the need for a new school without any discussion of the common good issues and objectors were characterised in the meeting, with no balancing support from the City Council's representative, as being against the concerns of children and parents rather than being respected for their concerns about the inalienability of the site. This biased approach extended to the content of the written consultative material which, again, took a simplistic – for or against a new school – approach, rather than dealing with the broader implications of the actions the Council wishes to take.

One requirement for the Parliament's Private Bill consultation process is that all alternatives to the proposed change should be set out in the consultation in an unbiased and transparent way. Instead, the City Council has referred briefly to previous consultations on options and has referred negatively to 'back up' options without setting out the pros and cons of them for consideration by the public. The Council has sought public support for its preferred option rather than consulting fully on the options and seeking public views on all of them.

This is, essentially, a matter of ends and means. Very few, including us, will disagree with the 'end' of the building of a new school in Portobello but this end does not necessarily justify the proposed 'means'. The City Council has not fully explained the implications of these 'means' to the public or facilitated adequate public debate on their immediate and wider implications. The Council appears not to have understood that this consultation is, essentially, being undertaken on behalf of the Scottish Parliament rather than on its own behalf and we feel that the inadequate consultation that has taken place does not provide a proper basis on which the Parliament can make a sound judgement on this matter.

Our other concern is with the precedent that will be set for other local authorities if this Bill is approved, making it much easier for them to appropriate Inalienable Common Good land. We are also concerned at the value of the promises made by Edinburgh City Council with regard to the other areas of Portobello Park which are not immediately required for the building of a school. The proposed Bill empowers the City Council to use the whole site for educational and 'connected' purposes and there is no guarantee that a future Council might not wish to do this. The nature of these 'connected purposes' and the compensatory proposals from the Council are not addressed in the terms of the Bill. The best protection for the whole of Portobello Park, in our view, rests in it retaining completely its status as Inalienable Common Good land.

On these grounds we urge the Scottish Parliament to reject this Bill.

We had hoped to submit our concerns as a formal 'Objection' to the Bill. However, the rules require that, in order to do this, we must demonstrate a direct impact on ourselves or our property from the passage of the Bill. This is not the case for us. We appreciate that the Parliament will wish to avoid frivolous objections but we are concerned that the rules are too restrictive and do not permit formal objections on matters of fundamental principle or fear of precedent. The future of inalienable Common Good land in Edinburgh is a matter of concern to all citizens, whether directly affected or not in a particular case and we believe that objections such as

ours should have a proper place in the legislative process. We would ask the scrutiny committee to refer this issue to the appropriate procedural committee of the Parliament for further consideration.

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