

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL
CONSIDERATION STAGE – WRITTEN EVIDENCE TO SUPPORT
ORIGINAL OBJECTION

ALISON CONNELLY (OBJECTION 50)

I have a number of points I wish to expand on in respect of my earlier objection to Portobello Park Private Bill. I wish to make it clear that I do not withdraw any of my objection and I would like all of my comments to be considered at the next stage.

Thank you for forwarding the communication from Edinburgh Council with their responses to certain issues raised by objectors, and on which I wish to add further comment.

Baileyfield

It is of curious timing, that there has been a very long silence from the council in regard to providing any information about progress with the purchase of Baileyfield, and yet within a very short time of the bill being approved by the Scottish Parliament for progress to the consideration stage, that the council are able to convey news from the agent that they are not the preferred bidder. An FOI response from the council to a question asking for details about communications in respect of Baileyfield was heavily redacted and is now the subject of an appeal to the Information Commissioner, but I remain deeply concerned about the council's transparency in this matter and whether matters have been dealt with in an open and honest manner.

Rebuild on existing site

I refer to the Atkins feasibility study from 2003 which the council commissioned when it first identified Portobello High School as a candidate for rebuild. The study demonstrates that equivalent educational and social spaces (with the exception of 1 of the artificial pitches) could be provided on the existing school site, without the need to relocate St John's Primary. I am disappointed that this option has been mothballed with no explanation given, and that the option to rebuild on site now assumes, without justification that it is essential for St John's to be relocated first. As has already been commented on, another large high school in Edinburgh is currently being rebuilt on its existing site which is approximately two thirds of the existing PHS site. The council made an undertaking in 2012 to develop as a fall back option a plan to rebuild on site, but they have failed to do this in a meaningful way.

Future uses of Portobello Park

The legal status of the land once it has been developed as a school site is far from settled, and the proposed amendment to resolve the uncertainty has not been commented on by legal experts, or at least if it has, such comments have not been made publicly available. Given the council track record, and their previous refusals to share legal opinion they have obtained in respect of Portobello Park, this is something I wish to explore further.

Notwithstanding assurances that should the park no longer be required as a location for the school it would revert to a park, there remains the more immediate concern that the park cannot remain as common good land at the present time if it is appropriated for the school. I am not a legal expert, and because I only received this communication from the council on 4th February, I have not have time to obtain legal advice concerning the council's assertions in their response to objectors prior to the deadline of 7th February, but I do intend to explore this further

Replacement park on existing site

The council have make no binding commitment to securing this park. The Fields in Trust is a charitable trust, with little statutory impact. I am including an extract from the Fields in Trust web-site:

Flexibility

That's not to say that every blade of grass should always remain. Opportunities will arise when disposal of part or the whole of a site for development can result in significant funding which can be reinvested in new or enhanced facilities, a process sometimes described as 'betterment' Charity law requires trustees to act in the best interests of their charity, which will require consideration of betterment opportunities. On occasion local authorities have a duty to ensure land is well used and not surplus to requirements. Like any other organisation, local authorities also need to balance their budgets, look broadly at the funding needs of all of their services and decide on priorities. At Fields in Trust we recognize these pressures on recreational landowners and managers. Under our protection, there is flexibility to allow for disposals leading to betterment where we judge this to be of recreational benefit to the local community. Indeed, we have been able to use this flexibility to leverage better facilities for communities on numerous occasions.

This makes it clear that there is, as the title indicates, considerable flexibility, and it offers little by way of reassurance that long term protection is offered. This reinforces local concerns that the existing school site is unlikely to be retained as a park in the longer term, and that the potential capital receipt from its development will be very attractive to the council in times of budgetary pressure.

Neighbourhood Partnership

The council have advised that they have delegated to the local Neighbourhood partnership responsibility to consider the best uses of the new park. It should be noted that the Duddingston and Craigtinny Partnership (ward 14) which has been given this task, does not include the streets surrounding Portobello Park, which is in a different ward. As a result those most affected by the loss of Portobello Park will not be included in this consultation about replacement facilities.

Amendment to bill to include new park

The council also states that it would not be possible to include within the bill a clause to enforce their commitment to provide the replacement park, with their excuse being that the exact footprint is not known. I do not accept this reasoning, as I believe it would be possible to include provision something along the lines of “a space of 2.2 hectares within the larger 3.5 hectare boundary identified by the following co-ordinate...”, and I believe that the council unwillingness to do so demonstrates a lack of commitment to the replacement green space, especially in light of their earlier comments (2010) that the existing school site is not in the correct location for replacement green space.

I also question their conclusion that such an amendment is inadmissible under rule 9A.12(5)(b), given that the consultation required by the private bill rules, and run by the council, relied on various statements including the promise of replacement green space on the existing site, and therefore it is an integral to the objectives of the bill. I believe this is something that may possibly be subject to future legal challenge if not resolved properly at the current time.

In terms of the unilateral measures to which the council refer, I find it strange that the council are able to find authority to remove inalienable common good land designation (via this proposed private bill), but are not conversely able to instate it. Again this is a matter, that given adequate time, I wish to obtain legal advice.

Cost estimates from council in report to full council of 6 February 2014.

The council continue to provide a distorted picture of the alternatives, but using inconsistent estimation rates and criteria of the inclusion of additional costs (eg I understand that they have included the full cost of replacing St John's in the plans to rebuild on the existing site, and have not included it in the plans to build on Portobello Park, despite the fact that they plan to rebuild St John's in either scenario. This means that the comparisons are invalid and should not be relied on in the decision making process. I do not yet have access to the breakdown of their estimates, so the above comments are subject to a degree of guesswork and memory from the way they have approached the business case in the past, but I would like the council to

clarify these comparisons to justify the reports that have been submitted to the full council meetings, and which underpin the decision to proceed with the private bill.

Procurement concerns

The council has now entered talks with the preferred contractor, Balfour Beatty, to renegotiate the contract terms, in particular the price. Such negotiations are open to legal challenge from other previous or potential bidders, and best practice would dictate that after an extended contract acceptance period, such as has been the case in this instance when the preferred bidder was selected in September 2011, the contract be re-tendered. The council do not have a good track record with school build contracts - there was a collapse of the £500 million PPP2 tender process in 2005 (see the Scotsman newspaper, 6 September 2005 – “Corruption bid wrecks school plan”), when it was found that a council employee had provided preferential information to Balfour Beatty, and I am confident that it would be viewed with concern if Edinburgh Council and Balfour Beatty were to appear to stretch the rules in respect of this contract now.

If the council are likely to retender, then the cost comparisons referred to in the above report (to inform full council on 6th February 2014 of current options) become completely meaningless, because the council would be obliged to estimate the build on the park at the industry standard meterage rates that they have use for the other options, rather than the reduced rates they achieved through the first tender process. This undermines the decision making processes of Edinburgh Council.

Lessons learnt: consultation

The Private Bill Committee indicated that the council should learn lessons from the consultation. It is my belief that the council will take the following view:

1. They held a heavily biased consultation aimed to promote a particular outcome
2. As a result of their promotion of the favoured option they gathered public support
3. As a result of the public support, the Scottish Parliament supported their proposal
4. As a result of this support they got what they wanted

Lesson learnt: Run a bad-practice consultation and you are more likely to get what you want.

In summary, I remain concerned that the foundations on which decisions have been made regarding the progression by the council of this private bill are defective, and that there remains the risk of further legal challenge and on-

going delay in the provision of the new school. The council have failed to identify and measure risk associated with this project and have failed to take adequate measures to manage these risks.

I look forward to hearing your views on these observation/objections.

6 February 2014