



OFFICIAL REPORT
AITHISG OIFIGEIL

Pow of Inchaffray Drainage Commission (Scotland) Bill Committee

Wednesday 12 September 2018

Session 5



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**POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL COMMITTEE
6th Meeting 2018, Session 5**

CONVENER

*Tom Arthur (Renfrewshire South) (SNP)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Alison Harris (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hugh Grierson (Pow of Inchaffray Commissioner)

Jonathan Guest (Pow of Inchaffray Commissioner)

Mr Ian Macgregor (Objector)

Alastair McKie (Anderson Strathern)

Mr Watkins (Objector)

Mrs Watkins (Objector)

CLERK TO THE COMMITTEE

Nick Hawthorne

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Pow of Inchaffray Drainage Commission (Scotland) Bill Committee

Wednesday 12 September 2018

[The Convener opened the meeting at 10:09]

Pow of Inchaffray Drainage Commission (Scotland) Bill: Consideration Stage

The Convener (Tom Arthur): Good morning and welcome to the sixth meeting in 2018 of the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee.

The first item on our agenda is to take evidence on the objections to amendment 9 to the bill. Two objections to the amendment were received; objectors are here today to speak to those objections. Given the specific nature of each objection, we did not consider grouping them, but will take evidence on each in turn. We will hear first from Mr and Mrs Watkins, who will speak to objection 1. When that has concluded, we will hear from Mr Macgregor, who will speak to objection 2.

Before we proceed, I will briefly explain the process and how the meeting will proceed. We have concluded phase 1 of consideration stage, in which we considered and disposed of objections to the bill, and are now in phase 2, which is the legislative phase.

Fifteen amendments to the bill were lodged, and the committee determined that one of them, amendment 9, which relates to the new land plans that were submitted in April 2018, would adversely affect private interests. A new notification and objection period was therefore allowed for, and the committee set a deadline of 20 August 2018 for objections to amendment 9. Two objections were received and today, as we did with the objections to the bill, we meet in a quasi-judicial capacity to consider those objections.

Once consideration of the objections has concluded, the committee will consider and dispose of the amendments that have been lodged and will consider each section, schedule, and the long title of the bill. At today's meeting, the objectors and promoters will have the opportunity to set out their arguments and to test those arguments through cross-examination. I will manage proceedings.

Committee members will predominantly listen to both sides, but might come in at times to seek clarification or to help to move things along. I will first invite Mr and Mrs Watkins to set out the points that they wish to make in relation to their objection. The promoters will then have an opportunity to cross-examine them. After that, the roles will be reversed, and the promoter will respond to the points that have been made in the objections and make any other points, and Mr and Mrs Watkins will have an opportunity to cross-examine the promoters.

When we reach the end of the session, there will be an opportunity for each party to make a brief closing statement. The committee will then reflect on what we have heard and come to a view when we meet on Wednesday 26 September 2018. We will then repeat the process with Mr Macgregor.

We now move to the formal evidence session. I encourage all speakers to be as concise as possible. I invite Mr and Mrs Watkins to open proceedings by setting out the points that they wish to make regarding their objection.

Mr Watkins (Objector): Thank you, and good morning everyone. We thank the parliamentary committee and promoters for inviting us to give evidence today. We have lived alongside the pow for 18 years and have paid our dues for its maintenance regularly.

Our objections are basically as set out in the letter and in appendix 1. As everyone will have seen in the letter, we do not own the Inchaffray abbey site; it is owned by the Earl of Kinnoull. The original planning consent clearly states that the house site, which includes access from the road and the front lawn, is restricted to 0.1 of a hectare, which is just under a quarter of an acre.

I quote from Perth and Kinross District Council planning consent condition 6:

"The site shall be used for residential purposes only and no agricultural or industrial development will be permitted on the site or the immediate vicinity of Inchaffray Abbey."

I refer the committee also to appendix 1 to the letter from Perth and Kinross District Council planning department that gives the reason for that as being

"In the interests of amenity and in order to protect the setting of Inchaffray Abbey which is category B listed building of Architectural or Historical Interest and is a Scheduled Monument of national importance."

Historic Scotland classified the abbey site and surroundings as a scheduled monument, protected by the Ancient Monuments and Archaeological Areas Act 1979. As such, further development is extremely unlikely. The scheduled area was moved back from the pow to the south-west corner of the remaining abbey wall after an

archaeological excavation was undertaken to facilitate the planning consent for a house in 1987. That excavation was conducted by Mr Gordon Ewart and was published in the *Proceedings of the Society of Antiquaries of Scotland*. I am showing the committee the paper now.

The proposed house site was altered after the results of the archaeological investigation were known because a large building, the position of which is shown on the little plan in the paper, was discovered. It is just to the west of our house. I am sure that the promoters could have a copy of the paper.

Alastair McKie (Anderson Strathern): That would be helpful. I do not believe that I have seen that.

Mrs Watkins (Objector): We got it very recently.

The Convener: It would be helpful if that document could be circulated. Do you have copies with you?

Mr Watkins: No. We just have this copy.

The Convener: I suspend the meeting briefly to give everyone the opportunity to study the document.

10:15

Meeting suspended.

10:31

On resuming—

The Convener: I invite Mr Watkins to continue.

Mr Watkins: I apologise for the delay.

You will see that area 1, which is positioned just to the west of our house, was quite a large area that was excavated by Gordon Ewart and his team. The final summary in the archaeological papers states that

“The evidence still remains largely underground”

and concludes that

“there is little doubt that Inchaffray may yet yield more crucial evidence.”

As a result of the survey, the potential position of the house was moved east to be nearer the road, in an area of 0.1 of a hectare, which could be built on without causing too much damage to the underlying archaeology. The original house plans revealed that all waste water is routed from the west side of our house to the east, then down past the garage to the septic tank in order to avoid area 1 and any other archaeology.

Even though the scheduled area was moved back from the pow to the abbey wall, we were and

are required to obtain consent for any disturbance to the ground. Historic Scotland required us to have an archaeological watching brief for the erection of a fence around our proposed vegetable plot, which is at the south-western end of our land, together with raised beds.

Permission for the fence was granted, subject to 10 conditions in the letter that you now have before you. I will not read all 10 conditions, because the most relevant one is that the posts of the fence that are to be constructed around the cultivated area should be inserted by driving them into the ground rather than by their being placed into excavated holes. The reason for that, of course, is to ensure that damage to any archaeological deposits is minimised.

We feel that the assumed value per acre for the land is also too great, as we are not in a housing development situation, and that the promoter's residential assessment of 0.855 acres is inaccurate.

The area that is outlined in pink on your Ordnance Survey plan is not correct. The actual scheduled area should be from the south-west corner of the abbey to the north-west corner of the vegetable plot and then down to the pow. Neither the vegetable plot nor the front bit in the front garden nor the part of the pond should be in the scheduled area, apparently. The area that we have outlined in blue, which—if you are looking at a photocopy—is between the house and the road, is the 0.1 hectares for residential use. The rest of the land should, we feel, be classed as amenity land.

We have based our original figures for the annual costs on the spreadsheet that we were sent in June by McCash & Hunter LLP, and I understand that those are now incorrect. We also note that the rate has changed, which will affect all the figures.

Our original objection was because the new method for assessing properties had triggered a massive increase of 500 per cent in our annual costs of drainage. We note from the new schedule for heritors, which we were able to look at only yesterday, that the assessment is now £440.78 plus VAT. That still represents a 59.68 per cent increase, and comes to £528.86 including VAT. Together with the annual charge of £280 for emptying the septic tank, the actual cost to us for waste-water disposal comes to £808.86, because we cannot reclaim VAT. We feel that the increase of nearly 60 per cent is still a large burden for two people.

We are also concerned about the possible financial consequences of updating the bill for all heritors, especially as it may mean a doubling of the initial annual payment after the bill has been

passed, to pay for the promoter's legal costs. If it were doubled, we would be paying £1,057.72 including VAT. Adding the septic tank cost to that would take the total cost to £1,337.72. We do not feel that that potential charge is fair.

The new figures, which we looked at yesterday, do not seem to be correct. On checking column I multiplied by column J, for Inchaffray abbey, we discovered that the figure should be £440.445, as opposed to £440.78, which is 33.5p in the promoter's favour. When I checked the cheapest annual assessment for 5 Eden Square, which also has two people registered on the electoral roll, I noted that it was £15.47. That is incorrect by 2p: it should be £15.45. I checked some of the other figures for the residential properties and discovered that all the ones that I checked were incorrect by varying amounts, mostly pennies. I then checked the agricultural spreadsheet and discovered similar inaccuracies with the figures when multiplying column 16 by column 17. I used a calculator to do that, so I presume that the spreadsheet has a small glitch in it. Apart from the figures being incorrect for the heritors, that obviously has implications for VAT returns.

Finally, as our house is built on the driest piece of land in the Strathearn valley, we argue that the benefit to us is minimal.

To summarise, in view of Perth and Kinross District Council's planning restrictions for the residential footprint of 0.1 hectares and the limitations that were imposed by Historic Scotland, we feel that the new method for assessing our property is incorrect. Not only will our private interests be affected by the financial burden—it will also cause difficulty should we decide to sell the property.

Thank you for your attention.

The Convener: Thank you, Mr Watkins. I invite the promoter to cross-examine Mr Watkins, both on his statement and more generally on the objection raised.

Alastair McKie: Good morning, Mr and Mrs Watkins. Thank you for your submission. Can you confirm that I have understood correctly that you do not object to the principle of payment in terms of the assessment?

Mr Watkins: No, not at all.

Alastair McKie: This is a dispute about the area of assessment from which is derived the annual assessment.

Mr Watkins: Yes.

Alastair McKie: Your position is that the actual area that should be assessed by the commissioners as the benefited area is 0.247 acres.

Mr Watkins: Yes—0.1 hectares.

Alastair McKie: And that 0.1 hectares derives from your planning permission.

Mr Watkins: Yes.

Alastair McKie: As opposed to the commissioners' assessment, which is 0.855 acres.

Mr Watkins: Absolutely.

Alastair McKie: I just want us to understand what the dispute is about.

I want to take you through and ask some questions about the pack of documents that I lodged this morning and which you should have had sight of. I should point out that lodged with these papers is the schedule of ancient monuments, which I think that you lodged with your objection, and a copy of your planning permission, which I assume that you will be familiar with.

Mr Watkins: Yes.

Mrs Watkins: I should say that we did not actually build the house—it is the original planning permission.

Alastair McKie: That is understood.

Document 1 is an excerpt from the Ancient Monuments and Archaeological Areas Act 1979. If I have understood it correctly, your case is that the scheduling of the ancient monument—Inchaffray abbey—places a considerable constraint on what can or cannot be developed on your land. That is why you have produced these documents for this morning's meeting. We see that section 2(1) of the 1979 act says that if anyone

"causes or permits to be executed any works"

that affect the monument without getting consent, it is a criminal offence.

Mr Watkins: It is.

Alastair McKie: And that is how the system of control operates.

Mr Watkins: Yes.

Alastair McKie: Okay. I thought that we would just go through that.

Document 2, which you have produced as part of your objection, is the entry in the schedule of ancient monuments under the 1979 act. The first page mentions

"The monument known as Inchaffray, abbey and early monastic site",

while over the page, we see the actual legal entry for the monument. At the bottom of the page, we see the registration of that document in the register of sasines, showing that it has been

recorded against your title and therefore has effect.

On the next page, we see a map or plan that goes with the entry, which shows two areas outlined in red; they represent the area of the scheduled ancient monument, to which the level of high control or restriction has effect. I think that your house was built in the south-east corner, just outwith the area outlined on the left-hand side.

Mr Watkins: Yes.

Alastair McKie: So the house is outwith, but quite close to, the scheduled ancient monument area. Your garden—or the area of land that goes with your house—extends into the scheduled ancient monument area.

Mr Watkins: Yes. It sort of goes around the scheduled ancient monument.

Alastair McKie: The next document that I will turn to is the planning permission that you have lodged. It is an outline planning permission dated 2 September 1986, and it is for planning permission

“in principle for the erection of a dwellinghouse at Abbey Bridge”,

which ultimately became your house.

Mr Watkins: Yes.

Alastair McKie: Your case is based on condition 4 of the planning permission, which says:

“The house site shall be restricted to 0.1 hectare to the satisfaction of the District Council as Planning Authority.”

Am I right in understanding that it is that 0.1 hectares from which your 0.247 acres derives?

Mr Watkins: Yes.

Alastair McKie: That is the imperial measurement of that metric.

The condition uses the expression “house site”. What do you understand to be “the house site” for the purposes of your objection?

Mr Watkins: I understand it to mean the house and the garden. I have to say that the area—the footprint—of the actual house and the garage is approximately 438 square yards, which is a lot less than 0.1 hectares.

I think that the people who built the house moved it towards the road, so that the area could be excavated without further damage to any archaeology that may be under the ground to the west of the house. Did what I said make sense?

10:45

Alastair McKie: I understand where you are coming from. Would you accept that the area of

the house and garden that you currently enjoy is greater than 0.1 hectares—or 0.247 acres?

Mr Watkins: The whole thing is 2.3 acres.

Mrs Watkins: But we are restricted. The valuation that you have given us is based on the value of residential land—development land. We feel that the value of the land that you are suggesting—the £300,000 price—is based on figures for development land, but we cannot develop the garden. The whole lot is not residential; it is amenity land.

Alastair McKie: Okay. We may return to the garden size when we go through the documents, but would you agree with me that the expression “house site” does not seem to exclude the garden ground that goes with your house?

Mr Watkins: I think that the “house site” should include the garden and the access.

Alastair McKie: You think that it should include the garden and the access.

Mr Watkins: I think so.

Alastair McKie: That is very fair of you.

You also refer to condition 6 of the planning permission, which does not use the term “house site”, but just “site”. It says:

“the site shall be used for residential purposes only and no agricultural or industrial development will be permitted on the site or the immediate vicinity of Inchaffray Abbey.”

That does not place a restriction on use for residential purposes, does it?

Mrs Watkins: I think it does.

Alastair McKie: It says that it shall be used “for residential purposes only”. Is it not placing the restriction on the use for “agricultural or industrial development”?

Mr Watkins: I think it should say the “house site”. They refer to the “site” and we would interpret the site as being the “house site”—the 0.1 hectares.

Alastair McKie: You might choose to interpret it like that, but it could be interpreted in other ways.

Mr Watkins: It could be.

Alastair McKie: That is fair of you.

On the next page of the planning permission document we have the reasons, which seem to be highlighted in the earlier photocopy. Reasons 4 to 7 are

“In the interests of amenity and ... to protect the setting of”

the abbey as a “category B listed building” and a scheduled ancient monument.

If we move on, document 4 is an aerial photograph of your house and garden, including the abbey as well, is it not?

Mr Watkins: Yes.

Alastair McKie: I have some questions about it. There appear to be some buildings, which are built away from your house in what looks as though it is your garden.

Mrs Watkins: Yes, they are wooden sheds and a greenhouse. I have a greenhouse and a wooden shed.

Mr Watkins: And I have a workshop, built on a concrete plinth that, I gather, has been there since the last war. I was going to say that it is north of the greenhouse, but it is actually just to the east of it.

Alastair McKie: Can I just be clear about which is which?

Mr Watkins: The trapezium-shaped area is the veg plot.

Alastair McKie: That is the veg plot. Is that what the Historic Scotland letter refers to?

Mr Watkins: Yes. That is the veg plot, which was not in the scheduled area at the time, so the pink bit on your—

Alastair McKie: I will come to that in a moment. So, you have a greenhouse here. Was that a polytunnel before?

Mr Watkins: No, we never had a polytunnel. Because Historic Scotland wanted us to have another archaeological watching brief, we decided that a greenhouse that was just placed on top of the earth was better.

Alastair McKie: Right, so the greenhouse is just placed on there. Then there is another building.

Mr Watkins: That is my workshop.

Mrs Watkins: That is on the concrete plinth.

Alastair McKie: There is another building to the left of that.

Mrs Watkins: That is the wooden shed.

Alastair McKie: And there seems to be another.

Mr Watkins: That is another wooden shed.

Alastair McKie: So, you are using the areas here in association with your house—you must be.

Mr Watkins: Yes.

Alastair McKie: Leaving aside the restrictions that you discuss, what is considered to be your garden ground? Why should your garden ground be restricted to 0.247 acres?

Mr Watkins: Because we are not allowed to dig in to any of the scheduled area at all. As I mentioned earlier, area 1, which was excavated, is just to the west—we think—of the house, and it is quite a large area, encompassing 9m by 13m. We certainly would not be able to build anything on that.

Most of this area now is down to grass, which Historic Scotland was pleased with, and it encouraged us to keep it fairly short.

Alastair McKie: Document 5 shows various photographs of your house. Am I correct in saying that we can see some of the outbuildings in the first of the larger photographs?

Mr Watkins: Yes. The greenhouse is on the left, and the workshop is hidden by the trees.

Alastair McKie: I do not think that we need to trouble you with document 6, but I would like to turn to document 7, which you made a reference to.

Obviously, you have looked at this document before, but perhaps, for the purposes of our conversation, we can have a discussion about it.

Mr Watkins: Which one is it?

Alastair McKie: It is the one with pink, yellow and blue areas on it.

Mr Watkins: I have got it.

Alastair McKie: The area that is coloured yellow is excluded from the assessment, because it is owned by the Earl of Kinnoull. It is identified as amenity land because it is the core of the abbey. The area that is coloured pink is the area that I understand to be the area of the scheduled ancient monument, overlaid on top of your property.

Mr Watkins: The pink area is not correct.

Alastair McKie: Can you explain to me what—

Mr Watkins: I have drawn on this paper before me what I think that the correct area is. Do you want to have a look at it?

Alastair McKie: If I can, yes.

The Convener: That means that we will have to suspend briefly.

10:52

Meeting suspended.

10:58

On resuming—

The Convener: I invite Mr Watkins to continue.

Mr Watkins: I am not quite sure where we were.

Our understanding is that the area that I have outlined in blue on that piece of paper and which is nearest the road—the trapezoidal area that includes the house, the front lawn and the access—is the 0.1 hectares and that the rest of the non-scheduled area, which I have put a dotted red line around, should be classed as amenity land. Does that make sense?

Alastair McKie: I can understand your arguments, Mr Watkins. That is helpful.

Could you briefly look at the plan that is attached to document 2? That is the one with the two areas that are outlined in red.

Mr Watkins: Yes. It shows the scheduled area.

Alastair McKie: The area that we are concentrating on is the left-hand area, which is slightly smaller.

You dispute what those boundaries are, but I put it to you that the promoter has sought to draw those boundaries from quite a difficult scale of map and translate them into a larger scale for the purposes of the proceedings today. That is just to explain where we have come from.

In your assessment, leaving aside what you think should be your house and garden area—the dotted blue area—what you have done, using the promoter's methodology, is increase the blue area to include the pink triangle beneath the abbey, and some additional area that is currently scheduled. What you are saying is that the scheduling is in fact smaller than it appears on the promoter's plan number 7.

Mr Watkins: I do not think so.

11:00

Alastair McKie: If you have the promoter's plan number 7 before you, you can see the area that is coloured blue.

Mr Watkins: Yes.

Alastair McKie: If you were to follow the logic of this plan, which is basically to allocate your garden area—I use that in its widest sense, because I know that we are disputing that—

Mr Watkins: The blue would cover most of the vegetable plot.

Alastair McKie: It is quite hard to pick that up. If you look at the triangle between—

Let me start again. What the promoter is trying to do is to take the area that you own, remove the area that is owned by the Earl of Kinnoull, which is the yellow area, so that, in so far as your area, in

its widest sense, is affected by the scheduling, that is excluded from the assessment.

Mr Watkins: Yes.

Alastair McKie: What you have done is redraw the boundary of the scheduled ancient monument—you think that you have done that in the interests of accuracy; that perhaps needs to be looked at. In doing so, you have included an additional area, have you not?

Mr Watkins: The veg plot?

Alastair McKie: On this plan here—

Mr Watkins: I am including that area to the left.

Alastair McKie: But you are saying that the dotted red line is the line of the scheduling.

Mr Watkins: Yes.

Alastair McKie: I think that we are in agreement on that.

With regard to the logic of what the promoter has done, the promoter is trying to say to you that it is prepared to take a reasonable approach with regard to the area of assessment and say that what you own, minus the scheduled area, is what should be your area of assessment.

Mr Watkins: We would disagree with that, because we think that it should be this 0.1 hectares at the front—the blue area.

Alastair McKie: Yes. I know that we are disagreeing, but I am trying to understand our respective decisions, because we now have slightly conflicting plans.

The promoter is saying that everything that you own, minus the scheduled area, should be part of the assessment of the residential area. That is where the 0.855 acres figure comes from. That area may have to be increased if we were to follow the lines on your new plan. I am saying that that would be the case if you were to follow that same logic. I appreciate that you are disputing it, but that would be the natural consequence.

Mrs Watkins: We are claiming that the bit that I am pointing to here is amenity land rather than—

Alastair McKie: I appreciate that; I am just trying to ensure that we understand our respective positions.

Mary Fee (West Scotland) (Lab): I would like to ask for a point of clarification. You have redrawn the blue line. When you say that that should be the area that is included for assessment for your property, why do you say that? I am not quite clear about the actual reason why there is a difference between what you say and what promoter is saying.

Mr Watkins: Originally, the planning people said that the house site, which I take to mean the house, the front garden and the access, should be 0.1 hectares. I think that 0.1 hectares is about the size of the plot at the front, although it might actually be slightly bigger than that.

Mary Fee: You have taken the measurement of 0.1 hectares and roughly calculated where that would be in relation to your house.

Mr Watkins: I have tried to triangulate this, yes.

Mary Fee: I understand now. Thank you.

Alastair McKie: I have to put it to you, Mr and Mrs Watkins, that the position of the promoter is not an unreasonable one in terms of identifying what is the beneficial residential area for the purposes of the assessment, which is, in simplistic terms, the area that is coloured blue in document 7, but perhaps nuanced by your redrawing of the boundary of the scheduled ancient monument.

If the committee were to accept that your house should be 0.247 acres, what would that represent in terms of your assessment? In the schedule in document 8, Inchaffray abbey is shown as £440.78—I know that there is some dispute about the amount of pence, but I am told that that is something to do with rounding up on the Excel spreadsheet. That £440 is based on a site area of 0.855 acres. Would you agree that, if your house were 0.247 acres, the assessment would be around £140 or £150, because it would be almost less than a third of the greater area?

Mr Watkins: We would be happier with an assessment of around £200, or maybe a bit more, because we also have to pay VAT, which we cannot claim back, and we have to pay £280 a year to have the septic tank emptied.

Alastair McKie: Where does your septic tank drain into?

Mr Watkins: Into the pow.

Alastair McKie: Okay. I have no further questions.

The Convener: Do the promoters wish to make any further points with regards to the objection?

Alastair McKie: I have no further submission on that.

The Convener: I invite Mr and Mrs Watkins to cross-examine the promoters on what they said about their objection, today and more generally.

Mrs Watkins: We feel that there may be a conflict of interest on two fronts with regard to the bill, as all the commissioners are farmers and there does not seem to have been any residential input. Also, the land valuation and mapping have been performed by Savills, of which Jo Guest is a

director. In that regard, and in relation to the valuation, we feel that there is a conflict of interest.

Alastair McKie: That is not accepted, but I invite Mr Guest to answer for Savills in that matter.

Mr Watkins: We talked to several estate agents and came to the conclusion that the valuation was extremely high in this case.

Jonathan Guest (Pow of Inchaffray Commissioner): The starting point of our approach to the evaluation of residential property and the other categories of property was that, instead of valuing each property individually, we wanted to categorise the properties into the different types of land use. Therefore, farmland is broken down into the different grades of farmland, referring to the Macaulay land use research institute, and there is also residential property, forestry and commercial property. We wanted to end up with bands of values for each category of property so that the calculation of the individual assessment would be a mechanical process. The idea behind that was that it would then be simple and easy to review, because the bill includes a proposal for the land to be revalued every 10 years, or when there is a material change of use.

For example, we have not valued the agricultural land on a field-by-field basis. Instead, we have said that the value of class 3.1 land is something like £6,000 an acre—I cannot remember the exact figure now. We have not gone around valuing each individual field; we have simply taken that as the value for that category of land. Similarly, with regard to residential property, we have not looked at the different house types. There is a range of house types in the benefited area. There are small houses, semi-detached houses and detached houses on the Balgowan estate, and there are cottages, larger detached houses, houses with big gardens and so on. Instead of looking at them individually, we have lumped them together and arrived at the global figure for residential development land.

Those values were arrived at by me, in discussion with the specialist departments at Savills that deal with all the different types of property.

Mrs Watkins: Did you not think that you should have gone outwith Savills? Given that you were bringing forward the bill, did you not think that you should have taken a wider view and consulted other—independent—estate agents?

Jonathan Guest: I suppose that one could have done that but, as you understand, the commission has a limited budget that is raised from the heritors, and we were looking to do this as economically as possible. Employing another firm would have been another expense.

With regard to how the values were arrived at, Savills has specialist departments dealing with each category of property. I do not profess to be an expert on every category of property, so I discussed the issue with individuals in all the relevant departments. It was on the basis of those discussions that the figures were arrived at.

Mr Watkins: We would like to know how residential property has been defined.

Jonathan Guest: In the course of the progress of the bill, two alternative bases have been looked at. The initial basis was that we would look at the plot on which the house was built from the point of view that that land could be developed for residential purposes because of the benefit provided by the pow and the pow commission. We closed our eyes to the type of house that was on each plot of land, because the pow commission did not build houses; all that it did was enable the land to be developed for housing. In effect, therefore, we looked at undeveloped building land. The approach was to measure the size of the plots on which those houses sit and then multiply that by a figure for residential development land in the area.

The committee expressed concern that that approach might be too broad brush, and that it might disadvantage people with larger houses. We were therefore invited to come up with an alternative, which we did. That alternative approach involved not measuring the plot but looking at the footprint of the house and multiplying it by five—I think that we came up with a five-times multiplier. That would give the notional plot area.

Mr Watkins: I see that in our spreadsheet. I would call that the older method. From our point of view, that would seem to be a better method.

Jonathan Guest: We proposed it as an alternative method and produced alternative workings on that basis. Ultimately, however, it is not for us to decide; it is for the committee to decide.

Mr Watkins: I am sort of getting away from that, really.

We are interested to know how you define residential property, as many of the farms previously had accommodation for agricultural workers.

Jonathan Guest: That is true but, in 1846 or 1851, when the benefited land was defined, there were no residential properties on the benefited land—none at all.

Mr Watkins: If the properties were let or sold to people who are not involved in farming, would the occupants pay the residential rate, would the

properties still be combined with the farms or would they have a private arrangement?

Jonathan Guest: All the houses on the benefited land were built after the improvements that were carried out under the Pow of Inchaffray Drainage Act 1846. There were no houses before.

11:15

Hugh Grierson (Pow of Inchaffray Commissioner): I think that all farmhouses would be classed as residential; none is classed as agricultural—

Mr Watkins: They do not appear on the residential—

Jonathan Guest: There are no farmhouses, because they are not on the benefited land.

Mr Watkins: So none of them is on the benefited land.

Jonathan Guest: No. Before 1846, people did not build their houses on boggy land—they built them on the edge—so they were not on the soft land that has benefited from the work on the pow.

Mr Watkins: I understand that, as my poor workshop is dropping to bits because it is too near the pow. Anyway—there we are.

If we are unhappy with the outcome of today's meeting, will there be a mechanism for appealing against the decision?

Jonathan Guest: Which decision?

Mr Watkins: The decision on what we will have to pay for drainage.

Jonathan Guest: It is for the committee to advise on that, but I understand that we are interested not so much in the number as in the method—the approach to defining benefited land, which must be logical. To be honest, we are blind to the figures; we are concerned with the process.

Mr Watkins: That is all that we have to ask.

The Convener: Before we move to closing remarks, I ask the promoters whether they envisage any further amendments or redrawings of the land plans that have been submitted.

Jonathan Guest: I hope not.

Hugh Grierson: Possibly, but only to accommodate Mr Watkins's concern about the historic area.

Alastair McKie: That would not involve a land plan; that would involve just a change in classification. There are no additional land plans or replacements. If an adjustment was required because of what we have heard today, that would mean a change in classification of the land—it

would still be benefited land, but it would be classified as residential or amenity.

The Convener: Mr McKie has anticipated my next question. Do the promoters envisage further adjustments to classification?

Alastair McKie: If the boundary of the scheduled ancient monument is as described by Mr Watkins, as opposed to the promoters' interpretation from the scheduled plan, there might be a nuanced adjustment. That might change the area from 0.855 acres to a bit more than that, or the area might reduce after a final check. However, we are fairly confident that we have lodged the right plan.

The Convener: We move to brief closing remarks.

Mr Watkins: The committee can probably tell that we are unhappy with the potential 60 per cent increase in the annual fee for the pow, given that nothing much has changed—in fact, we probably produce less waste water, because our son no longer lives at home.

Mrs Watkins: If and when we decide to sell our house, we will have to declare the fee, which will probably discourage possible purchasers.

Mr Watkins: That is all that we have to say.

Alastair McKie: There is no dispute on the principle of payment; the dispute is about the area of assessment. The commissioners have treated the objectors, Mr and Mrs Watkins, fairly and reasonably in terms of the level of assessment and what should apply to their property.

The commissioners consider that the area of assessment should be about 0.855 acres, although there might be a nuance to that once we finally determine the boundary of the scheduled ancient monument, as I said. That should be the area, rather than the 0.247 acres that Mr and Mrs Watkins suggested. The lesser area that they suggested is derived from the terms of their planning permission, which refers to 0.1 hectares, which is 0.247 acres. The commissioners' view is that that does not form a reasonable basis on which to restrict the assessment.

The promoters have sought to take a reasonable approach. They accept that the scheduled ancient monument creates a restriction—although it has not affected the tree felling and the polytunnel—so that area has been excluded from the assessment. If the area of assessment were restricted to 0.247 acres, that would be about three and a half times smaller than what the promoters think is reasonable use of the garden ground, and one can see from the aerial photograph that it is being used.

The promoters' proposal is that the area of assessment, which we are discussing, should be the area that is coloured blue on plan 7, subject to whatever adjustment might derive from a final measurement of exactly where the scheduled ancient monument applies.

The Convener: On the committee's behalf, I thank Mr and Mrs Watkins and the promoters and their representatives for attending the meeting.

I suspend the meeting to allow a change of objectors.

11:21

Meeting suspended.

11:36

On resuming—

The Convener: We recommence proceedings and again I encourage all speakers to be as concise as possible. I invite Mr Macgregor to set out the points that he wishes to make regarding his objection.

Mr Ian Macgregor (Objector): Good morning, convener, ladies and gentlemen. I will keep this brief, because I think that it gets to my point without too much argument.

I have already submitted my objection, which I take it that you have all read. I do not accept the assumption that our house at Nethermains of Gorthy was built on so-called benefited land, for the reasons that were outlined in Mr Tait's submission, to which I referred in my initial objection.

Mr Tait is a retired civil engineer—a company director who specialised in water supplies and drainage systems—and his detailed findings concluded that the level of benefited land on the south of the pow, opposite Nethermains of Gorthy, is determined at an altitude of 39.05m. The boundary fence of my property lies at 39.4m, and my property lies slightly higher than that if we take the property to include the house and not the garden.

Since the pow and the altitude of benefited land are common to both north and south, I fail to see why the north side should be treated any differently from the south. Therefore, I totally reject the assertion that my property should be included on benefited land. Furthermore, the level of benefited land on the south seems to have been meticulously defined, running almost in line with the 40m contour on the original plans. However, on the north side, it appears just to run along boundaries in straight lines.

As already mentioned, properties dating back pre-1846 were deemed not to have been built on benefited land. I question the close proximity of my property to that of my neighbours—the Steading, owned by Mr and Mrs Tait—which was built prior to 1846. The Steading is merely 170mm higher than the level of my boundary fence. That indicates to me that my property does not lie on benefited land. That is all that I have to say.

The Convener: Thank you very much, Mr Macgregor. I now invite the promoters to cross-examine Mr Macgregor on the points that he has made today and more generally with regard to his objection.

Alastair McKie: Good morning, Mr Macgregor. Do you have before you the pack of papers, which starts with the Pow of Inchaffray Drainage Commission (Scotland) Bill? There are 15 documents attached to that.

Mr Macgregor: Yes.

Alastair McKie: Can you turn first to document 8, which is a schedule in A3?

Mr Macgregor: Yes.

Alastair McKie: You will see that there is a list of properties in the left-hand column. You are in property 13, Centre Cottage. Is that correct?

Mr Macgregor: That is correct.

Alastair McKie: If we move along the line, we see that the annual assessment proposed for a £20,000 budget is £118.57.

Mr Macgregor: That is correct.

Alastair McKie: I just wanted to clarify that with you.

Your principal contention, Mr Macgregor, is that your property—Centre Cottage at Nethermains of Gorthy—is not constructed on benefited land and that, therefore, no money should be payable. Is that your big point?

Mr Macgregor: Yes.

Alastair McKie: I ask you to turn to document 9, which is a fair copy excerpt of the 1850 plan that accompanied the Pow of Inchaffray Drainage Act 1846. On it, we can see some properties that are coloured pink. They are described on the map as West Mains, but are they now known as the Steading that you talked about?

Mr Macgregor: That is now known as the Steading.

Alastair McKie: Where in proximity to the Steading is your property constructed?

Mr Macgregor: It is south of that, below the line. If you look at the map, there appears to be a

crack or double line running to the left of the letter “e” in “West”. My property is on that line.

Alastair McKie: So it is south of the double line. There are two other cottages beside your property, are there not?

Mr Macgregor: There are.

Alastair McKie: If we move down into what looks like an enclosure or field, we will see a number that I think—or which I have been told—is 130. Do you see that plot number?

Mr Macgregor: Yes.

Alastair McKie: And you will see beside that a plot 122, which is in a different area. Can we agree that your house is built on what is identified on the 1850 map as plot 130?

Mr Macgregor: I can only assume so, without actually seeing the property on the map that I have.

Alastair McKie: That is fine.

Before we move on, can you identify on the 1850 plan where the Carse Mile burn or the Downie burn is? There seems to be some dispute.

Mr Macgregor: If you look at the “e” of West Mains, you will see a faint double line that is coloured a faint blue.

Alastair McKie: I can see that.

Mr Macgregor: At the “s”, there is another double line that bends down the hill.

Alastair McKie: I see that, too. There are two burns that converge.

Mr Macgregor: They come together. The one that is coloured blue is the Downie burn, and the one that is not coloured—the one that is white—is referred to as the Carsehead Mill or Mile. There are three different names for the burn. These two converge some distance further down at the bottom of the field.

Alastair McKie: What do they drain into?

Mr Macgregor: Ultimately, the pow.

Alastair McKie: Thank you.

Mr Macgregor: If you refer to plan 10—

Alastair McKie: I am just getting to that.

Plan 10 appears to be a plan from 1864, but going back for a moment to plan 9, can we agree that your properties are not shown on the 1850 plan?

Mr Macgregor: That is correct.

Alastair McKie: So they must have been built subsequent to that.

Mr Macgregor: Not necessarily. It depends on when the survey for the land was done. I got in touch with Historic Scotland, but it cannot confirm the exact date for the construction of my property.

Alastair McKie: But the properties are not on that plan, which is the certified one. It is a matter of fact that they are not on it.

Going back to plan 10, which is the 1864 plan, we see near enough in the centre a property described as “Nether Mains”, and I think that we can see the Steading, which is a kind of C-shape.

Mr Macgregor: That is correct.

Alastair McKie: I think that we saw that in plan 9. However, we also see some new properties that look to me to have been built immediately to the south of that.

Mr Macgregor: I would say “property”. There is only one.

Alastair McKie: Which one do you think it is?

Mr Macgregor: That is mine.

Alastair McKie: That is your property. On the basis of the 1864 plan, we can say that it had certainly been built by 1864.

Mr Macgregor: Without a doubt—it is on the map.

Alastair McKie: I think that you were going to make a further observation about the Carsehead Mill burn and the Downie burn going into the pow.

11:45

Mr Macgregor: Yes. Although this map is printed, it is quite unclear. On the map, the Downie burn is on the “t” of Nether Mains and the Carsehead Mill burn is between the “h” and “e” of Nether. The burns join further down the field—you can see the line that comes across. Dating back to maps that I do not have with me, unfortunately, the Downie burn extended and still extends 4 miles further up the hill to Fowlis Wester—that is where it originates—and it comes all the way down the hill. I do not know why it changes its name where the two watercourses—natural and man made—join. A previous map, which I do not have, said Downie burn, but it had been made opaque.

Alastair McKie: So there is some doubt about what they are called, but it is not in doubt that they both drain into the pow.

Mr Macgregor: Correct, but what I question is that one is man made and one is natural.

Alastair McKie: Going back to plan 9, it looks as though the burns are very straight and have been altered to be in a dead straight line.

Mr Macgregor: If you were to visit and see them in the flesh, you would take a different view for a simple reason, which was referred to in Mr Tait’s submission. Looking at the plan, the Downie burn is on the left and the Carsehead burn is on the right. The Carsehead burn is about two feet deeper than the Downie burn, yet they are only a couple of feet apart, so it is obvious that one is man made and the other is not.

Alastair McKie: We will perhaps turn to that in some of the other plans.

Please have document 11 before you, Mr Macgregor, and turn to paragraph 6. I will introduce the context of the document, which is important. It is an opinion of counsel, which the promoter obtained to guide them in the proper interpretation of what should or should not be benefited land. It was unfortunate that your property was not picked up in the first assessment of benefited land, but I reassure you that that has been checked. I will read to you paragraph 6 of counsel’s opinion. It says:

“There was an area of land at Nethermains of Gorthy containing three houses”

—one of which is your cottage, in the centre—

“which was identified at the consultation as having been excluded from the original plans”.

Those are the original plans that we put in. Today, we are dealing with the replacement plans, which include your land as benefited land.

Counsel also talks about

“a further area of land at Millhill”

and goes on to say:

“In respect of both these areas of land, none of those houses are shown as existing buildings on the 1848 plan. They are both areas of ground which can be identified from the Book of Reference, the Estimate of Increased Value and the 1848 plan as having been improved by the works under the 1846 Act. In my opinion both areas ought to be shown on the replacement plans as benefited land. The owners of the houses on that land will require to be notified”,

which is where we are today, as you have been notified.

That is just an explanation and something of an apology—a sincere apology—to you that it was not picked up first time round.

Mr Macgregor: Can I just add something?

Alastair McKie: Yes, by all means.

Mr Macgregor: It says:

“The owners of the houses on that land will require to be notified of the change.”

There are three houses there, but only two owners have been notified. The third has not been notified.

Alastair McKie: I am not in a position to answer that.

Mr Macgregor: I am just saying: if they have not been notified, how accurate is the writing on all these things? Mistakes have been made all over the place.

Alastair McKie: You are entitled to your opinions, but I do not necessarily agree with them.

Please turn to plan or document 12, which is described as the "Burn Map" from 1846. A series of surveys were undertaken prior to the pow works in 1846 and this is an excerpt of a map showing where improvements to the pow and its tributaries were undertaken in your area. If we look at this map, we can see West Mains, the C-shaped steading that we saw on the 1850 plan. Would you agree that we can see no identification of Centre Cottage or any other cottages on the plan?

Mr Macgregor: I cannot argue with that.

Alastair McKie: Can you see the dotted lines that march on either side of the Carsemile burn and the Downie burn?

Mr Macgregor: Yes.

Alastair McKie: I am advised that those are showing evidence of spoil. They are annotated "limit for deposit of spoil".

Would you agree that that indicates powerfully that works were carried out in 1846 in relation to the Carsehead Mile burn and the Downie burn?

Mr Macgregor: It is all about interpretation. I am not a civil engineer or anything, but if I look at that map and think of someone digging out the burn marked in pink, where are they going to deposit the soil? On the right-hand side of the pink burn. However, where are they going to deposit the soil on the left-hand side? It has to be on the left-hand side of the blue burn. That does not necessarily mean that the blue burn has been dug out. If you were to dump the soil from the pink burn into the blue one, you would cause a dam. So, I do not follow or agree with what you have said.

Alastair McKie: Be that as it may, the dotted line on the surveyors' plan talks about the estimated line of the spoil—that is what the annotation says. Just from looking at the Carsemile burn—the area coloured blue—is there anything about it that strikes you as unusual?

Mr Macgregor: In terms of what?

Alastair McKie: In terms of it being in a dead straight line.

Mr Macgregor: No.

Alastair McKie: Do you think that that is a natural feature or more likely to be an artificial feature?

Mr Macgregor: Natural, 100 per cent. I state once again that you need physically to see it—to have a walk down there and see the trees that are there. I am not a tree surgeon or professional tree man, but those trees are big. I would say that they are well over 100 years old, maybe 150; I do not know. The roots from those trees are visible in the blue burn all the way down. They have not been cut off or excavated; there are bare roots lying in the burn. Why would the straight line not be a natural thing, given that the tree roots are still there?

Alastair McKie: Because nature does not tend to do things in a dead straight line. That is my assumption.

We can see field enclosure 130 on the plan as well, in the field where your house is yet to be built. It has a dotted line going through it. Can you see that?

Mr Macgregor: Yes.

Alastair McKie: Can we move on to the next plan, document 13, which is a surveyors' plan? It is a fair copy of a surveyors' plan that was executed in 1940. The areas that are outlined in red are where the pow commissioners have been involved in executing works. Would you agree that the leftmost red line is going roughly along the line of the Carsehead Mile burn?

Mr Macgregor: Roughly, yes.

Alastair McKie: Would you agree that, if this is a copy of a 1940 plan that depicts where works have been carried out, it is pretty clear that the commissioners have been undertaking work in that general area?

Mr Macgregor: I could not comment on that. Looking at a map—just looking at a line on a bit of paper—it is hard to say whether work has been carried out or not.

Alastair McKie: Okay, but do you appreciate that, since there is a red line on the map, it has some significance?

Mr Macgregor: No.

Alastair McKie: Right.

Mr Macgregor: There were red lines put on a map earlier on, which I believe that Mr Willet was made aware of at the committee meeting, that were in totally the wrong place. I do not know whether you have amended them or not.

The one that Mr Tait pointed out—

Alastair McKie: We are dealing with this map just now. Mr Willet is not in this conversation.

Mr Macgregor: Mistakes have been made, so I cannot agree with what you have said.

Alastair McKie: You are not in agreement, but you are not in a position to deny that this is a 1940 plan showing a red line where the commissioners have carried out work.

Mr Macgregor: It is what it is. It is a 1940 plan.

Alastair McKie: Turning to the next page of the document, and to plan 14 of the land plans that accompany the bill, which is entitled “Middle Section Part 1 of 2”, we can see near the centre of the page the Carse Mile burn and the red line that shows where the commissioners executed works.

Mr Macgregor: But, looking at the map again, if you refer to the Carsehead Mile burn and then carry on north of my property and Nethermains of Gorthy, it is referred to as the Downie burn, which was man made. If you continue northwards, why is there such a meander in it?

Alastair McKie: Is it not possible that works were carried out in the section where it is straight and not carried out where it meanders?

Mr Macgregor: Not when you look at the tree roots in it, I am afraid. No work has been carried out on that burn for years and years. Unless you came and walked down it, you would not be able to appreciate what I am saying. I do not see what that has to do with my house being benefited land or not.

Alastair McKie: We will come to that in a moment. You will have a chance to ask questions of the promoters.

Mr Macgregor: Okay—sorry.

Alastair McKie: Please have before you document 15A; documents 15A and 15B are the last of the documents. I might need to explain a little about how this works. When the works were carried out in 1846, an initial survey was done beforehand to take account of the value of the land at that stage. Once the works were completed, the increase in value was calculated, which showed the extent to which the land had been improved by the pow works. It is that improvement to the land that creates what we describe as “benefited land”.

Documents 15A and 15B are two pages that go together. They are shown separately just because of the way in which they have been copied. Document 15A is a statement of the increase in value of the land after the works had been completed. If you scroll down to the plot numbers on that document, you will see—five up from the bottom—plot 130. Can you see that?

Mr Macgregor: Yes.

Alastair McKie: And if you go over the page, the entry that is five up from the bottom on there shows that the rate per acre is 9 shillings. Beside that it says that the increased annual value is £3

8s 3d. I put it to you that, if we look at the document that shows that plot 130 had increased in value, and then go back for a moment to document 9, which demonstrates that your house, Centre Cottage, is built on plot 130, we can see that, in accordance with the documents that are associated with the 1846 act, plot 130 increased in value as a result of the works and therefore your house is on benefited land.

I appreciate that you may not previously have received assessments. The promoters’ position is that it may be that, when the farmland was sold off a contribution was taken from the farmer on it and that, unfortunately, no assessment was made of your property. However, that does not change the fact that your property has been built on benefited land.

I have no further questions, convener.

The Convener: Do the promoters wish to make any other remarks at this stage?

Alastair McKie: I have just one comment, which relates to the document that Mr Macgregor kindly lodged this morning.

12:00

Please look at that document, which shows particulars of sale. On page 3, there is an outgoing for lot 2, which says:

“Pow of Inchaffray Drainage Commission dues to be allocated.”

That is a document from 1984. As I put to Mr Macgregor, the assumption—it was some time ago—is that the land and the cottage were assessed as one and, when they were separated, no assessment was sought for the cottage. It was just taken from the farm and it has been slightly lost in the aeons of time. As a result of the new assessment record, which tried to be as faithful as it could to the original benefited land, it is beyond doubt that Mr Macgregor’s cottage and the two other cottages are on benefited land.

The Convener: Before moving on, there are two points that I wish to clarify. Is maintenance work still undertaken by the commission on the watercourses of Carsehead Mile burn and Downie burn?

Jonathan Guest: There are a number of side ditches on the pow that were burns—they are still called burns. The Cowgask burn is one of the principal side ditches and, as its name implies, it is a burn that has been improved and straightened and on which the commission carries out works from time to time. There is another called the Jessie burn, which comes in at Balgowan, and another, which comes in at Drumphin, called the Drumphin burn. There is a series of side ditches that are natural watercourses and have been

improved, and for which the commission has responsibility.

We inspect the pow twice a year and the surveyor writes a report on the condition of all the side ditches for which the commission is responsible, which include the ones that I mentioned, and on whether work needs to be done. Work is done on some of them more frequently than on others. I have to confess that there has not been much work done on the Carsehead Mile burn for some considerable time and there has been no work done on the Drumphin or Jessie burns for years. Burns with a flatter gradient tend to silt up, so work is done more often on them. For instance, we clean out the Cowgask burn fairly regularly.

The fact that we have not done much work there in recent years does not take away the fact that the commission is still responsible and has a maintenance obligation. If it was brought to our attention that a bank had collapsed or a tree had fallen across a burn, we would have to deal with it.

The Convener: I appreciate the clarification. I have a further point. In terms of benefited land, there are properties that could be categorised as directly benefiting from the pow, as they drain directly into it, and others that we could categorise as indirectly benefiting, as they drain into tributaries that subsequently join the pow. Are you aware of any properties that benefit indirectly—they might drain into a tributary burn further upstream—but are not on benefited land?

Jonathan Guest: There might be properties that drain into the side ditch but are beyond the area for which the commission is responsible for maintenance.

The Convener: Thank you for clarifying. I now invite Mr Macgregor to cross-examine the promoters on the points that he raised and more generally.

Mr Macgregor: Please have a look at the document that I gave out earlier. It refers to three lots: lots 1, 2 and 3. Lot 2 is the one with the outgoing of

“Pow of Inchaffray Drainage Commission dues to be allocated.”

Lot 3 is the cottage that is

“located between the farmhouse and a separately owned property known as BURNSIDE COTTAGE.”

Lot 3 is my property, and there is no mention in the particulars under lot 3 of any bill for the Pow of Inchaffray drainage commission. That bill is purely for lot 2 and not for lot 3.

I refer back to papers 15A and 15B. Once again, I apologise that I do not have the document with me, but I have seen it. Mr Tait and I worked out

the figures and two of the sums on the document are wrong, although I cannot be 100 per cent accurate about which ones they are—I cannot remember, but I can get back to you about that if you need them. The maths for two of them do not add up but, as I said, I do not know which they are. If those sums are incorrect, that needs investigating—it might be for my property at plot 130, but I am not sure. They are wrong though. If such documents are relied on in order to decide whether my property is on benefited land, I expect them to be correct.

As far as maintenance of the Downie burn is concerned, I have lived in my property for 15 years and not once have I seen any maintenance being done on it or in the field down to the pow.

I refer to my original point: I believe that the fact that an altitude of 39.05m is used in the south and an altitude of 39.4m is used in the north means that it is not fair to treat my property as benefited land. What is “benefited land”? Is it somewhere that benefits financially, one that benefits from drainage or one that benefits from flood alleviation? If that is the case, why are the levels at different heights in the north and the south?

I could make a lot of points, especially about inconsistencies in minutes of meetings and so on, but unless they are absolutely necessary I will not do so. I have nothing further to ask. I thank the committee.

The Convener: Thank you, Mr Macgregor. I ask that you write to the committee to set out in more detail the concerns that you raised on documents 15A and 15B. We will ensure that those are also circulated to the promoters and put on the Parliament’s website.

I invite Mr Macgregor to make any closing remarks.

Mr Macgregor: I have one final point. I request that the commission carries out a survey of the entire area that it defines as benefited land. It should include the whole of the pow, use modern techniques, technology and surveying equipment, and determine precisely what is benefited land and what is not. Perhaps that could be done in conjunction with the Scottish Environment Protection Agency’s flood plans, on which our property appears as having zero risk of flooding. In the past, it has been mentioned that the issue here is not about flooding but about drainage, but there have been instances—I referred to them in my original objection—in which flood alleviation has been mentioned.

The Convener: I invite the promoters to make any closing remarks if they wish to do so.

Alastair McKie: I will pick up on the point that Mr Macgregor has just made. The commissioners

did consider whether they should carry out a detailed survey to establish the benefited land. They looked into that in some detail and took the decision that it was acceptable for them to rely on the work that had been carried out pursuant to the 1846 act. That is the basis on which the plans have been drawn. There may be issues with how long ago that was, but they were believed to be accurate. Carrying out a survey of all the properties would not be financially viable—it might not even be possible because of land changes and the fact that works have now been carried out. Therefore the promoters are content to rely on the 1846 act. From the assessment of the preparation of the plans that were submitted by Savills in April, the committee will have seen that that is the basis on which they were progressed.

The promoters have demonstrated that Mr and Mrs Macgregor's house, Centre Cottage at Nethermains of Gorthy, was constructed after the improvement works had been undertaken, and therefore has a dependency on those works having been undertaken. There is therefore no question but that it was built on benefited land. If one looks at the 1850 plan, one can see that Mr Macgregor's house is not there. It is also not present on the 1846 plan that we went through. There is no doubt that plot 130 was subject to an increase in value as a result of the works, which is the basis for reaching a conclusion that the land has been benefited and is thus benefited land. That is demonstrated by documents 15A and 15B.

In my view, the promoters were correct to include the house. The objectors have the promoters' sincere apologies for not including it in the first place, but that came to light only as a result of a further assessment earlier this year.

The issue about the Downie burn, the Carse Mile burn or whatever they are called is something of a red herring, because they both drain into the pow. The plans indicate quite powerfully that, historically, works have been carried out to them, as is shown by the dotted line on the 1846 plan of the burn. We can also see that the burn—such as it is—is on a dead straight line, which I think indicates that it is not a natural course of water and has been altered. In the promoters' view, it has been altered in order to improve its flow. The Carse Mile burn and the Downie burn were included in the 1940 plan so, at some stage, they have had attention from the commissioners. On the current land plans they are identified as being part of the feeder network to the pow.

In summary, therefore, although it is regrettable that the objectors' property was not included in the land plans earlier, it is correct to include it at this stage. The promoters' approach on that is consistent with the overall methodology for the entire redrafting of the land plans and the

identification of benefited land across all the properties, all of which is set out in the explanatory report that was submitted by the promoters' agent, Savills, in April of this year.

That is all that I have to say. Thank you, Mr Macgregor.

The Convener: It only remains for me to thank Mr Macgregor and the promoters for attending this morning.

The committee's next meeting will be on Wednesday 26 September 2018 at 10 am, when we will consider the objections and our second consideration stage report.

The committee will now move into private session.

12:11

Meeting continued in private until 12:32.

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