Waverley Railway (Scotland) Bill Committee

2nd Report, 2006 (Session 2)

Consideration Stage Report on the Waverley Railway (Scotland) Bill
For information in languages other than English or in alternative formats (for example Braille, large print, audio tape or various computer formats), please send your enquiry to Public Information Service, The Scottish Parliament, Edinburgh, EH99 1SP.

You can also contact us by fax (on 0131 348 5601) or by email (at sp.info@scottish.parliament.uk).

We welcome written correspondence in any language.
Waverley Railway (Scotland) Bill Committee

2nd Report, 2006 (Session 2)

CONTENTS

Volume 1

REMIT AND MEMBERSHIP

CONSIDERATION STAGE REPORT

Introduction 1
Format of report 1
Brief description of the Bill 2
Objections 2
  Background 2
Approach by Committee and Consideration Stage procedure 3
  Role of Committee 3
  Approach to evidence taking 3
Consideration of evidence and conclusions 5
  Mitigation of adverse impacts 5
  Promoter’s policy papers and other documents 5
  Noise and vibration policy 6
  Code of construction practice 8
  Other environmental mitigation commitments 10
  Compulsory purchase and compensation, advance and voluntary purchase schemes 11
    Compulsory purchase and compensation 11
    Time limits for compulsory acquisition of land 12
    Advance purchase scheme 13
    Voluntary purchase scheme 14
  Railway safety 16

Groups 17
  Group 1 17
  Group 2 17
  Group 3 18
  Group 4 18
<table>
<thead>
<tr>
<th>Group</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 5</td>
<td>19</td>
</tr>
<tr>
<td>Group 6</td>
<td>19</td>
</tr>
<tr>
<td>Group 7</td>
<td>19</td>
</tr>
<tr>
<td>Group 8</td>
<td>19</td>
</tr>
<tr>
<td>Group 9</td>
<td>20</td>
</tr>
<tr>
<td>Group 10</td>
<td>21</td>
</tr>
<tr>
<td>Group 11</td>
<td>22</td>
</tr>
<tr>
<td>Group 12</td>
<td>24</td>
</tr>
<tr>
<td>Group 13</td>
<td>25</td>
</tr>
<tr>
<td>Group 14</td>
<td>25</td>
</tr>
<tr>
<td>Group 15</td>
<td>26</td>
</tr>
<tr>
<td>Group 16</td>
<td>27</td>
</tr>
<tr>
<td>Group 17</td>
<td>27</td>
</tr>
<tr>
<td>Group 18</td>
<td>27</td>
</tr>
<tr>
<td>Group 19</td>
<td>27</td>
</tr>
<tr>
<td>Group 20</td>
<td>27</td>
</tr>
<tr>
<td>Group 21</td>
<td>28</td>
</tr>
<tr>
<td>Group 22</td>
<td>29</td>
</tr>
<tr>
<td>Group 23</td>
<td>29</td>
</tr>
<tr>
<td>Group 24</td>
<td>29</td>
</tr>
<tr>
<td>Group 25</td>
<td>30</td>
</tr>
<tr>
<td>Group 26</td>
<td>30</td>
</tr>
<tr>
<td>Group 27</td>
<td>30</td>
</tr>
<tr>
<td>Group 28</td>
<td>32</td>
</tr>
<tr>
<td>Group 29</td>
<td>32</td>
</tr>
<tr>
<td>Group 30</td>
<td>32</td>
</tr>
<tr>
<td>Group 31</td>
<td>33</td>
</tr>
<tr>
<td>Group 32</td>
<td>34</td>
</tr>
<tr>
<td>Group 33</td>
<td>34</td>
</tr>
<tr>
<td>Group 34</td>
<td>36</td>
</tr>
<tr>
<td>Group 35</td>
<td>36</td>
</tr>
<tr>
<td>Group 36</td>
<td>36</td>
</tr>
<tr>
<td>Group 37</td>
<td>37</td>
</tr>
<tr>
<td>Group 38</td>
<td>38</td>
</tr>
<tr>
<td>Group 39</td>
<td>38</td>
</tr>
<tr>
<td>Group 40</td>
<td>39</td>
</tr>
<tr>
<td>Group 41</td>
<td>40</td>
</tr>
<tr>
<td>Group 42</td>
<td>41</td>
</tr>
<tr>
<td>Group 43</td>
<td>41</td>
</tr>
<tr>
<td>Group 44</td>
<td>41</td>
</tr>
<tr>
<td>Group 45</td>
<td>43</td>
</tr>
<tr>
<td>Group 46</td>
<td>43</td>
</tr>
<tr>
<td>Group 47</td>
<td>43</td>
</tr>
<tr>
<td>Group 48</td>
<td>44</td>
</tr>
<tr>
<td>Group 49</td>
<td>44</td>
</tr>
<tr>
<td>Group 50</td>
<td>44</td>
</tr>
<tr>
<td>Group 51</td>
<td>45</td>
</tr>
<tr>
<td>Group 52</td>
<td>45</td>
</tr>
<tr>
<td>Group 53</td>
<td>45</td>
</tr>
<tr>
<td>Group 54</td>
<td>46</td>
</tr>
<tr>
<td>Group 55</td>
<td>47</td>
</tr>
<tr>
<td>Group 56</td>
<td>48</td>
</tr>
<tr>
<td>Group 57</td>
<td>48</td>
</tr>
<tr>
<td>Group 58</td>
<td>48</td>
</tr>
<tr>
<td>Group 59</td>
<td>48</td>
</tr>
<tr>
<td>Group 60</td>
<td>48</td>
</tr>
</tbody>
</table>
Conclusion
Consideration of objections 54

ANNEX A
STOW STATION
Background
Parliamentary process 55
Objection 56
Assessment generally 56
Conclusion 57

ANNEX B
FURTHER CONSIDERATION OF GENERAL PRINCIPLES
Background
Approach
Housing and water and drainage infrastructure 58
Patronage forecasts and revenue yield assumptions 60
Project cost overrun 61
Conclusion 62

Other issues
Waverley Route Trust 63

Volume 2

MINUTES
6 October 2005, (10th Meeting, Session 2 (2005))
23 January 2006, (2nd Meeting, Session 2 (2006))
27 February 2006, (5th Meeting, Session 2 (2006))
13 March 2006, (7th Meeting, Session 2 (2006))
27 March 2006, (8th Meeting, Session 2 (2006))
19 April 2006, (9th Meeting, Session 2 (2006))
Volume 3

ORAL EVIDENCE
6 October 2005, (10th Meeting, Session 2 (2005))
23 January 2006, (2nd Meeting, Session 2 (2006))
27 February 2006, (5th Meeting, Session 2 (2006))
13 March 2006, (7th Meeting, Session 2 (2006))
27 March 2006, (8th Meeting, Session 2 (2006))
19 April 2006, (9th Meeting, Session 2 (2006))

Volume 4

WRITTEN EVIDENCE
Objections
Written evidence from objector groups and promoter

Volume 5

OTHER WRITTEN EVIDENCE
Draft code of construction practice (version 7)
Promoter's policy paper on noise and vibration
Promoter's policy paper on code of construction practice
Promoter's policy paper on compulsory purchase and compensation
Promoter's policy paper on railway regulation
Department of Transport report on railway noise and the insulation of dwellings
(the 'Mitchell' report)
Scottish Office Planning Advice Note: PAN 56 – Planning and Noise (April 1999)
Scottish Office Development Department Circular 1992/38: Disposal of Surplus
Government Land – The Crichel Down Rules
Scottish Executive, Scottish Planning Policy 7: Planning and Flooding

Stow station—
Promoter's memorandum
Addendum to Environmental Statement
Addendum to non technical summary of Environmental Statement
Estimate of Expense and Funding Statement
Draft amendments to Bill (9 January 2006)
Objection from BRBR (Residuary) Limited
Written evidence from BRBR
Promoter's written evidence for BRBR
BRBR response to promoter's written evidence
Further consideration of issues arising from Preliminary Stage report—
  Promoter's memorandum on housing and water and drainage
  Promoter's memorandum on funding and project costs
  Promoter's memorandum on advance and voluntary purchase schemes
  Promoter to Convener on advance purchase scheme
  Promoter's memorandum on general matters
  Scottish Executive memorandum on housing, patronage, project costs and voluntary and advance purchase schemes
  Promoter's written evidence on Waverley Route Trust
  Waverley Route Trust written evidence
  Homes for Scotland further written evidence
  Promoter's response to Homes for Scotland further written evidence
  Scottish Water further written evidence
Waverley Railway (Scotland) Bill Committee

Remit and membership

Remit:

To consider and report to the Parliament on the Waverley Railway (Scotland) Bill.

Membership:

Tricia Marwick (Convener)
Ted Brocklebank
Gordon Jackson
Christine May (Deputy Convener)
Margaret Smith

Committee Clerking Team:

Clerk to the Committee
Fergus D Cochrane

Support Manager
Stephen Fricker

Committee Assistant
Joanna Mason
The Committee reports to the Parliament as follows—

Introduction
1. The Waverley Railway (Scotland) Bill was introduced into the Parliament on 11 September 2003. It is a Private Bill, being promoted by Scottish Borders Council under the procedures set out in Rule 9A of the Parliament’s standing orders and the Guidance on Private Bills.

2. Following its introduction, there was a 60 day objection period that concluded on 10 November 2003 when 118 admissible objections were lodged (this number subsequently increased to 141 (the background to this is set out in our Preliminary Stage report)). An admissible objection is one that complies with Rule 9A.6.5 of the Parliament’s standing orders and the Presiding Officer’s determination on proper form). At the commencement of Consideration Stage there were 129 objections outstanding.

3. Following the publication of that report on 22 July 2005, the Parliament debated the Bill on 28 September 2005 and agreed its general principles and that the Bill should proceed as a Private Bill. The Parliamentary Bureau then referred the Bill back to this Committee to take Consideration Stage.

Format of report
4. Volume 1 reports on the Committee’s consideration of the evidence relating to outstanding objections and sets out its decisions with respect to each. Appearing as annexes to the main report are our conclusions and recommendations on the provision of a railway station at Stow and further consideration of some general principles issues as highlighted in our Preliminary Stage report. The Committee also draws attention to our report on appropriate

---

1 Waverley Railway (Scotland) Bill Committee, Preliminary Stage Report on the Waverley Railway (Scotland) Bill, (paras. 293-303) (www.scottish.parliament.uk/business/committees/waverlyRB/reports/wrr05-01-vol01-01.htm)
2 Guidance on Private Bills, Annex Q (www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-05/sor0928-02.htm#Col19503)
assessment\textsuperscript{4} which sets out the background, our conclusions and recommendations on appropriate assessment.

5. The main report forms volume 1, with the remaining volumes covering the proceedings of the Committee and the evidence submitted and considered (these volumes are being published in electronic format only on the Committee’s homepage on the Parliament’s website: www.scottish.parliament.uk/business/committees/waverlyRB/index.htm)—

Volume 2: Minutes of each Consideration Stage meeting  
Volume 3: Oral evidence  
Volume 4: Consideration Stage written evidence  
Volume 5: Other written evidence

**Brief description of the Bill**

6. The principal objective of the Bill, as set out in the Promoter’s Memorandum (one of the accompanying documents lodged with the Bill), is—

‘to give the promoter statutory authority to construct a railway between a point in Midlothian immediately south of Newcraighall and Tweedbank in the Scottish Borders, largely along the route of the former Waverley railway. In connection with these works the Bill also provides for the closure of some roads and footpaths that cross the route and the construction of various ancillary works along the route as necessary to accommodate the railway. Provision is also included for the compulsory acquisition of land for the scheme, including land for new stations at Shawfair, Eskbank, Newtongrange, Gorebridge, Galashiels and Tweedbank which will be constructed as part of the scheme’.

7. The railway, which will provide a passenger service, will be approximately 31 miles in length. The proposed route would follow much of the former Waverley railway route, using remaining bridges, tunnels and track bed. The former railway itself was closed following the 1963 Beeching Report with consent for closure being granted in 1966, passenger and through freight services being withdrawn in 1969 and the track lifted in 1969 and 1970.

8. Further information on the policy objectives of the Bill can be found in our Preliminary Stage report.

**Objections**

*Background*

9. The Committee at Preliminary Stage gave preliminary consideration to the objections lodged against the Bill and rejected any objection where the objector’s interests were, in our opinion, not clearly adversely affected. A full explanation of our preliminary consideration of objections is given in our Preliminary Stage report.

\textsuperscript{4}Waverley Railway (Scotland) Bill Committee, 1st Report 2006, *Report on Appropriate Assessment on the River Tweed Special Area of Conservation*
Approach by Committee and Consideration Stage procedure

Role of Committee

10. Consideration Stage involves the consideration of objections and the detail of the Bill and is split into two distinct phases. This report marks the completion of the first phase, where the Committee must arbitrate between the interests of the promoter and the interests of each remaining objector and report on each outstanding objection. In this report, we give our decision on whether or not to uphold each objection.

11. The second phase of Consideration Stage is where the Committee will consider all admissible amendments that are lodged to the Bill. After Consideration Stage has been completed, the Bill moves to Final Stage. This is where final consideration of the Bill and a decision on whether to pass or reject it will be taken at a meeting of the whole Parliament.

Approach to evidence taking

12. The Committee took seriously its role as quasi-judicial arbiter at Consideration Stage, given the need to comply with the principles of natural justice and the Parliament’s obligations under the Human Rights Act. The procedures applied ensured that the promoter and each objector had a fair opportunity to present their case and to question the opposing case. We sought to maintain a relatively informal atmosphere during oral evidence-taking, subject to the need to examine all the evidence in an open and fair manner. This enabled us to assess fully each objection as well as determine whether the Bill struck an appropriate balance between the rights of individuals affected by it and the wider public interest it serves.

13. At the start of Consideration Stage, and in accordance with Rule 9A.9.4 of standing orders, we grouped those objections which in our opinion were the same or similar. The result of this process was that sixty-five groups were agreed by us. Following informal discussions between the Committee’s clerks and objectors, we also agreed the ‘lead objector’ for each group, whose role was to have responsibility for co-ordinating that group’s provision of evidence. Where an objection was not or could not be grouped, the original objector automatically became the lead objector for that ‘group’.

14. In summary, the approach adopted by us was to invite each group to—

- attend a series of local meetings to be held with Parliament officials to explain the Consideration Stage process and to discuss proposed groupings and lead objectors;
- make the case for being grouped, for not being in the group proposed, or not being grouped at all;
- reply in respect of the proposed lead objectors with the opportunity to propose alternatives;
- submit—
  o a summary of the issues that each group wished to pursue in written and, if necessary, oral evidence;
o written evidence on the issues it wished to pursue arising from the objections within the group (this written evidence would stem from the summaries above);
o provisional witness lists i.e. the witnesses each group wished to put forward on each topic of evidence (should the Committee wish to hear oral evidence on the issues raised); and

- indicate how long it would take to present its oral evidence and cross examine witnesses.

15. Upon receipt of the written evidence from each group, a copy was forwarded to the promoter inviting it to —

- respond to the written evidence received on each issue raised by each group;
- submit provisional witness lists i.e. the witnesses the promoter wished to put forward on each topic of evidence within each group (should the Committee wish to hear oral evidence on the issues raised); and
- indicate how long it would take to present its oral evidence and cross examine witnesses.

16. Upon receipt of the promoter's response, a copy was forwarded to each group inviting it to respond to the promoter's evidence. Oral evidence meetings then commenced.

17. It was made clear to all parties that written evidence must relate back to the terms of the relevant original objection and not introduce new issues. The Committee met to take oral evidence where it became clear that outstanding issues between the promoter and an objector could not be resolved through written evidence and where the written evidence did not provide sufficient evidence to enable us to reach a decision on that issue. We held six oral evidence meetings in consideration of the objections on 16, 23 and 30 January, 27 February and 6 and 13 March 2006. The meetings on 23 January and 13 March were held in Newtongrange and Galashiels respectively.

18. All the witnesses who gave oral evidence did so on the basis that their written evidence would be treated 'as read', meaning that we did not want this evidence simply to be repeated orally. Instead, our focus was on examining how, if possible and if desirable, outstanding issues could be addressed practically. The Committee considered both written and oral evidence as being of equal status.

19. Several groups stated that they preferred not to provide any further written evidence (or made no contact with the Committee at all). It was made clear to these objectors that they would not be able to subsequently provide oral evidence. In these circumstances, we sought further evidence from the promoter’s witnesses where we felt it would assist us in reaching a decision on the issues raised within the relevant objection.

---

5 Letter from Clerk to the Committee to all objectors (6 October 2005)
While written evidence was being submitted, meetings were held between our clerks, objectors and representatives of the promoter at which the proposed timetable and format for providing oral evidence at Consideration Stage was discussed. We also undertook a site visit to various properties and areas of land on 9 January 2006.

Several objections were withdrawn before and during this first phase of Consideration Stage, as a result of negotiations between the promoter and objectors. The report does not address any issues raised in objections that have been withdrawn, other than those that were withdrawn on the understanding that we would make appropriate amendments at the second phase of Consideration Stage.

**Consideration of evidence and conclusions**

*Mitigation of adverse impacts*

In considering the evidence and the Bill in general, it remains open to the Committee, notwithstanding the Parliament’s approval of the general principles of the Bill at Preliminary Stage, to recommend that the Bill is not passed at Final Stage. In particular, the Committee could make that recommendation if it considers that any inevitable adverse local environmental impacts consequential upon the scheme would outweigh the public policy desirability of the scheme.

We have therefore considered in detail whether any additional measures need to be carried out in order to mitigate the environmental impact of the scheme. Only then could the Committee establish whether any residual impacts, after mitigation, would be within acceptable limits and be offset by the wider benefits of the scheme.

*Promoter’s policy papers and other documents*

In addition to the written evidence submitted by the promoter, it also produced a series of policy papers on—

- noise and vibration\(^\text{6}\)
- code of construction practice\(^\text{7}\)
- compulsory purchase and compensation\(^\text{8}\) and
- railway regulation\(^\text{9}\)

and submitted copies of Scottish Executive policy documents by way of evidence in support of the promoter’s case. Two of these policy documents were planning advice note (PAN) 56 on planning and noise\(^\text{10}\) and circular 38/1992 on the disposal of surplus government land (the Crichel Down rules).\(^\text{11}\)

---

\(^\text{6}\) Policy paper on behalf of the promoter in respect of noise and vibration (November 2005)
\(^\text{7}\) Policy paper on behalf of the promoter in respect of the code of construction practice (November 2005)
\(^\text{8}\) Policy paper on behalf of the promoter in respect of compulsory purchase and compensation (December 2005)
\(^\text{9}\) Policy paper on behalf of the promoter in respect of railway regulation (December 2005)
\(^\text{10}\) Scottish Office Planning Advice Note: PAN 56 – Planning and Noise (April 1999)
25. Given that all the written and oral evidence provided to us is available on our website, this report does not rehearse all the arguments pertaining to all the individual issues that were raised in evidence. If an issue is not specifically mentioned in this report, this is because we were not persuaded by the objector’s case. We applied the same rigorous consideration to every issue whether detailed in this report or not. Further, if an issue was resolved during oral evidence, that issue has not been addressed in detail in this report.

26. Our decisions in this report have been reached on the basis of all the evidence considered at Preliminary Stage as well as all the evidence provided by the promoter, objectors and their respective witnesses at Consideration Stage.

27. The following paragraphs discuss our views generally on the mitigation measures proposed by the promoter, in particular its approach to noise and vibration, construction impacts and the relevant compensation arrangements that would be available to objectors. The decisions reached on these measures apply universally along the entire route.

**Noise and vibration policy**

28. The promoter’s policy paper sets out its intentions with respect to mitigating the noise and vibration impact caused by the operation of the railway. It should be read in conjunction with the environmental statement\(^{12}\) and the further environmental information\(^{13}\) as well as the current draft of the code of construction practice\(^{14}\) which defines the minimum standards to apply as regards construction practice.

29. The Committee does not propose in this section to repeat the terms of the promoter’s noise and vibration policy. Given the importance of this matter to a number of objectors we do wish to highlight the general standards of mitigation that the promoter has committed to under that policy.

30. The overall approach of the promoter is to use best practicable means\(^{15}\) to design the railway track and track bed so as to avoid significant noise and vibration impacts at sensitive receptors\(^{16}\) such as residential properties and schools.

31. The policy identifies the noise levels at which mitigation measures at source (i.e. within the railway corridor) and noise insulation would be considered. In summary, the requirements for noise mitigation, relate to two sets of noise levels - threshold and unacceptable. The threshold levels are a daytime (7.00 am-11.00 pm) equivalent noise level of 55dB LAeq and a night-time (11.00 pm-7.00 am) equivalent noise level of 45dB LAeq.

---

\(^{12}\)Waverley Railway (Scotland) Bill environmental statement (5 September 2003)

\(^{13}\)Waverley Railway (Scotland) Bill further environmental information (28 February 2005)

\(^{14}\)Waverley Railway (Scotland) Bill code of construction practice, draft final v7 (28 April 2006)

\(^{15}\)As defined in section 72 of the Control of Pollution Act 1974 (those measures that are "reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to financial implications")

\(^{16}\)All people, buildings and natural resources that may, potentially, be subject to impact from the railway
32. The purpose of the thresholds is to set a target level in the design of the railway that will apply where the railway's operation increases noise noticeably at particular properties. Where train noise is predicted to be more than 3dB above either of these threshold levels at the relevant time, appropriate mitigation will be introduced at source.

33. The unacceptable levels have been set at—

- Day > LAeq, (6.00 am-midnight) 66 dB
- Night > LAeq, (midnight-6.00 am) 61 dB
- Night > LAmx 82 dB

34. If, after consideration of measures at source, any of the relevant unacceptable levels is routinely exceeded by at least 1dB then noise insulation will be offered. Noise insulation would be provided on the same basis as the noise insulation regulations that apply in England and Wales. It may be worthwhile mentioning the consideration given to the ambient noise impact in both urban and rural settings, given that this railway starts in an urban setting, then moves predominantly into a rural area before again moving into an urban area. The promoter stated that it has set its levels at which, research has shown, noise annoyance generally does not occur. Of particular concern was the impact in rural areas of railway noise and any sleep disturbance caused by this. We note that the railway will not be operational throughout the night. It is reported that sleep disturbance is not significantly increased by transport noise until the exterior noise level exceeds about 82 dBA.

35. The Committee welcomes the promoter's commitment to consult with local residents during the detailed design phase over the most appropriate form and siting of local noise mitigation measures.

36. As regards any ground vibration caused by operating trains, the promoter has agreed that trackforms will be designed adjacent to sensitive receptor buildings using the best practicable means to keep within the guideline levels of vibration dose set out in the relevant British Standards.

37. Also of importance is the monitoring of railway noise and vibration following the commencement of train operations and track and rolling stock maintenance (poor quality track and rolling stock being a prime source of additional rail noise). The promoter has given a commitment to monitor such levels within six months of the railway opening. This monitoring will be carried out by the authorised undertaker. However, we consider this response inadequate. We believe that this monitoring should be at six monthly intervals at locations agreed with the local planning authorities for a period of not less than three years following the

---

17 Noise Insulation (Railways and Other Guided Systems) Regulations 1996 (SI 1996/428)
18 Department of Transport report on railway noise and the insulation of dwellings (the 'Mitchell' report) (February 1991)
19 BS 7385-2: 1993 Evaluation and measurement for vibration in buildings - Part 2: Guide for damage levels from groundborne vibration and BS 6472: 1992 'Guide to Evaluation of human exposure to vibration in buildings (1 Hz to 80 Hz)
commencement of the railway’s operation and annually thereafter and that the Bill should specify this. This will ensure that early consideration is given to the need for noise mitigation measures caused by track degradation, rolling stock requiring maintenance, or other factors, and that the effectiveness of any measures that have been put in place is appropriately tested. **We will amend the Bill to require this.**

38. We also believe the results of the monitoring should be published in a readily and accessible format for members of the public to access (the promoter’s website and its project newsletter may be a useful mechanism).

39. A further issue of interest was the implementation and enforceability of this policy. Numerous objectors expressed anxiety over the noise impact of the railway on them and how they could be assured that the promoter would live up to the commitments specified in the noise and vibration policy. To allay such concerns, we believe that the policy should be given a statutory backing therefore **we will amend the Bill so as to specifically require the authorised undertaker to use all reasonably practicable means in applying, as a minimum, the standards of protection and mitigation set out in the policy.** This amendment will recognise that the policy is a ‘live’ document to which improvement may be made while at the same time defining minimum standards that should be met.

**Conclusion**

40. **Subject to the amendments outlined above, the Committee is generally satisfied as regards the terms of the promoter’s noise and vibration policy and the levels set for threshold and unacceptable actions.**

**Code of construction practice**

41. Along with the noise and vibration policy, this document seeks to address many of the fundamental concerns expressed by objectors. It outlines the action the promoter will require contractors to take during both construction and maintenance of the railway to minimise environmental and other impacts (e.g. construction noise, access, road closures).

42. The code itself is an evolving document, originally appearing as an annex to the environmental statement lodged with the Bill in September 2003. In the light of both Committee and objector concerns, further versions have been produced, incorporating revisions and enhancements. The most recent version seen by us is that received from the promoter on 28 April 2006. It will be subject to further development. The intent is that, should the Bill be passed by the Parliament, the authorised undertaker would have to get the code approved by the local planning authorities (Midlothian and Scottish Borders as appropriate). In approving the code, the local planning authority will consult with Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA). The Committee expects sufficient staffing resources to be provided by each of the planning authorities, in particular to allow them to deal promptly with this matter, and to be able to monitor and enforce any breaches of the code. We welcome the appointment of an environmental clerk of works by each planning authority to oversee the construction works from an environmental perspective during the construction period.
43. The code is in two parts, part one setting out the general requirements that all contractors involved in the construction of the railway will comply with. Part two sets out specific mitigation requirements that will apply at certain locations. Some of the commitments in part two address specific concerns raised in objections. It is also of particular relevance to the issue of appropriate assessment.\(^\text{20}\)

44. As with our approach to the consideration of the noise and vibration policy, it is not our intention to repeat in this report the detail of the code. We would however wish to comment on key aspects of it and on its application and enforcement. In that regard, we are pleased to note that the code sets out the minimum standards that will be applied. We are of the view that such standards are not to be seen as the minimum levels to which a contractor should attain, but rather it should always endeavour to achieve higher and more stringent standards.

45. A further issue of interest to us and many objectors was the potential noise and vibration impact caused by the construction of the railway. As with the noise and vibration policy (which is concerned with railway operation noise and vibration), the code sets maximum noise levels that will apply between set hours on particular days. In general terms, we are content that the levels as set out are appropriate. However, in saying that, we do not expect any contractor during the construction of the railway to feel that it can unnecessarily create noise up to that level as a matter of practice. All contractors should, as a matter of practice, seek to attenuate noise levels as far as reasonably practicable.

46. A further concern expressed by a number of objectors related to the risk of property damage arising from the construction or operation of the railway. The code specifically addresses this and requires that the contractor make investigations of foundations, structures, walls, cabling etc and that it safeguard all buildings and structures within twenty metres of the works prior to construction. Up to two years post railway opening, affected parties may request that a defects survey is carried out to investigate any reports or evidence of damage. Such surveys will be carried out by the contractors’ engineers and at the contractors’ expense.

47. The Committee is of the view that the terms of the code need to be supplemented so as to specifically provide that damage identified in this survey caused by the construction or operation of the railway is repaired within a reasonable time. The contractor should bear the expense of repairs being completed to the reasonable satisfaction of the property owner and to the standard of repair existing before construction or operation, as appropriate. In the event of this revisal to the code not being made, we will amend the Bill along these lines at phase two.

Conclusion

48. In general terms, the Committee is satisfied as regards the terms of the code of construction practice. However, as with the noise and vibration

\(^{20}\)Waverley Railway (Scotland) Bill, 1st Report 2006, Report on Appropriate Assessment on the River Tweed Special Area of Conservation
policy, we believe that the code should be given statutory backing. We will therefore amend the Bill at phase two along the following lines.

49. The authorised undertaker will be required to submit the code, (which as a minimum must confer the standards of protection and mitigation set out in the 28 April 2006 version (v7)) to the local planning authority for approval before commencing the works. The local planning authority must consult SNH and SEPA in considering whether to approve the code. Once approved, the authorised undertaker must use all reasonably practicable means to ensure that the works are carried out in accordance with the code. The Committee will also amend the Bill so as to empower the local planning authority to enforce the terms of the code. In practice this will enable the local planning authority to stop development until non-compliance is remedied.

50. This package of amendments will enable the code of construction practice to evolve while at the same time setting minimum standards of protection and mitigation. This should allay objector concerns about the application and enforcement of this code.

Other environmental mitigation commitments

51. The Committee is conscious that the concerns of most objectors focus on exactly what mitigation the promoter will provide against the impacts of the railway. The uncertainty of exactly where the railway track will be, how close a property will be, what screening and planting will be provided, what land take will be required, are all legitimate concerns for objectors. However, we accept that it is not always possible, at this stage in the railway project's process, for definitive answers to be given to these questions.

52. Should the Bill be passed, the promoter will take the project forward and appoint contractors who will finalise the exact details on construction and operation of the railway, the where, when, what, why and how. We understand that the time period between now and then may cause anxiety amongst affected people. What we have sought to do in considering the promoter’s policy papers on noise and vibration and compulsory purchase and compensation and the code of construction practice, is to give assurances now, of what minimum mitigation, attenuation and action the promoter will put in place or take to address these concerns.

53. The promoter’s environmental statement and its further environmental information and draft concept landscape design documents contain details of the measures the promoter will put in place as regards environmental mitigation, indicative planting and works to be undertaken along the railway route. Consistent with our approach above, we wish to give these documents a statutory backing to ensure that the residual impacts from the railway, both construction and operation, are, at the very least, no worse than those already identified. We will amend the Bill at phase two accordingly.

54. Whilst the decision to amend the Bill in this way may offer reassurance to objectors, other commitments given by the promoter about the environmental
mitigation that would be provided would not be captured by such an amendment. In particular, where the promoter has made pledges on the record about the specific mitigation that it will provide or actions it will take to certain objectors (e.g. planting trees, replacing a wall, installing a noise barrier). We understand that such commitments may be binding on the promoter under the law of promise. However, where practicable, we have made clear that such undertakings should be entrenched in writing, for example, in written undertakings granted by the promoter to the objector or by way of appropriate amendment to the code of construction practice or the noise and vibration policy. In addition, we will amend the Bill at phase two to bind the authorised undertaker to using all reasonably practicable means to honour any such commitments.

Conclusion

55. The Committee will amend the Bill at phase two as indicated above.

Compulsory purchase and compensation, advance and voluntary purchase schemes

Compulsory purchase and compensation

56. The Bill authorises the compulsory purchase of land for the construction and maintenance of the scheme and the associated infrastructure and authorises acquisition of the necessary rights in land.\textsuperscript{21} In respect of compensation for compulsory purchase, and also for the effects of the scheme on the value of adjacent property, the Bill adopts the general law contained in existing legislation, particularly the Land Clauses Acts and the Land Compensation (Scotland) Acts 1963 and 1973. This means that the scheme is subject to the same procedural rules, safeguards and requirements regarding compensation as apply generally. Compensation will therefore be payable on the same basis as for any other compulsory purchase in Scotland. Disputes over compensation levels may be referred to the Lands Tribunal for Scotland. Compensation arrangements are described in greater detail in the promoter’s policy paper on the subject.

57. Not all land required for the scheme will have to be acquired permanently. Temporary possession of some land will be required for building or commissioning the railway and the Bill provides the promoter with the power to take such land temporarily. This was an issue that was of concern and interest, particularly to those whose land and properties are to be acquired to accommodate the construction of the railway. Concerns were expressed to us about the lack of information or guidance being made available by the promoter on, for example, how and when land is to be acquired and how the compensation process would apply. In our Preliminary Stage report,\textsuperscript{22} we recommended that the promoter produce and make available clear, understandable and pertinent guidance on compensation. The promoter subsequently produced a Q and A guide which was made available to objectors.

58. An issue of concern to a number of objectors was that of the railway project not proceeding after the promoter has compulsorily acquired land that is currently in the ownership of objectors. The promoter, in evidence, stated that the terms of

\textsuperscript{21}Sections 13 to 17 of the Bill
\textsuperscript{22}Waverley Railway (Scotland) Bill Committee, Preliminary Stage Report on the Waverley Railway (Scotland) Bill, (paragraph 252)
the Crichel Down Rules\textsuperscript{23} on the disposal of surplus land would apply. In general, if the promoter wished to dispose of surplus land acquired under the threat of a compulsory purchase order, the former owner would, as a general rule, be given first opportunity to repurchase the land at market value provided that it has not been materially changed in character since acquisition.

59. To offer reassurance to objectors, we will amend the Bill at phase two to ensure the implementation of the Crichel Down Rules.

Conclusion

60. The Committee is content that, as a result of the compensation provisions as applied by the Bill, objectors will be appropriately compensated in respect of any land compulsorily acquired and, where no land is acquired, for any reduction in value of the land caused by physical factors associated with the scheme.

61. In line with our approach taken to commitments given by the promoter, we will amend the Bill at phase two to apply the Crichel Down Rules (as may be amended or superseded from time to time) to the Bill.

Time limits for compulsory acquisition of land

62. A further issue considered by us was the time limits during which the compulsory purchase powers conferred by the Bill will be exercisable. Section 116 of the Lands Clauses Consolidation (Scotland) Act 1845 (as applied by section 42 of the Bill) provides that generally powers to compulsorily acquire land elapse after three years from the passing of the Act unless otherwise prescribed. Section 26 of the Bill provides that the power to compulsorily acquire land required for the scheme may be exercised only during the period of seven years from the date of coming into force of the Bill.

63. The promoter contends that this extra time is required in order to complete full title searches on all required land, serve the necessary notices, complete the detailed design of the railway and the mitigation measures and landscaping and also to secure funding. However, we are concerned at the impact this further time period may have on individuals who have already experienced many years of uncertainty over whether their property will be compulsorily acquired and may be faced with a further seven years of this, to 2013. We note the commitment of the promoter to acquire all land at the outset i.e. as soon as possible after Royal Assent.

64. The promoter states that it is aware of instances where short time limits have resulted in delayed projects being jeopardized. In considering an appropriate time-frame, we are mindful of the stated intention that the railway be operational by 2011, if not earlier. We also note the assertions made by the promoter in evidence on the comprehensive risk and project management procedures it is putting in place to ensure the project proceeds on time and budget. This target date of 2011 will therefore provide clarity of purpose.

\textsuperscript{23}Scottish Development Department Circular 38 of 1992 ("Disposal of Surplus Government Land - The Crichel Down Rules"
65. The Committee was also concerned that objectors should not be blighted by having the threat of compulsory purchase hanging over them indefinitely. We note that the Bill applies the general law relating to blight. The effect is that in certain circumstances, certain landowners whose land is intended to be compulsorily acquired for the scheme, can require the advance purchase of property which has become unsaleable at its former market price.

66. The Committee intends to reduce the period within which the compulsory purchase powers may be exercised from seven years to five years from when the Bill receives Royal Assent. We believe, given the promoter’s evidence, that this is sufficient time to allow it to finalise the required land take and make the necessary arrangements for acquisition. Accordingly, we will amend the Bill at phase two. We hope that this will afford a degree of comfort to those people whose property will be acquired.

67. We will also make a consequential amendment to section 35(2) of the Bill to provide that the authority to develop land given by the Bill (known as deemed planning permission) is limited to development begun within eight years of the date on which the Bill comes into force and not ten years as currently provided for in the Bill. At the latest, all parts of the scheme must be under construction by 2014 (should the Bill receive Royal Assent in 2006). In our view the proposed amendments strike an appropriate balance in alleviating uncertainty and delay, without imposing too great a burden on the promoter. If, for whatever reason, these timescales cannot be met it would suggest to us that the granting of statutory powers is premature at this stage. In that event, the proposals (or more likely a part thereof) may be the subject of a fresh Private Bill. However, it seems to us entirely appropriate that any such proposals should be properly re-assessed in light of the circumstances then prevailing.

Conclusion
68. The Committee will amend the Bill at phase two to (a) reduce the time limit during which the power to compulsorily acquire land required for the scheme may be exercised from seven to five years from the date of Royal Assent; and (b) make a consequential amendment to provide that the authority to develop land given by the Bill is limited to development begun within eight years of Royal Assent.

Advance purchase scheme
69. In June 2003, the promoter submitted its proposals for an advance purchase scheme to the Scottish Executive. The scheme will be available to those properties where compulsory purchase powers under the Bill are exercisable. The benefit of an advance purchase scheme is that it will enable the promoter to enter into negotiations with those objectors whose land would be subject to compulsory acquisition under the Bill at a much earlier stage i.e. before the Bill receives Royal Assent. The effect of this is that it reduces uncertainty for the objectors which the

---

24 Part V, Chapter I of the Town and Country Planning (Scotland) Act 1997 (see section 39 of the Bill)
25 Generally speaking, development authorised by the Bill will benefit from planning permission by virtue of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992
Committee welcomes. Such schemes are, we understand from the Scottish Executive, common in infrastructure projects in the UK.

70. The Scottish Executive, as principal funder, indicated that it was, in principle, supportive of such a scheme but that it was unlikely to agree to any advance purchase ahead of the completion and approval by it of the promoter’s business case. Approval of the business case was given, and intimated to this Committee by the then Minister for Transport, Nicol Stephen MSP, at our meeting on 14 March 2005.

71. Following a meeting on 10 January 2006 between the promoter and the Scottish Executive, the Scottish Executive approved in principle an advance purchase scheme. At our meeting on 27 March 2006 we were informed that a further meeting between the Scottish Executive and the promoter was to take place on 28 March 2006. It was unfortunate that this meeting had not been scheduled to allow us, and objectors, to be updated on progress at our meeting.

72. The Committee was notified on 29 March 2006 that the Scottish Executive had now agreed to an advance purchase scheme. It is of deep concern to us that it took thirty-five months after the proposal for such a scheme was submitted for the Scottish Executive to make this decision. Several objectors gave oral evidence of the stressful effect this delay was having on them. Had a decision been made on this issue earlier, we are sure that a number of objectors would have been prepared to withdraw their objections. This failure to make a decision earlier in the process, and certainly before this Committee commenced its objection oral evidence meetings, has involved the Committee in considering objections that may have been withdrawn.

73. We understand that the promoter has now written to affected persons to ascertain whether or not owners wish to be included in the scheme. The Committee welcomes this approach by the promoter.

Conclusion
74. The Committee has been extremely frustrated and disappointed at the time taken by the Scottish Executive to decide about an advance purchase scheme. The impact, in terms of added stress and worry, on persons affected by the compulsory acquisition of their land or property, was unnecessary. It has also caused additional work for this Committee in considering objections.

75. The Committee welcomes the introduction of this advance purchase scheme and believes it will provide much needed clarity for those objectors whose land is subject to compulsory purchase under the Bill.

Voluntary purchase scheme
76. Of equal concern to objectors was the delay by the Scottish Executive in considering a voluntary purchase scheme. This scheme would apply to certain properties that are outwith the areas where compulsory purchase powers under the Bill could be used; that is they are not required for the purposes of the construction and operation of the railway, but may be materially adversely affected
by its construction or use. Such a scheme, given that it is a discretionary scheme and is one that goes beyond the general law of compensation, would be available only in exceptional circumstances.

77. It became apparent to us throughout our evidence meetings the obvious distress this delay was causing objectors over a considerable length of time. The promoter submitted proposals for a scheme to the Scottish Executive in July 2003 but the Scottish Executive has been unable to determine it as yet. It wished to give full consideration to the implications of introducing such a scheme for other such infrastructure projects. The Committee recognises the awkward position this delay has placed the promoter in negotiating with objectors.

78. A copy of the draft guidelines on the proposed operation of the scheme was submitted as part of the promoter’s written evidence. The Scottish Executive, in its written evidence, stated that it would be in a position to make a decision by mid-May, having previously indicated it hoped to make a decision in March 2006.

79. It is most unfortunate that thirty-four months after the proposal was submitted to the Scottish Executive it is yet to make a decision on whether there is to be a voluntary purchase scheme and, if there is, how it will operate. The Committee has seen the impact this delay in making a decision has had on objectors. The lack of decision and clarity has caused distress to them, distress that could and should have been avoided, as well as inconvenience to them and this Committee. Had these objectors known that their property would be voluntarily purchased by the promoter, they may have withdrawn their objection. We do not understand why it is taking the Scottish Executive so long. Again, as with its indecision on the advance purchase scheme, this has hindered this Committee in our Consideration Stage proceedings. A decision on this made in advance of us commencing objection oral evidence meetings would have greatly assisted the Committee.

80. The guidelines outline what could be regarded as eligibility criteria. A person would have to demonstrate how they are ‘materially adversely affected’ by either the construction or the use of the railway, for example, noise level, medical condition or reduction in property value. The applications for voluntary purchase would be made to Scottish Borders Council as promoter and we are pleased to note their aim to make a decision on an application within three months of receipt.

81. The Committee observes that such a scheme goes beyond the general law on compensation and would enable land to be acquired and compensation paid when such land would not be subject to the compulsory purchase powers under the Bill. Further, we observe that it is not a scheme that is commonly used in infrastructure projects in the United Kingdom. We understand that such a scheme has only previously been used twice and on neither of those occasions was that in Scotland.

26Promoter’s supplementary memorandum on voluntary and advance purchase schemes (17 March 2006)
27Memorandum by the Minister for Transport (17 March 2006)
82. We questioned the promoter on what other remedies would be available to objectors if such a scheme was not introduced or indeed if an objector was not eligible for such a scheme. The promoter indicated that, under the Bill, there would be no obligation to buy such properties and there would be no scope to do so under the project. However, the promoter stated that a person may be able to successfully claim that, because of noise, vibration or other physical factors, the value of their house was reduced and they could claim compensation for that reduction in capital value under Part I of the Land Compensation (Scotland) Act 1973. The promoter recognises that this is not the same thing as buying the property out.

83. Given the delays and anxiety caused to objectors, we expect the promoter will wish to exercise sensitivity in taking matters forward with objectors should the voluntary purchase scheme be agreed. While we accept that even the voluntary purchase of a person’s home would be unlikely to be their preferred option, we would hope that, should there be such a scheme, knowing that their property is to be bought out will provide some clarity and comfort to individuals and allow them to make future plans.

Conclusion

84. The Committee believes that this avoidable delay by the Scottish Executive in making a decision has not been helpful to a number of objectors who have been subjected to additional yet unnecessary stress. We do not consider the Scottish Executive has given due recognition to such individuals or to the work of this Committee.

85. We invite future promoters of Private Bills to ensure early resolution of any such proposed schemes. We expect the Scottish Executive to act with greater speed, sensitivity and awareness when considering such schemes in the future.

86. The Committee is however content that Part I of the Land Compensation (Scotland) Act 1973 will provide an appropriate remedy for objectors in the absence of a voluntary purchase scheme being available.

Railway safety

87. This was a matter referred to by a number of objectors who were concerned about the proximity of their properties to the railway track and the associated safety issues. As there is no railway at present, there is currently no safety risk so it was understandable that people were concerned at any new risk that would be placed on them through the installation of the railway.

88. The promoter, in its policy paper on railway regulation, refers to the requirements on rail, station and train operators under the Railways (Safety Case)

28Section 1 provides that compensation may be payable where the value of an interest in land is depreciated by physical factors caused by the use of public works. The physical factors are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land in respect of which a claim is made of any solid or liquid substance. Section 3 (as amended by the Local Government, Planning and Land Act 1980 (c.65), section 112) provides that such claims cannot be lodged until 12 months after the scheme is operational.
This requires them to prepare a comprehensive safety case and then submit it for acceptance by the Health and Safety Executive before the operator is allowed to operate their business. The Office of the Rail Regulator will not grant a licence to a railway operator without an accepted safety case being in place.

89. We are satisfied that the existing regulatory framework is appropriate. It applies to all railway projects across the network and will equally apply to this project as appropriate and adequate.

90. We also accept the commitment by the promoter that all fencing to be provided along the route to prevent unauthorised access will apply the relevant Network Rail specifications. The Committee takes comfort from the promoter's evidence that the entire railway infrastructure, for example, track alignments and curvatures, train speeds, will be designed, constructed and maintained in accordance with Network Rail and HM Railway Inspectorate standards.

Conclusion
91. The Committee is satisfied that the existing statutory safety standards that will apply to the construction and operation of the railway are appropriate and adequate. Accordingly, the Committee does not uphold those parts of the outstanding objections concerned with safety.

Groups
92. Having set out the Committee's general views on the mitigation measures, design issues and compensation arrangements that will be adopted by the promoter, and how these will be monitored and enforced, this next section of the report presents the Committee's decisions on each remaining group of objections.

Note: (objection no.)
Indicates the (date) of the meeting at which oral evidence on the objection was heard

Group 1
Scottish Power (114): Withdrawn 13 December 2005

Group 2
Scotland Gas Networks plc (140)
National Grid Gas plc (116)
(16 January 2006)
93. The main issue of concern from these two objections was on the protection of the objectors’ assets and infrastructure. There appears to be one issue outstanding where Scotland Gas Networks is concerned at the impact of the railway on existing gas apparatus that may have been laid across the former railway and for which they will be liable for the cost of the ‘lift and shift’ of this apparatus. The objector contends that the Bill does not provide adequate protective provisions for the benefit of its apparatus and for the protection of its

29SI 2000/2688 as amended by the Railways (Safety Case) Amendment Regulations 2003 (SI 2003/579)
statutory rights and obligations. In response, the promoter contends that the Bill
does provide for statutory protections for apparatus on terms that are of general
application in similar circumstances where a Bill is not required and refers to the
New Roads and Street Works Act 1991 and the protections for statutory
undertakers in sections 224 to 227 of the Town and Country Planning (Scotland)
Act 1997. It would appear to us to come down to whether the company or the
promoter is liable to bear such costs.

94. Before we set out our conclusions on this we wish to draw attention to the
lack of progress made in settling these objections. References were made in the
promoter’s written evidence submitted in December 2005 and in oral evidence on
16 January 2006 that agreements were imminent. They clearly were not. There
appears to have been some activity in the lead up to the publication of this report
but we do not believe that either party has treated this issue with any priority in
seeking a resolution. The issues of concern are such that they could, and should,
have been resolved through negotiation and agreements between the parties. We
note that the objectors did not give oral evidence before us on the substance of
their objections.

95. Turning now to our consideration of the objections, we refer to the
Parliament’s agreement to the general principles of this Bill at Preliminary Stage
and of the need and wider public benefits that the railway will offer. We do not
disturb that finding here and accordingly, we do not uphold the objections. The
parties appear willing to enter into a protective provisions agreement which offers
enhanced protective provisions for these objectors over and above the general
statutory protections included in the Bill. However, those agreements have still not
been finalised.

96. We are content to leave any issues of compensation to be determined in
other forum. It is for the objector and the promoter to reach whatever agreements
are required were such apparatus ever to be moved.

Conclusion
97. The Committee does not uphold either of these objections.

Group 3
Network Rail (115): Withdrawn 11 January 2006

Group 4
BRB Residuary Ltd (113)
(16 January 2006)
98. The objector is concerned about the impact of the railway on the
development potential for rail freight services at the Millerhill rail site; the Bill’s
failure to take account of the statutory obligations of BRBR (British Railway Board
Residuary) in respect of the railway generally; and the effect of the Bill on certain
legal rights held by BRBR in respect of land to be acquired under the Bill.

99. From the written and oral evidence heard on this objection, it became
apparent to the Committee that the objector’s concerns were capable of being
addressed through a combination of private agreement between the objector and
the promoter (in respect of development potential and rights in land) and amendment to the Bill (in respect of the statutory obligations). We understand that agreement has now been reached between both parties on the issues arising from the objection.

Conclusion
100. The Committee will amend the Bill at phase two to give effect to the agreement between the promoter and the objector.

Group 5
Railway Paths Ltd (118): Withdrawn 11 April 2006
SUSTRANS (76): Withdrawn 11 April 2006
(16 January 2006)

Group 6
Royal Mail Group plc and Post Office Ltd (112): Withdrawn 11 November 2005

Group 7
CPL Distribution Ltd (87): Withdrawn 13 December 2005

Group 8
The Cockatoo Bar & Restaurant (137)
(16 January 2006)
101. The concerns of the Cockatoo Bar & Restaurant centre around the impact of the railway on its business and, in particular, the cutting off of two roads within the proposed Shawfair development (the Cockatoo will be situated in the southern wedge of this proposed 3,500 house development). Were the Cockatoo to stay in its current location, the objector contends that its business would be affected financially as a result of the difficulty in customers accessing the restaurant, it effectively being at the end of a cul-de-sac due to the cutting off of these two roads.

102. Due to the impact of the revised road layouts, and the impact this could have on the Cockatoo, Midlothian Council, as planning and roads authority, in considering the Shawfair proposal (the council is also part of the Waverley railway partnership) has facilitated discussions with Shawfair Developments Ltd over a possible land swap between one of the developers and the Cockatoo owners. We heard evidence that the proposed land swap, which would lead to the relocation of the Cockatoo onto a main road artery and to an area more accessible from surrounding housing, was acceptable to the objector, though we understand that no resolution has yet been reached on this matter.

103. We welcome the efforts being made to reach a solution with this objector and we encourage all parties to do whatever they can to broker a deal. However, notwithstanding this, we accept the need by the promoter to realign the roads as proposed in order to accommodate the proposed alignment of the railway to the front of the Cockatoo leading as it does to and from the proposed Shawfair station. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).
Conclusion

104. **The Committee does not uphold this objection.**

*Linda Page (124)*
(16 January 2006)

105. The objector’s house is in close proximity to the railway and she is concerned about the impact of train noise and vibration. In addition, there are areas again in close proximity that will be used by the promoter during the construction phase as construction compounds. The objector is concerned at the resulting noise and vibration impact and the overall impact on the value of her property.

106. On railway operation noise and vibration, the promoter contends that the noise level at this property will be below its target set out in its noise and vibration policy. Notwithstanding this, there will be noise screening provided at the property to further mitigate against train noise. While the promoter has stated that some degree of construction noise disturbance is inevitable, this will not be significant and will be of a limited period of 12-18 months. The promoter has referred to its policy paper on compulsory purchase and compensation and contends that any devaluation in property value as a result of noise and vibration would be covered by way of compensation.

107. We are content with the promoter’s application of its noise and vibration policy and the specific noise mitigation measures it has committed to provide at the property. In addition, we are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61). We accept the promoter’s evidence that measures such as tree and shrub planting would reduce the impact of the railway on the amenity of the objector’s property.

Conclusion

108. **The Committee does not uphold this objection.**

*Mr & Mrs Lamb (80): Withdrawn 29 March 2006*
(16 January 2006)

**Group 9**

*Tesco Stores Ltd (122)*

109. The principal concern of this objector was the acquisition of land required by the promoter for the construction of the Eskbank station and car park in close proximity to the store. The objector believes this will impact on its development plans for the store. To facilitate such future development potential, the objector wished to ‘lift and shift’ the required access road to the station.

110. The promoter indicated that it was not averse to Tesco ‘lifting and shifting’ this access road at its own expense provided access was maintained to the car park and that the replacement road was constructed to the existing standard. The local authority (Midlothian Council) would still own the road. We also note the promoter has offered a number of options whereby this could be facilitated and
that these negotiations in drawing up a suitable agreement are continuing. We further note that such discussions are also seeking to ensure continued access to the store during construction. We are satisfied by the commitments given by the promoter in its code of construction practice to ensure there is minimal disruption to business and access to properties. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion

111. The Committee does not uphold this objection

K & I Ltd (77)
(16 January 2006)

112. The objector has business premises at Eskbank adjacent to the Tesco store and therefore the proposed Eskbank station and car park. The objector was concerned at the impact the access road to the park-and-ride facility would have on access to its forecourt.

113. Following discussions between the objector and the promoter, the promoter confirmed it would move the access road to be in line with their gates and reroute the nearby footpath. Revised plans to indicate this have been issued to the objector although the promoter has received no response as yet. We note that Symon of Edinburgh, which has lease of a property from K & I, has subsequently withdrawn its objection to the Bill based on assurances given by the promoter.

114. We are satisfied at the commitments given by the promoter in its code of construction practice to ensure there is minimal disruption to business and access to properties. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion

115. The Committee does not uphold this objection

Symon of Edinburgh (8): Withdrawn 18 April 2006
(16 January 2006)

Group 10
Grange Estates (Newbattle) Ltd (82)
Grange Estates (Newbattle) Ltd (83)
Trustees of Newbattle Trust (84)
(16 January 2006)

116. These objectors were concerned at the compulsory acquisition of land within their ownership in the Eskbank and Newtongrange areas. As a result of this acquisition, they contend this would impact on the planning and business potential for these sites. On one of the sites, planning permission had been granted for a public house/restaurant. The objectors were also concerned at the impact of this compulsory acquisition on the value of other plots of land and the resultant loss of storage facilities.
117. The promoter stated that the land is required for the purposes of providing access to Eskbank station and a car park at Newtonrange station. The objectors had requested a realignment of the access road at Eskbank station. The promoter has submitted drawings to Grange Estates and the Trustees and we understand that negotiations are continuing on this matter.

118. We also understand that discussions are continuing between the various parties on the acquisition of offices and storage facilities and the identification of alternative premises but, as yet, no conclusions have been reached.

119. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61). We are also satisfied at the promoter’s proposed rail alignment provided for in the Bill, leading to and from these stations and on the requirements for land take to provide road and pedestrian access and car parking facilities.

120. The Trustees also referred to the impact on access to grazing land caused by the temporary possession of land to be used by the promoter for the purposes of constructing the railway. We note the commitments made by the promoter in its code of construction practice, which will be attached to the Bill, on the closure of roads and access points, maintaining access and minimising disturbance to the occupiers of land and property. We are satisfied at the commitments made by the promoter in this regard.

Conclusion
121. The Committee does not uphold this objection.

Group 11
Drs Wyllie & Mr and Mrs Combe (78)
(16 January 2006)
122. The main issues of concern to these objectors in Eskbank are, safety, noise and vibration, loss of amenity and property value. The railway will be situated on the former track bed (now a tarmac path providing a walkway and cycle route through Eskbank) which runs adjacent to the properties.

123. We noted that the Wyllie and Combe properties are less than six metres from where the railway track might be. The objectors believe that the amenity, privacy and enjoyment of their surroundings, will be adversely affected by passing trains. The installation of a proposed 2.6 metre high noise barrier will have a further impact as will the limitations, due to the available space for this barrier, on the type and amount of planting and screening that will be provided. While the mitigation proposed by the promoter will assist in ameliorating noise, vibration and visual impacts of the railway, the railway will have an intrusive impact at these properties.

124. We considered whether that impact is to such a degree that merits, effectively, the track being realigned. Having carefully considered this, we do not believe that a realignment is feasible at this location. The track, as it passes these properties, is running straight either to or from the proposed Eskbank station.
approximately 400 metres away. There are limitations, taking into consideration issues such as the track alignment to and from the station platforms, as to where the track could be moved. However, we would expect the promoter to situate the track as far from the edge of the properties as is possible, giving due cognisance to track alignment, engineering and safety requirements. Subject to this, we accept the promoter’s proposed alignment.

125. Although we acknowledge the particular difficulties presented by the close proximity of the railway to the objectors’ properties, we are content that the policies and commitments set out in the promoter’s noise and vibration and railway regulation policy papers provide adequate noise and vibration mitigation measures and safety measures. With regards the objectors’ concerns about the adverse impact of the railway on the value of their properties, we are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
126. The Committee does not uphold either of these objections.

David Flynn (120)
(16 January 2006)

127. The objector resides in Eskbank, his property being adjacent (the promoter states 30 metres) to the former track bed. This is now a tarmac path and the objector is concerned at the loss of this public amenity which provides a safe route for cyclists and pedestrians. We note the promoter has, in conjunction with Sustrans (a national sustainable transport charity that works on practical projects such as a national cycle network), identified and is committed to provide alternative cycle routes and walkways in this area and that the funding for these has been secured. The Committee accepts the commitment by the promoter in providing such facilities is a suitable replacement to the existing facility that will be lost.

128. The objector is also concerned at the loss of vegetation along the path. However, we are content with the commitments made by the promoter that it will remove minimal vegetation and, where appropriate, new planting will be provided at this stretch of line. Further, we are content with the commitments made by the promoter in response to the objector’s concerns over the noise impact from the line’s operation. Specifically on noise, an existing cutting at the property may provide adequate and natural noise screening although this cannot be determined until the detailed design stage. A noise barrier may be provided to bring noise levels below the promoter’s targets set out in its noise and vibration policy. The objector was also concerned at the adverse impact of the railway on the value of his property. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
129. The Committee does not uphold this objection.
Ms Lea Taylor (133)  
(16 January 2006)  
130. The Committee understands that this objector no longer resides at the address given when objecting. The objector’s concerns are similar to those of Mr Flynn above. The property is approximately 20 metres from the railway therefore there was concern about the noise impact from passing trains, loss of amenity and reduction in property value. The trains will operate along the former railway track bed.

131. We are again content with the evidence of the promoter regarding noise and vibration mitigation. The cutting referred to in relation to Mr Flynn’s objection above may also provide adequate noise screening at this property although the promoter has committed to consider the provision of a further noise barrier to bring noise levels to below those set out in its noise and vibration policy. We accept that the promoter has sought to provide adequate measures to mitigate against any noise impact. On loss of amenity, we accept the promoter’s evidence on minimal removal of vegetation and that measures such as tree and shrub planting would reduce the impact of the railway on the amenity of the objector’s property. On reduction in property value, we are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion

132. The Committee does not uphold this objection.

Group 12  
Residents of Hardengreen Lane (30-33, 35-56, 121):  
Mr & Mrs Dunn: Withdrawn 11 January 2006  
J Walker: Withdrawn 2 April 2006  
Mr & Mrs Paterson: Withdrawn 23 January 2006  
Mr & Mrs Joshi: Withdrawn 11 January 2006  
Mr & Mrs Macdonald: Withdrawn 4 October 2005  
Mr & Mrs Dalgetty: Withdrawn 11 January 2006  
Mr & Mrs Jackson: Withdrawn 3 April 2006  
Mr & Mrs Cairns: Withdrawn 11 January 2006  
Mr D McGlashan: Withdrawn 15 January 2006  
Mr & Mrs Docherty: Withdrawn 11 January 2006  
Mrs Hood: Withdrawn 18 January 2006  
Andrew Reid: Withdrawn 17 January 2006  
Mr & Mrs Spinks: Withdrawn 18 January 2006  
Mr B Mayberry: Withdrawn 11 January 2006  
Mr & Mrs Dodds: Withdrawn 11 January 2006  
Mr & Mrs Forrester: Withdrawn 16 March 2006  
Mr D Brown: Withdrawn 11 January 2006  
Miss J Mitscavitch: Withdrawn 11 January 2006  
Mr & Mrs Scaife: Withdrawn 19 January 2006  
Ms C Bracher: Withdrawn 11 January 2006  
Mr & Mrs Maitland: Withdrawn 23 January 2006  
Mr & Mrs Wightman: Withdrawn 23 January 2006)  
Mrs A Rooney: Withdrawn 23 January 2006
Mr & Mrs McDonald: Withdrawn 19 January
Mr & Mrs Ewing: Withdrawn 11 December 2005
Mr & Mrs More: Withdrawn 11 January 2006
Mr & Mrs Chalmers: Withdrawn 19 January 2006
Mr & Mrs Sheriffs: Withdrawn 18 January 2006

Note: A letter of 11 January 2006 on behalf of all the Hardengreen Lane objectors stated that they were withdrawing their objections to the Bill. Individual letters from some residents were subsequently received.

Group 13
Mr & Mrs Martin (79): Withdrawn 6 January 2006

Group 14
Mr & Mrs Street (1)
J B Pendlebury (9)
W T Davis (10)
Mr & Mrs Lawrence (125)
(23 January 2006)

133. These objectors reside in properties that are situated in varying degrees of closeness to the railway line. The track at this location will run along the former track bed. The promoter stated that the closest property is approximately 30 metres from the railway and, as the properties are slightly lower than the track, the noise impact will be reduced. The train speed in the area is expected to be approximately 50mph.

134. The objectors were concerned at the proximity of the railway to their properties and the impact of this on noise and vibration levels. Noise screening will be provided by the promoter although it expects noise levels to be below those set out in its noise and vibration policy. The promoter has committed to removing as little vegetation as possible and only adjacent to the track itself and from bridges and other structures. It was seeking to provide reasonably dense growth from new planting. The promoter indicated that it was misleading to assume that the removal of vegetation would result in an increase in noise level in the area.

135. The objector also asked the promoter about noise monitoring, should noise levels be higher than anticipated following the introduction of the railway. The Committee is satisfied over the commitments given by the promoter with regards to noise mitigation and the provision of new planting in the area, including replacement trees. We refer back to earlier in the report (paragraph 37) when we set out our intentions to amend the Bill to put in place a noise monitoring scheme. This, we believe, will address the objectors’ concerns on that matter.

136. The objectors were also concerned at the impact of the railway on the value of their properties. The objectors accepted the promoter’s evidence that the Bill applies the general law of compensation to properties affected by the Bill. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).
137. A further concern of the objectors was the impact on access to their properties and damage to their private tarmac road. The promoter had sought access along this road to a construction compound and to carry out bridge repairs. The promoter however has identified an alternative access route to the compound therefore reducing access along the objectors’ road (for inspection, repair and maintenance of the bridge). The promoter has committed to make good any damage caused to the road.

138. Turning to the impact on privacy and loss of amenity at these properties, we note the comments by the promoter on the flexibility in the positioning of the GSMR masts that will be required to aid communication and signalling on the railway. The height of these (approximately 29 metres) may cause a visible intrusion at the properties. The promoter has indicated that engineering will not be the only factor that will be considered when determining the location of these masts and that a sensitive approach will be considered. The Committee expects the promoter to provide adequate planting and screening, in consultation with the residents, to attenuate the visual impact from the masts and from the nearby proposed bridge over the roundabout at the A7.

139. We note the progress that has been made in resolving some of the initial concerns of the objectors and we encourage such dialogue to continue. While we note that there may be some adverse impact on the residents at this location, principally visual intrusion, we nevertheless accept the need for the promoter to construct the line along this stretch as proposed. The promoter has provided satisfactory assurances by way of mitigation although we expect innovative solutions in seeking to address these impacts.

Conclusion
140. The Committee does not uphold any of the objections in this group.

Group 15
Thomas Wilson (7)
(23 January 2006)
141. The primary concern of this objector is noise and vibration, his property lying approximately 10 metres from the new track (on the former track bed). The promoter has undertaken to install a noise barrier at the property to mitigate against noise levels. The height of the barrier (approximately 1.5 metres high) will be determined at the detailed design stage. The commitments within the promoter’s noise and vibration policy will also apply.

142. In addition to the installation of the noise barrier, the promoter undertook to reinstate any vegetation removed as a result of the railway. Due to the lack of space, the promoter was considering planting a hedge at the top of the embankment which would help screen both passing trains and the noise barrier. We accept this approach as appropriate and require that all future consideration on planting at this property should be done in full consultation with the objector.

143. The objector was also concerned at the impact caused by the railway on the value of his property. We are content that the Bill applies the general law of
compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
144. The Committee does not uphold this objection.

Group 16
Millers Oils Ltd (90): Withdrawn 13 April 2006
(23 January 2006)

Group 17
Mr & Mrs Dubickas (59): Withdrawn 23 March 2006
(23 January 2006)

Group 18
Mr & Mrs Pretswell (60): Withdrawn 31 March 2006
(23 January 2006)

Group 19
Residents of Victoria Gardens (57)
(23 January 2006)

145. This objection from residents in Victoria Gardens in Newtongrange focused on noise and vibration levels from trains passing along the rear of the properties, a former railway track bed. The track will run to and from the proposed nearby Newtongrange station. These objectors were also concerned about the adequacy of the compensation arrangements for any loss in the value of their properties.

146. A lot of the objectors comprehensive and informed written and oral evidence centred on the methodology used in assessing noise levels. The lead objector for the group, Mr Berend Meijer, believed that the 82dB night time LAmax limit set by the promoter was too high. We refer to our earlier consideration in this report of the promoter’s noise and vibration policy where we make specific reference to night time impact (paragraph 34).

147. The Committee previously instructed a peer review30 of the noise and vibration chapters of the promoter’s environmental statement. This review was carried out and reported at Preliminary Stage31 as part of our consideration of the adequacy of the Bill accompanying documents. Amongst the conclusions of that review were—

‘The absolute standards adopted for operational noise are derived from robust guidance (PAN 56)....The correct accepted prediction method has been used for railway noise (CRN)....The vibration criteria have been derived from the appropriate British Standards (BS 7385 and BS 6472)’

30Casella Stanger peer review of the noise and vibration and air quality chapters of the environmental statement (June 2004)
31Waverley Railway (Scotland) Bill Committee, Preliminary Stage Report on the Waverley Railway (Scotland) Bill, (paras. 266-277)
148. In addition, we concluded in our Preliminary Stage report that the noise and vibration assessment had, in general, been carried out using correct prediction and assessment methodology and according to best practice. We do not therefore, in this report, intend to delve into the technical aspects of noise assessment methodology, limiting ourselves to the consideration of noise mitigation measure at these properties.

149. The promoter is proposing a timber faced noise barrier at these properties 1.5 metres high. This barrier will run along the rear of properties numbers 7, 9, 11, 13, 15, 17, 19, 21, 23, 25 & 27 until the line drops into a cutting which would effectively serve as a noise barrier. The fence type noise barrier will reduce noise levels to the threshold levels set out in the promoter’s noise and vibration policy. Subsequent to appearing at the meeting, Mr Meijer sought the views of his fellow residents to gauge their opinion on the provision of a 4 metre high fence which he believed would reduce the noise level further.

150. While the residents are supportive of this proposal we are not minded to support it. The detrimental impacts (aesthetically, loss of sunlight, lack of increased benefit, impact on property value) of a 4 metre high barrier may well not have been fully considered by the residents and, as the proposed 1.5 metre barrier will bring noise down to the limits set, and the objectors do not dispute this, we accept the promoter’s evidence on the provision of noise mitigation measures. However, the promoter should engage in further dialogue with these residents at the detailed design stage to discuss any scope for a larger barrier and the location of the noise barrier and any tree and plant screening.

151. With regards the objectors’ concerns at the adverse impact of the railway on the value of their properties, we are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
152. The Committee does not uphold this objection.

Group 20
Residents of Deanpark (58)
(23 January 2006)
153. The objectors were concerned about the noise and vibration impact from passing trains. The promoter has stated that, with the distance of approximately 20 metres between the track and the nearest property, the likely train speeds here (approximately 50 mph) and the deep cutting the trains will travel through at this stretch, there would not be a significant noise impact.

154. The promoter has also sought to allay the objectors’ safety concerns through the provision of a Network Rail compliant boundary fence. The promoter, as part of its landscaping programme at this location, will seek to screen this fencing through planting. While there will be some loss of existing vegetation, the promoter has given a commitment to reduce this to the absolute minimum. The promoter will consult with the local residents over the type and amount of planting at the detailed designed stage. A further concern of the objectors was the siting of
a signal box. However, the promoter confirmed that there are no proposals for a
signal box at this location.

155. We are content with the mitigation the promoter will provide at this location. While there may be some adverse noise impact on the local residents, we accept the evidence put forward by the promoter as to how it will attenuate this. We accept the route of the proposed railway at this point, leading as it will to and from the proposed Newtongrange station. We expect the promoter to engineer the track as far from the properties as is possible.

Conclusion
156. The Committee does not uphold this objection.

Group 21
Mr & Mrs McCloskey (85)
(23 January 2006)
157. The Committee understands that these objectors have moved. However, as the objection had not been withdrawn, we were required to give consideration to it.

158. The objectors resided at New Star Bank in Newtongrange and the issues of concern to them were in line with those raised by the residents of New Star Bank in Newtongrange (see group 22 below) whose objection was withdrawn on receipt of sufficient assurances and undertakings from the promoter.

159. A concern of Mr & Mrs McCloskey was the siting of a footpath and footbridge close to their property. However, the promoter has agreed to relocate the footpath from west of the proposed railway to east of the track therefore further away from the rear of their property. The footbridge is also to be realigned. In addition, vegetation at the rear of the property will be retained and, where possible, enhanced. The promoter will provide noise mitigation as necessary.

160. The Committee is content with the commitments and assurances given by the promoter with regards mitigation.

Conclusion
161. The Committee does not uphold this objection.

Group 22
Residents of New Star Bank, Newtongrange (86):Withdrawn 12 January 2006

Group 23
Steven Lyon and Lyndsay Jackson (81)
(23 January 2006)
162. There are several issues of concern to these objectors whose property will be at the rear of the proposed Newtongrange station. Between the objectors’ property and the station, a distance of approximately 20 metres, the former track bed will be used for the new line. The objectors were therefore concerned at the noise impact from both the station and trains.
163. We note that the promoter has committed to the provision of a noise barrier, approximately 1.6 metres high, at this location to reduce noise level to below those set in its noise and vibration policy. We also note the promoter will seek the use of directional speakers and other measures to reduce noise impact from the station. On the basis of these commitments, we are content on the provision of suitable noise mitigation.

164. The objectors also had safety concerns arising from the proximity of the railway line and the station, both in terms of unauthorised access to their property and in the protection of their children and pets. The promoter has committed to the provision of a security fence at this location in addition to the provision of CCTV at the station. The security fence would be in addition to the noise barrier. As referred to earlier in the report (paragraphs 87-91), we are content over the application by the promoter of agreed standards and specification with respect to the provision and type of security fencing.

165. Of further concern to the objectors was the loss of vegetation and the open view currently enjoyed by them from their property. We accept that this view will be lost through the railway line and Newtongrange station. However, we note the commitments by the promoter on the provision of new planting on the banking at this point that will assist in screening or filtering out this visual impact. Planting may be used to mitigate against the visual impact of both the noise barrier and the security fence if appropriate. While we accept the railway will cause an impact at this location, we accept that the promoter will provide adequate mitigation. We accept the need for the track at this point, running as it does along the former track bed.

166. The objectors also expressed concern about reduction in the value of their property as a result of the railway. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
167. The Committee does not uphold this objection.

Group 24
Brian Byars and Marie Sutherland (135): Withdrawn 21 March 2006
(23 January 2006)

Group 25
Scottish Mining Museum (94): Withdrawn 18 November 2005

Group 26
Residents of Harvieston Villas, Gorebridge (64)
(30 January 2006)
168. This objection centres on the proposed compulsory acquisition of eight properties which form a secluded site adjacent to the former Gorebridge Station.

169. The original intention of the promoter had been an alignment of the railway that would have required only the acquisition of half the properties although the
remaining properties would still have been severely adversely affected by their close proximity to the line. There were engineering issues with this proposed alignment as the site is at the base of a steep slope. There was therefore little scope for an alignment that would not require compulsory acquisition of these properties. However, in discussion with the promoter, the residents indicated they would rather all eight properties were acquired. This allows the promoter to provide a park-and-ride site at the station.

170. There appears to exist a strong community spirit, shown by the residents desire to ‘stick together’ and be bought out in entirety. We were deeply impressed by the dignity shown by the Harvieston residents, not least in their recognition of the need for the railway, despite the most severe impact this will cause them.

171. It is a most distressing and worrying issue to have been hanging over the residents for a number of years, not least, the uncertainty of what would happen to them. As Mrs Wilson stated in oral evidence, because of the errors made by the promoter in its notification process and the resulting prolonging of proceedings on the Bill, they “had to sit in limbo for another huge whack of time”. This has placed further and unnecessary strain on the residents. The residents stated that they had not been well served with respect to adequate and timeous communication from the promoter.

172. The promoter said in oral evidence that Midlothian Council was seeking to assist the residents in identifying a like-for-like development within Gorebridge. This is to be supported. Various sites had been discussed but feedback had indicated that these were too large and did not reflect the character of their present location. However, a smaller 30 house development at Robertson’s Bank is being investigated by the council. This site, although not ideal, did appear to offer possibilities although the residents had indicated that they would hope that their part of the site could be screened from other overlooking properties.

173. We accept that there is a timing issue here and that the council cannot place any legal requirement on a developer to complete eight houses by a certain date, should the housing development go ahead and the Harvieston residents decide they do wish to move there. We encourage and expect the promoter and Midlothian Council to do everything it can to assist these residents in the identification of a suitable alternative site to which they might be relocated and in the purchase of appropriate properties there. We ask that clear and regular lines of communication between the council, the developer and the residents are established. We also expect the promoter to reflect carefully and sensitively on the timing of the purchase of the Harvieston properties, giving full consideration to the needs and situation of the residents and causing them minimum distress and inconvenience. We note that offers of advance purchase have now been made to the residents.

174. We greatly sympathise with the Harvieston residents and their situation. However, in view of the engineering and topographical factors referred to above, we accept the need for the railway’s alignment at this stretch. We are content that

32 Official Report, 30 January 2006 (col.608-9)
the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

**Conclusion**

175. **The Committee does not uphold this objection.**

**Group 27**

Tony Stovin (92): Withdrawn 5 May 2006
David & Lynn Swift (93): Withdrawn 26 January 2006

**Group 28**

Bridie Thompson (95): Withdrawn 6 February 2006
Kenneth Scollan (96): Withdrawn 6 February 2006
Mr & Mrs Silvagni (97): Withdrawn 6 February 2006

**Group 29**

Paul and Christine Baxter (11)
(30 January 2006)

176. The objectors are concerned at the impact on access to their property, to be provided by way of an existing bridge crossing over the proposed railway track. They sought assurance on the requirement for this, the structural capability of the bridge to accommodate large construction vehicles, potential for damage to be caused to the bridge and liability for repair and maintenance. The promoter had initially intended to locate a construction compound on the other side of the bridge. However, the promoter later stated that it will only require to take small plant vehicles over the bridge because the proposed construction compound is to be relocated so as to avoid using the bridge.

177. We are content with the need to use the bridge and these assurances by the promoter. We also note the commitments set out in the code of construction practice for example on lorry movements, maintenance and damage, access. We refer to our statements earlier in the report (paragraphs 48-50) that we will amend the Bill to give the code of construction practice statutory backing.

178. The objector was also concerned about the environmental impact of the railway for example on wildlife and woodland. We note the commitments by the promoter both in evidence and in its environmental statement on the retention of existing habitats and the provision of suitable mitigation by way of planting. The promoter will also have to have regard to, and comply with, relevant legislation (eg the Wildlife and Countryside Act 1981) and will have to obtain all the necessary licences from both Scottish Natural Heritage and the Scottish Executive for operations affecting proposed flora and fauna. The promoter will develop its environmental proposals further at the landscape design stage and in consultation with the objectors.

179. The objectors also indicated concern at the noise impact from the railway. Although the objectors’ land abuts the proposed railway, their dwelling is over 100 metres from the track. We are content to accept the promoter’s noise predictions indicating no significant noise impact on the objectors’ dwelling. The objectors
were concerned at the adverse impact of the railway on the value of their property. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

180. Subject to the commitments given by the promoter and the recognition that further mitigation may be required at this location (for example, the provision of screening of the railway by way of planting and earth bund), we accept the promoter’s requirements for the track alignment and temporary use of adjacent land at this location.

Conclusion
181. The Committee does not uphold this objection.

Group 30
Dr and Mrs Wightman (61)
Michael Radford (63)
(30 January 2006)

182. Amongst other things, these objectors were concerned about the compulsory purchase of a section of their land (the Wightmans) and the temporary possession of other land for use during the construction process (both objectors). We note however that the promoter no longer requires the amount of land it had originally intimated it required and that this will now be limited to a 1 metre strip to construct a retaining wall. Dr & Mrs Wightman appear to find this acceptable and chose not to press this part of their objection. Mr Radford, who was concerned at the impact of the land acquisition on his business as well as on personal amenity, has not withdrawn this aspect of his objection, but we understand he is also agreeable to the more limited land-take.

183. Both objectors were also concerned at the impact of the railway on the value of their properties and, additionally for Mr Radford, his business. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

184. We should like to turn now to noise and vibration. The railway is approximately 15 metres from the rear of these properties and runs along the former railway track bed. The line will be twin-tracked at this point with trains likely to be travelling up to 60mph. Both objectors are therefore, understandably, concerned at the adverse noise impact, particularly at a twin track stretch of line.

185. The promoter has acknowledged the need for noise mitigation in this instance, following guidelines set out in the promoter’s noise and vibration policy paper. This will possibly take the form of a 1.5 metre high noise barrier (slightly higher than the existing fence). However, the proximity of the track combined with the fact that it is dual-track and constrained by local bridges and a curve in the track at this point presents logistical difficulties.

186. The Committee is aware that the precise location and nature of noise barriers has yet to be determined and indeed will require closer scrutiny at the
detailed design stage. We heard oral evidence that the noise barriers and any complementary vegetation will be closer to the objectors’ properties than would have been required on a single-track section of the route. This therefore allows less room for planting between fences with the majority of planting being positioned in such a way as to screen the noise barrier as opposed to softening the visual impact. However, at the design stage, the promoter will quite clearly know where the track will be positioned which will then determine precisely the amount of space and land available for the noise barrier and suitable planting.

187. The Committee accepts the reasons set out by the promoter for the track alignment, using as it does the existing track bed. We accept the commitment by the promoter to continue to discuss viable solutions with the objectors and welcome the objectors’ willingness to engage in such discussion. Our amendments will ensure that the promoter will carry out any works in a manner to comply with the relevant policy papers as submitted.

188. Finally, both objectors outlined their concerns on air and ground pollution, both as a result of construction and operation of the railway. The promoter has referred to the commitments set out in the code of construction practice that will apply during construction of the railway. We refer to our intention to give that code a statutory backing. The promoter also referred to the reduced level of pollutants emitted through diesel fumes from the train units expected to be operating on this track and that the risk of any fuel or other leakages was extremely slim. Should Network Rail become the authorised undertaker of the railway, its operation and maintenance standards (which reflect the requirements of bodies such as SEPA) would apply. The Committee is satisfied with the measures taken to minimise any risk to health by an emission of pollutants from the trains.

Conclusion
189. The Committee does not uphold either of these objections.

Mr and Mrs Douglas (91): Withdrawn 10 February 2006

Group 31

Group 32
Mr and Mrs Rae (3)
Lesley Inglis (13)

Group 63
Mr and Mrs Banks (12)
Helen Foster (17)
Mr and Mrs Paterson (65)
Mr F Wood (66)
David Cowan (67)
(27 February 2006)

191. While we heard evidence regarding these two groups of objectors separately, it is convenient, within the confines of this report, to address their issues collectively. The objectors all reside at Falahill Cottages. The original proposal of the promoter was to locate the railway to the rear (east) of these
properties, along the former railway track bed. The A7 would be to the front of the properties and the residents were concerned they would be sandwiched between a railway and a busy road with resultant noise, safety, access, loss of amenity impacts.

192. The alternative alignment (provided for in the Bill) moves the railway to the front (west) of the properties. An alternative option to realign the A7 to the rear, along with the railway, was considered by the promoter but was discounted on grounds of magnitude of works, costs and the impact on the residents. In order to avoid the ‘sandwich’ effect both the railway and the road are to be at the front of the properties.

193. This rail and road realignment still impacts upon the residents, principally in respect of access, services to the properties, traffic safety, construction disturbance and noise. We are satisfied that the implementation of the noise and vibration policy and the code of construction practice will address some of these concerns. For example, the promoter, to mitigate against the noise impact, will provide a false cutting and a mound to provide screening (and it will consult the residents on the design of this) and lower the railway as far as possible to further reduce noise and visual intrusion. However, we would like to make specific reference to the issues of maintaining access to the properties and road safety.

194. The track at the rear of the properties provides the sole access to some of the properties (including also the property of group 34). We note the assurance by the promoter about minimising construction impact along this track and the scope for screening construction traffic. We also note the commitments to maintain access to the properties at all times and to protect services (water, septic tank, postal deliveries) to the properties both during and after construction. We also note the promoter’s evidence with regards access to bus services on the A7.

195. The promoter states that it has reached agreement in principle with the landowner to purchase the track at the rear of the properties. The council will bring this up to an adoptable standard. The promoter will create a spur from that track to the A7, passing first to the side (north) of properties 1 and 2 and then along the front of the properties thereby providing parking and access and a turning area for vehicles. Agreement in principle has been reached with the landowner over the purchase of the land required for the link from the track to the A7. The promoter believes this will maintain full access to all the properties. It will bring the track up to a higher standard than at present. A pavement along the full length of the properties will also be provided.

196. Of further concern to the objectors however, caused by the realignment of the A7, was that of road safety. In particular, high traffic speeds at this stretch of the A7 which will become straighter than at present, particularly at the heightened point as the A7 crosses the railway. The overbridge will be approximately 215 metres north of the properties. The objectors were concerned at access on to the A7 from their properties and with fast moving traffic.
197. The promoter has confirmed that the new A7 alignment will be constructed in line with national\(^{33}\) and local\(^{34}\) standards. The promoter referred to existing poor visibility on this stretch of road caused by a dip in the carriageway stating that the realignment will improve this and provide a longer, clearer, sight line on the northwards approach to the overbridge. The promoter believes this will provide a safer road than at present.

198. The permitted traffic speed limit is currently 60 mph and the intention is that that limit will apply to the realigned stretch of road. However, the promoter has undertaken to consider the provision of ‘slow’ markings on the road (and we would invite consideration of ‘slow’ or other signage at the side of the road that indicate that traffic from the cottages may be emerging). A four-stage road safety audit will also be undertaken, part of which involves the police and local roads authority and we note discussions with the police have already taken place about the A7 and the Falahill stretch generally. We note the commitment by the promoter to formally seek the views of the Falahill residents at some stage in this survey.

199. The promoter also confirmed the application of national standards and guidelines on road access and traffic speeds during construction. This is part of its code of construction practice.

200. We are satisfied with the commitments made by the promoter to mitigate the effects of the railway and the A7 at these properties. We recognise the efforts made to seek compromises by realigning the railway from the promoter’s preferred route to accommodate the concerns of the residents. We are satisfied that the promoter has committed to maintaining access at the properties and with the solutions, by way of land acquisition, that will assist the residents. We accept the application of agreed road and bridge safety standards and guidelines.

201. Concern was also expressed by the objectors at the impact of the railway on the value of their properties. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

**Conclusion**

202. **The Committee does not uphold any of the objections from the Falahill Cottages residents within these two groups.**

**Group 33**  
*D E W Kibble & Sons (19): Withdrawn 6 March 2006*

**Group 34**  
*Scott Murray & Sayrah Ohara (20)*  
(27 February 2006)

203. This objection centred on the railway’s impact on the objectors’ property in the form of access, loss of amenity, noise and vibration levels. The promoter’s original route option would have made this property subject to compulsory

---

\(^{33}\)Department for Transport Design Manual for Roads and Bridges (TD9/93)  
\(^{34}\)Scottish Borders Council Standards for Development Roads
acquisition. However, due to the realignment of the railway track to the west of the Falahill Cottages, it now falls outwith construction limits, and the land is no longer required by the promoter.

204. The objectors were extremely concerned and distressed at the lack of information regarding their situation. Although we have addressed the issue of voluntary purchase earlier, we wish to make further mention of it here. We are particularly aware of the anxiety caused to these objectors due to the lack of precise assurances on the impact of the railway and whether their property would be subject to voluntary purchase. The objectors, in oral evidence, spoke on their reasons for buying the property and what it meant to them.

205. The objectors were also concerned at the adequacy of the promoter’s dialogue and engagement with them. For example, on the precise route alignment and the impact this will have on them and the ground investigation of tunnels and troughs at the property and whether and what the promoter knew of these. We note that the promoter has committed to carrying out ground investigations at the property as part of the design phase. We note the assurances by the promoter on the provision of noise mitigation (the property is approximately 20 metres from the track) through the provision of a 1.5 metre high noise barrier and on maintaining access along the track (that runs along the rear of the Falahill Cottages) from the A7.

206. In response to the objectors’ concerns about safety arising from trains travelling at speed at this stretch of line, the promoter stated that the track alignment, a “gentle curve”, gives no particular concerns from a safety point of view. It will provide a compliant safety fence to prevent unauthorised access to the track. The promoter will provide suitable planting to assist on the screening of the visual intrusion of the fencing and the railway itself.

207. The promoter has stated that safe access along the track leading to the property will be maintained throughout construction of the railway as set out in the code of construction practice. The track is to be brought up to an adoptable standard by Scottish Borders Council.

208. While we are satisfied at the measures to be taken by the promoter to mitigate the impact of the railway, it is accepted that the objectors will remain affected by the railway. However, while sympathising with these objectors, we have concluded that the proposed alignment, which will have less of an impact on the nearby Falahill Cottages, represents the best solution at this location.

209. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
210. The Committee does not uphold this objection.

Group 35
J S Dun and partners (2): Withdrawn 6 March 2006

37
Group 36
Lord Borthwick (68)
(30 January 2006)
211. The concern of the objector, who owns land in the Heriot area, was the proposed compulsory acquisition of land by the promoter for the railway and, in particular, should the railway project not proceed, then existing owners should be given first option on re-purchase.

212. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61). On the issue of any ‘buy back’ of land, we refer to our earlier consideration in the report of this issue. We have undertaken to give statutory backing to the application of the Crichel Down Rules to ensure that, in the event that the railway project does not proceed, former owners would be given the first option to re-purchase land compulsorily acquired under the Bill.

Conclusion
213. The Committee does not uphold this objection.

Group 37
Robin Bull (18)
(27 February 2006)
214. The principal concern of this objector is the proposed acquisition of part of his land, and the associated impacts of having a railway line in close proximity to his house.

215. The alignment follows largely along the area of the former track bed, passing approximately 9 metres from the front door of the property and removing a large amount of the garden. The promoter outlined what mitigation it could provide by way of noise barriers and fencing. A noise barrier of 1.6 metre height would be installed 6-7 metres from the building. While the promoter believes this would bring noise levels to below its targets set out in the noise and vibration policy it is clear that a barrier so close to the house would be physically and visually intrusive.

216. While noise levels may be brought down to below target levels, the Committee finds the impacts of the proposed alignment on this objector unacceptable. The promoter accepts that little could be done to mitigate against this. In the Committee’s view, there are two possible solutions: either an alternative alignment moving the track away from the property or the acquisition of the entire property by the promoter.

217. We heard evidence that a realignment supported by the objector would have moved the line onto a marsh flood plain, required engineering and survey investigations, affected other residents in Heriot nearby (it would have taken the line in closer proximity to them) and required two new bridges to be built, all at a cost of up to £1 million. We do not, therefore, support a realignment at this location.
218. The promoter has now informed the objector that it will acquire the entirety of his property. Whilst that appears to be an acceptable solution to the Committee, we have not been impressed by the delay in reaching this decision.

219. The objector stated that he had made it clear to the promoter since 2003 that he wished to be bought out (if the railway were not to move). The promoter introduced the Bill in its current form and it was not until October 2005 that the promoter indicated that it may purchase the objector’s entire property. It was not until February 2006, shortly before our Committee meeting to hear oral evidence on this objection, that the promoter formally informed the objector that it would purchase his property. We understand that discussions are now underway to take this matter forward.

220. The objector and his family have been put under unnecessary anxiety and stress for a considerable period of time. We fully understand and accept that the offer to purchase the objector’s property is not the option he wishes. However, an offer has been made, albeit late in the day. We draw the promoter’s attention to the work that it must do from now onwards to process this purchase speedily, in full and prompt dialogue with the objector and with much greater efficiency than has been demonstrated by the promoter to date. On the basis of the offer of purchase now made, we accept that a resolution, and one that deals with the objection, has been reached that will allow the railway to proceed along the route provided for in the Bill, albeit a resolution that comes at the cost of the loss of a home. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
221. The Committee does not uphold this objection.

Group 38
Andrew & Dawn Smith (98)
(27 February 2006)
222. These objectors reside at Heriot, their property being adjacent to the former railway track. The promoter acknowledges that the property will be one of the closest to the line.

223. The objectors were concerned about access to their property during construction. The nearby existing level crossing gate is to be permanently stopped up thereby closing the road adjacent to the property. We note the assurances by the promoter that foot and vehicle access to the property during construction will be maintained. A new footbridge will be constructed over the line which will have a solid parapet to prevent people using it looking into the property. We would invite the promoter to provide mitigation to keep noise levels from the bridge caused by people using it (eg the sound of footsteps on metal steps, echo, vibration) to an absolute minimum.

224. Due to the close proximity of the line to their property, the objectors were concerned at the noise and vibration impact. The promoter referred to the “challenges” in meeting the noise targets set out in its noise and vibration policy.
Due to the closeness of the property to the track and the anticipated speeds of up to 90 mph as trains pass, the noise barrier will range in height from 1.7-2.5 metres to provide the necessary mitigation. While we accept that the noise impact can be attenuated, there will be an adverse visual impact. While planting and screening may lessen this impact, what remains would, in the words of the promoter, be still quite “ugly”.

225. We accept that a realignment of the railway at this point is not a viable option, given the significant costs associated with the engineering works that would be required to realign a large stretch of track before and after this point (the property is opposite that of Mr Bull’s above).

226. The objectors were concerned at a diminution in the value of their property due to the proximity of the railway. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

**Conclusion**

227. **The Committee does not uphold this objection.**

**Group 39**

*Peter Caunt (70)*

*Heriot Community Council (100)*

(27 February 2006)

228. The issue of concern from these objections was the local impact on the proposed closure of former railway crossings at Heriot. These crossings provide local access to and from the village as well as over the A7. The objectors contend that these crossings provide an essential, safe and convenient amenity, regularly used by the local community, not just for cars, but by pedestrians, cyclists and horsetrack riders.

229. The promoter’s proposals are to redeck and thereby retain the crossing at Shoeestanes (to the north of the village), replace the level crossing at Heriot (close to the A7) with a footbridge (a roadbridge not being possible due to lack of room to secure the required ground clearance) to the south of the village. A new road will be provided at Sandyknowe and a new bridge at Hangingshaw (both south of the village).

230. We considered the evidence about the local impact such closures might have on the day to day movement of people within the village and the surrounding area in accessing properties, farm land, local shops and bus services and on the enjoyment of free and easy access around the village. We note the position of HM Railway Inspectorate regarding the increased safety risk where a level crossing is retained (as opposed to a crossing over or under the railway). In addition, we also noted the cost impact of providing new bridge crossings as suggested by the objectors at Stagebank and Haltree (both south of the village), in the region of £350,000 each.

231. Whilst there may be a degree of inconvenience to local residents, we accept the promoter’s alternative proposals to ensure continued access points. We
also note the promoter’s commitment, which we support, to investigate the option of the school bus detouring from the A7 to the new road at Sandyknowe which would address some of the safety concerns about crossing over the A7.

Conclusion
232. The Committee does not uphold these objections in this group.

Group 40
Mr & Mrs Barnett (69): Withdrawn 27 March 2006
(30 January 2006)

Group 41
Mr and Mrs Allison (16)
(27 February 2006)
233. This property is to be subject to compulsory acquisition along with its garden and access tracks. The objector had suggested two alternative route options, roughly to the east and west of the property.

234. The promoter considered both options. Option A, roughly to the east of the property would require four new bridges, one of which would be a road bridge in order to retain access to the A7, as well as extensive earthworks as the track would be constructed on a flood plain. Option B also required extensive engineering works resulting in increased costs. We respect the position of the objector who has accepted the promoter’s assessment of his two alternative options and that his property will require to be purchased for the purposes of constructing the railway. Although we recognise the severe impact the proposed alignment will have on the lives of the objectors, we accept that the proposed alignment set out by the promoter represents the best solution at this location. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
235. The Committee does not uphold this objection.

Group 42
CJA Samuel and JM Llewelin (119): Withdrawn 16 April 2006

Residents of Still Haugh (128)
(6 March 2006)
236. These properties lie adjacent to what will be a straight stretch of line where trains may operate at speeds up to 90 mph.

237. The objectors were concerned at an increase in pollution caused by the trains, through the emission of diesel fumes. In response, the promoter referred to the requirement for new trains to comply with relevant EU emission standards (EURO 2). In addition, the promoter’s evidence was that the railway is expected to reduce vehicular traffic on the nearby A7 thereby reducing diesel and petrol emissions. The promoter will provide suitable planting of shrubs, hedges and trees which, as well as lessening the effect of any pollutants emitted, will also assist in
providing suitable screening and privacy of the properties. The Committee is satisfied with the proposed mitigation in relation to train pollutant impact.

238. The objectors also expressed concern at the proximity of the railway and the impact this would have on the value of their properties. However, we are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

239. The distance between the rear of properties 1-14 and the railway varies from 17-20 metres. The distance for properties 15-30 is around 60 metres. The noise impact at properties 1-14 is obviously greater than at 15-30. The objectors disputed the promoter’s noise impact assessment at the locations and commissioned their own noise survey report. However, the Committee has already indicated in its Preliminary Stage report that it is generally satisfied with the approach taken by the promoter, as set out in its noise and vibration policy, over the setting of noise thresholds and the provision of noise mitigation. We remain of that view.

240. The Committee understands the desire of the residents for the track to be moved as far as is feasible from their properties. However, we must have due regard to the need for the railway to be fully compliant with rail industry safety and engineering standards. An alignment favoured by the objectors to move the track further away from their properties may not be so compliant, and may also impact on journey times, whereas the current alignment proposed by the promoter is so compliant and does not adversely affect journey times. However, the Committee expects the promoter to make every effort at the detailed design stage to consider the scope to position the track as far from these properties as is possible and to do so in full and open consultation with the residents.

241. Turning to the specifics of how noise will be mitigated, the promoter indicated that the 1.5 metre high noise barrier could be incorporated at the sloping sides of the 1.5 metre high earth bund on top of which the track will be laid. This will reduce the noise impact to below the levels set out in the promoter’s noise and vibration policy. The promoter also stated that significant levels of sleep disturbance are not predicted.

242. The objectors contend that this barrier should be higher in order to mitigate against train noise coming from the top part of the carriage and not just the wheels and track. The promoter agreed that there will be some noise coming from the top part of the carriage, for example, from the exhaust system, but stated that such noise will be much lower than that emitted from the wheels and will not be significant. The promoter submitted that it would not take noise levels above targets set. We refer to our statements earlier in this report (paragraphs 37-38) regarding track and rolling stock maintenance and the monitoring to be carried out on the railway.

35Group 42 written evidence, Sandy Brown Associates noise survey (8 November 2005)
243. The objectors also believed that the noise barrier could and should be moved further away from the rear of the properties. This would allow for a higher noise barrier to be provided and a higher bund. They also believe that, due to the wide space leading to and from Still Haugh, that a movement of the track further away from the properties is possible and sought further advice on this. This would accommodate a repositioning of the barrier and the bund. The promoter has indicated that, at this time, it can move the track 1.5 metres farther away from the properties. We accept that, at this time, the promoter has offered what noise and vibration mitigation it can to the objectors and support their proposals in this regard.

244. Regarding loss of amenity, the promoter gave evidence about suitable planting on the earth bund to mitigate against the visual impact of the railway itself and the noise barrier. The promoter has also committed to the provision of other planting and to minimise the removal of existing vegetation. Such planting, which we expect to be carried out in consultation with the residents, will be finalised at the detailed design stage.

245. The Committee is satisfied at the proposed alignment at this point. The promoter has sought to make use of the former railway track bed and alignments. While we recognise the impact that may be caused to the objectors, we are satisfied with the proposed level of mitigation. However, we expect the promoter to fully consider the options for an alignment within the limits of deviation that would take the track as far as possible from the properties thereby giving greater comfort to these residents.

Conclusion
246. The Committee does not uphold this objection.

Group 43
James Barr (23): Withdrawn 6 March 2006

Group 44
Mr and Mrs Scott (101)
(6 March 2006)
247. The objectors are concerned at the proposed permanent and temporary acquisition of land and the impact on access at their property.

248. We note the commitments by the promoter regarding the redesigned access track from this property which means that there will now be no loss of trees. In addition, we note the promoter will provide a new access road to the objector’s farm. Accordingly, we are content with the provision of these alternative access arrangements and the assurance given in this regard. In addition, we are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
249. The Committee does not uphold this objection.
Group 45
James Muir (21): Withdrawn 6 March 2006

Group 46
Lional Lofthouse (22)
(6 March 2006)

250. The issue in dispute here was the acquisition of the objectors land and the resulting impact on farm access, storage and the movement of livestock. This would have an effect on the viability of the farm, which currently comprises around 300 acres. The promoter acknowledges the significant impact the proposed land acquisition will have on the farm’s operations. The existing track bed provides a convenient access route of around 3½ miles, cutting as it does through the farm, as well as providing useful storage facilities and hard standing and dry accommodation for livestock.

251. The reintroduction of the railway service along this former track bed will effectively dissect large parcels of the farm and cause severe difficulty in access from field to field. It would cut off production land. In addition, the compulsory acquisition of some parcels of land will further impact on the farm’s day to day business operations. The movement of livestock by foot along the former track bed would cease and livestock would need to be transported by lorry, with cost and animal welfare impacts. The loss of land would impact on farm income with a reduction in single farm payments as well as reduced income generation through food production. We note that adequate compensation arrangements are available under the Bill which would enable compensation to be claimed in respect of any land acquired and other losses directly attributable to the scheme.

252. Such is the impact on this stretch of line the promoter offered to acquire the entire farm. The farm is owned by a partnership and agreement could not be reached on the promoter’s proposal, leading to the objector declining the buy out option.

253. We accept the promoter’s alignment of the railway, utilising as it does the former track bed thereby minimising the need for engineering and geological investigations into alternative alignments. There would also appear to be no viable alternative route alignment. However, while aware of the impact the railway will have at this location, we recognise the greater public good that will be served through the provision of the railway although we are conscious of the difficult issues still to be resolved here. We note that adequate compensation arrangements are available under the Bill which would enable compensation to be claimed in respect of any land acquired and other losses directly attributable to the scheme. In that respect, we note the commitments by the promoter with regards to the provision of alternative storage facilities and the provision of bridge access points and tracks which will alleviate some of the adverse impact. These and other solutions are to be supported. While we can offer no suggestions as to how these issues are further resolved, we do expect the promoter to fully engage with the objector and to commit adequate resources to resolving, as far as is possible, the difficulties that are faced here.
Conclusion
254. The Committee does not uphold this objection.

Group 47
Nigel Miller (15): Withdrawn 15 February 2006

Group 48
L G Litchfield (24)
(6 March 2006)
255. This objection centred on the acquisition of land and the impact this would have on the movement of farm machinery and livestock and access to farmland and livestock thereby impacting on the viability of the various farm businesses owned by the objector. The existing track bed provides an access route between farms. The acquisition of land, including the Bowshank railway tunnel, would remove existing storage facilities.

256. There appeared to be problems in communication between parties on the provision of plans and drawings on possible solutions to maintain full access and movement around the farms and the exact requirements for any land take. There may be parcels of land and buildings that may not ultimately be required. Accordingly, we invited the objector to respond to the promoter on these matters.

257. We note the promoter’s evidence with regard to restrictions on alternative route alignments caused by the Gala Water and the need for the track to pass through the Bowshank Tunnel. We also note the consideration it will give regarding the upgrading, or provision, of new bridges over the Gala Water subject to maintaining access and movement between farms. We further note the commitment by the promoter to provide a shed for storage and the investigations being made to alternative track access to and from fields.

258. We accept the reasons set out by the promoter for its track alignment, using as it does the existing track bed. However, we recognise the impact this will have on the farming operations that have grown up utilising the track bed and surrounding land since the railway was closed. We note that adequate compensation arrangements are available under the Bill which would enable compensation to be claimed in respect of any land acquired and other losses directly attributable to the scheme. We accept the commitment by the promoter to discuss and implement viable solutions with the objector and would encourage the objector and the promoter to continue the discussions that they are now belatedly engaged in.

Conclusion
259. The Committee does not uphold this objection.

Group 49
Richard and Laura Thompson (25)
(6 March 2006)
260. These objectors reside at Station Road in Stow and, should the railway project proceed, their property will be subject to compulsory acquisition and demolition to make way for the railway. Originally only two plots of land and not the
whole property were scheduled for compulsory acquisition but, due to the impact this acquisition would have on access and the loss of the objectors’ garden ground, the objectors informed the promoter they would rather be bought out entirely.

261. The main issue for consideration by the Committee is the adequacy of the compensation arrangements. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61). We make reference to the need for the promoter to work sympathetically with the objectors over the timing and process for acquisition of their home. An offer of advance purchase has, we understand, now been made.

262. We sympathise with these objectors at the situation they are facing. However, whilst acknowledging the severe adverse impact the railway will have on them, we recognise why the promoter has sought the alignment it has at this stretch of line, utilising as it does the former railway track bed with the engineering and cost advantages that this offers.

Conclusion
263. The Committee does not uphold this objection.

Group 50
Mrs S Symon and others (26)
James Kirkness and others (27)
James Kirkness (28)
Mrs I Myles (29)
(6 March 2006)

264. These objections, like that above from Mr and Mrs Thompson, centre on the proposed compulsory acquisition of the objectors properties at Station Road for the purposes of the railway.

265. The properties at Station Road occupy land where the previous railway station was situated. The properties of Mr & Mrs Thompson (see above) and Mrs Myles occupy land at the side of the track while the property of Mr Kirkness, which was built after the railway line closed, is situated on the former track bed. All the land these properties occupy is required by the promoter for the construction of the railway.

266. We accept that there is no room for any alternative alignment at this stretch of track therefore the compulsory acquisition of the properties is the only viable option available to the promoter. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61). We understand that an offer of advance purchase of both properties has now been made to the owners.

Conclusion
267. The Committee does not uphold these objections.
268. The principal concerns of this objection relate to safety and the noise and vibration impact at Stow primary school due to the proximity of the railway. Of interest to us was that the objector supported a station stop at Stow as a means of reducing train speed at this location thereby reducing noise and vibration impact and safety risk.

269. We note the evidence of the promoter on its consideration of moving the playground’s location to another side of the school building. However, we expect any such proposals to be taken forward with due care and regard to the needs of the children and in consultation with the school and the parents. We note the promoter will provide a full specification fence to prevent access to the track. We would support any proposals for rail (and road given the increase in traffic from passengers arriving at Stow station) safety awareness presentations to be given to the school children by the police.

270. On noise levels, we note the commitment by the promoter to conform to the agreed noise levels of 55dB inside the school classroom. This will require the installation of a higher than normal noise barrier next to the track. In light of this, we encourage dialogue with the school over the design of this barrier. We also note the evidence on the increase in rail noise as one train passes another at the station (although one of these trains would likely be at a standstill). While this is not expected to happen regularly and there may be a slight increase in noise, we note also that one train can act as a noise buffer to the other and any increase in noise level may not be significant.

271. In response to the objector’s concerns about pollutant levels, we note the promoter’s evidence on the negligible level of pollutants emitted from the diesel train units expected to be operational on this line. The provision of planting will assist in filtering out pollutants.

272. We welcome the consideration to be given by the promoter to reducing the visual impact of the noise barrier and to minimising any blocking of daylight into the school through the provision of a translucent barrier. Again, we encourage dialogue and consultation with the school and the parents on this matter. The promoter will design the station’s public address systems to minimise the noise impact at the school.

273. We recognise there may be some intrusion for the school at the location. We accept that the promoter has sought, and is seeking, to put in place appropriate safeguards and measures to mitigate adverse impacts.

---

Conclusion

274. We refer to our conclusions later in this report with respect to the provision of a station at Stow. Accordingly, subject to the mitigation indicated above, the Committee upholds the part of the objection concerned with the provision of a station at Stow but does not uphold the remaining parts of the objection.

Group 52
James Pringle, Gala Fish Farming Ltd (105): Withdrawn 27 April 2006
James Pringle, Torwoodlee & Buckholm Estates Co Ltd (106 : Withdrawn 27 April 2006
(13 March 2006)

Group 53
Eildon Housing Association (108): Withdrawn 6 March 2006

Group 54
Sheila Campbell (14)
Andrew Brown (75)
David Fowler (126)
Residents of High Buckholmside (127)
Fiona Morrison (136)
(13 March 2006)

275. There were a number of concerns arising from these objectors who all reside in Galashiels. The properties are in close proximity to the former railway track bed along which the promoter will construct and operate the railway.

276. Mr Brown had expressed concern at the proposed stopping up of Plumtree Brae and the impact this would have on vehicular access to his property. The promoter has acknowledged the inconvenience this will have on Mr Brown and other residents as they will need to detour through the town centre to gain access at their properties. However, we accept the need for this road closure and note Mr Brown does also. We note the proposals for the provision of an alternative pedestrian and cycleway to the existing black path which is to be lost to the railway (see group 61).

277. Mr Brown will lose part of his garden to allow access for railway construction. We understand that he has agreed to this sale subject to suitable compensation. On this issue of compensation, concern was expressed at the impact the railway would have on the value and marketability of objectors’ properties and whether compensation would be paid. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

278. A concern was expressed by these objectors about health and safety. We do not accept these concerns and refer back to the commitments outlined by the promoter in its policy paper on railway regulation. We note also the commitments by the promoter to provide suitable standard of fencing to prevent unauthorised access to the railway track.
279. A further concern expressed was that of the noise impact. The promoter has committed to provide a 2 metre high noise barrier at Mr Brown’s property approximately 50 metres long. In addition, at High Buckholmside, some properties are quite close to the track. Despite providing a 2 metre high barrier at some properties here (the barrier will be approximately 200 metres long) the promoter may also be required to provide noise insulation (by way of secondary glazing) to comply with its noise and vibration policy. Again at this general location, there is a risk of vibration and the track will be modified providing additional vibration isolation. We note discussions are continuing with the Scottish Executive on before and after property surveys.

280. We also note the commitments given by the promoter with regards to planting and screening and removing vegetation only when necessary. We accept that the planting to be undertaken, which we expect is done in full consultation with the local residents, may provide suitable screening of the noise barriers and the railway itself as well as providing privacy to the properties. We are content at the mitigation the promoter will provide to attenuate the noise and vibration impact.

281. We accept the need for the alignment at these properties, making use as it does of former track bed. While we are aware of the impact of the railway on residents, we are satisfied with the commitments made by the promoter on how it will mitigate against such impacts.

Conclusion
282. The Committee does not uphold any of the objections in this group.

Group 55
DSG retail Ltd (104): Withdrawn 6 March 2006

Group 56
Ostle Tyres (109): Withdrawn 13 March 2006

Group 57
McLagan Investments Ltd (139)
(13 March 2006)

283. The objector is concerned at the proposed acquisition of land and the impact of their planning and expansion plans at the site for a proposed ASDA supermarket (for which planning consent has been given). This store would be adjacent to the railway and an area of land (a five metre strip), within the ASDA development, has been identified for temporary acquisition for railway construction purposes.

284. The objector seeks an assurance that plant and machinery will not encroach on to its land (it is expected that the store will be in existence before the construction of the railway commences) as this could impact on access to the store and mean a loss of car parking facilities. However, the promoter is unable to give such an assurance until it knows precisely what it will do at this site which will not be determined until the project’s detailed design phase. We understand that
the objector and the promoter have been attempting to reach a negotiated settlement on the various issues of difference between them.

285. We accept that the land in question will need to be temporarily acquired for the construction of the proposed railway. While this may have an impact on the ASDA development, we would hope that continuing dialogue between both parties will enable them to reach an agreement on how any impact will be minimised. We do not consider a realignment to take the railway away from the ASDA development to be viable given the associated engineering investigations and cost impacts that would involve. We therefore accept the promoter’s alignment of the railway at this point. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61).

Conclusion
286. The Committee does not uphold this objection.

Group 58
Gordon Richardson and Fjordhus Ltd (71): Withdrawn 10 March 2006
Messrs S & I Thomson (72): Withdrawn 21 December 2005

Group 59
Beechbank Place Proprietors Association (73)
(13 March 2006)
287. This objection centres on the compulsory acquisition of fourteen properties to be demolished to make way for the railway. The objectors drew our attention to unique features of their properties and the reasons why they were bought. The properties, which are centrally located within Galashiels, provide private parking, easy ground floor access, are within easy reach of local shops, supermarkets, the health centre, local public transport as well as leisure facilities. Some residents are elderly or have mobility limitations and their situation offers a high degree of convenience.

288. The combination of the railway’s alignment (to accommodate the alignment to and from the station at Galashiels), proposals to build an ASDA supermarket, the realignment of Station Brae together with the construction of a new road bridge have all squeezed this area of land. There is insufficient space to accommodate an alternative railway alignment around the objectors’ properties.

289. We are satisfied that the objectors will be appropriately compensated for compulsory purchase though the Bill’s application of the general law of compensation. We were interested in what action the council can take to assist the residents in finding like-for-like alternative accommodation. The promoter has sought to facilitate meetings and discussions between local developers and the residents on possible properties and to bring to the attention of the residents local planning applications that may be of interest to them. Such action is to be encouraged although, ultimately, it will be for the residents themselves to make decisions on where they will wish to move to. We note that these properties appear suitable candidates for advance purchase.
Conclusion

290. The Committee does not uphold this objection.

Group 60
Rev John Creanor (74): Withdrawn 2 November 2005
Archdiocese of St Andrews and Edinburgh (117): Withdrawn 2 November 2005

Group 61
Mr and Mrs Sandie (4)
Glenfield Residents Association (110)
(13 March 2006)

291. The primary issues of concern here centre on the proximity of the railway as it passes along the former track bed (known as the black path) close to these properties and the loss of amenity, flooding risk, noise and vibration and visual impact.

292. The black path, along which the railway used to run, is a popular local amenity used by walkers and cyclists. It runs between the properties at Glenfield, where these objectors reside, and the Gala Water. There are therefore limitations on how far the track could be moved away from the properties. The objectors sought an alignment taking the track closer to the Gala Water.

293. The objectors were concerned about the loss of this local amenity and the provision of an alternative. The promoter referred to a proposal to create a cycle route from Tweedbank station through Galashiels and on to Clovenfords north of the town. Bar an 800 metre stretch in the centre of Galashiels, this will be off road and while it may not offer the same degree of convenience to residents, it can generally be regarded as an enhancement of the existing facilities. Funding for the estimated £700,000 cost has been secured by the council from SESTRANS (South East Scotland Transport Partnership). We however note with caution that full agreements are not in place regarding the exact route nor the land required. While the council may have prioritised the project as number 15 out of 80 capital projects it has not yet been adopted as council policy although we were advised that there is commitment to put this alternative amenity route in place.

294. The promoter drew attention to the increased height the trains will enter on to the black path. In order for the track to pass over Currie Road it requires to be elevated. The clearance required (5.3 metres) will be visually intrusive for the properties and, in particular, Mr Sandie’s where the height will be 4-4.5 metres. By increasing the gradient from 1:100 towards the maximum of 1:70 this effect could be ameliorated by up to half a metre.

295. Due to this impact the promoter had sought to move the track up to ten metres closer to the Gala Water (therefore away from the properties). However, in evidence, the promoter stated that this would increase the risk of flooding due to the encroachment of the railway banking into the existing flood plain. In addition, such an alignment would not conform to the guidance set out in Scottish Executive planning guidance on new developments and flooding risk.37

37Scottish Executive, Scottish Planning Policy 7: Planning and Flooding (February 2004)
296. In response to the objectors’ proposals for a 4 metre movement towards the Gala Water, the promoter indicated that the same issues would arise. While the risk of flooding would not be as great as for a 10 metre shift, any encroachment on to the flood plain will increase the risk of flooding. This would be contrary to the policies of both the local council and Scottish Natural Heritage. In its objection, the Glenfield Residents Association recognised that encroachment onto the flood plain should be avoided.

297. On the issue of noise, the objectors expressed concern at the closeness of the noise barrier. The promoter indicated that the barrier could be incorporated at the sloping sides of the bund on top of which the track will be laid thereby taking it further away from the properties. The Committee accepts this and expects the promoter to position the noise barrier accordingly. We also refer to our intentions regarding noise monitoring set out earlier in this report. This will provide comfort to the objectors who had questioned how such monitoring would be carried out. On other matters raised by these objectors, the promoter has committed to undertaking structural surveys at these properties. The promoter will also provide suitable screening that may further mitigate against the visual impact of the barrier and of the railway itself.

298. We have sympathy with the residents at this stretch of line. However, flood prevention and protection must take priority and moving the railway closer to the flood plain increases the risk of flooding. We expect the promoter to take the railway as far from the properties as it possibly and safely can and that it will consider all engineering solutions, to reduce the height of the track. We are content that the Bill applies the general law of compensation to properties affected by the scheme and we refer to our consideration of this issue earlier in this report (see paragraphs 56-61). However, as stated earlier, the railway will run along the former track bed. We accept the promoter’s intention to utilise this as its preferred route.

Conclusion

299. The Committee does not uphold these objections.

Waverley Housing (138): Withdrawn 15 March 2006

Group 62
Derek Scott & Henry McConnachie (141): Withdrawn 7 March 2006

Group 63
Mr and Mrs Banks (12)
Helen Foster (17)
Mr and Mrs Paterson (65)
Mr F Wood (66)
David Cowan (67)
See entry under group 32

Group 64
Dr and Mrs Alexander (89): Withdrawn 26 April 2006
300. Mr Muir stated that he was adversely affected by the railway through the compulsory acquisition of land in Newton grange. However, the promoter was unable to establish the veracity of this as Mr Muir had not produced proof, by way of title deeds, to that effect.

301. We are only concerned with objectors that will be adversely affected by the construction and operation of the railway and not with historical grievances against Midlothian Council surrounding previous planning applications. It became apparent through our questioning of the objector that he did not have any title interest in any plot of land subject to acquisition by the promoter for the purposes of the railway. Whatever grievance he has is perhaps more appropriately a matter for the Lands Tribunal for Scotland and not this Committee.

**Conclusion**

302. The Committee dismisses this objection.

**Conclusion**

303. At the commencement of Consideration Stage, 128 objections were outstanding. This was a disappointingly high number, particularly in the light of the delays that had occurred to the Bill meaning it took over two years to get to Consideration Stage. While we acknowledge that this number has gone down (there are now sixty outstanding objections) the Committee feels that it was only through our momentum in progressing this Bill and continual pushing of the promoter to enter into, and maintain, useful dialogue with objectors that this reduction occurred. We believe that more objections could have been settled had timeous effort been allocated to settling them.

304. We heard from some objectors on what they regarded as a far from acceptable standard of communication from the promoter’s advisers after the Bill was introduced and the lack of useful information being provided to objectors. It was not perhaps until the lead in to the commencement of our oral evidence meetings that we saw real movement with an increase in the withdrawal of objections. While such withdrawals were welcome, it was unfortunate that some objectors were required to go through the process of preparing and submitting written evidence in support of their objections and for this Committee to then consider that evidence when the objection itself could perhaps have been resolved.

305. Some objectors were confused by the use of legal and over technical terminology by the promoter. Despite their desire to reach agreement with the promoter they were unable to do so as they did not understand what the promoter was offering. Some objectors therefore maintained their objections in order to come before the Committee and ask direct questions of the promoter and get direct answers on the public record. While we were content to assist objectors in this regard by providing the forum to seek such clarification, it is unfortunate that
our requests for clear and understandable communication and engagement in an
open and participative manner have not been fully implemented.

306. However, we also acknowledge the role that objectors play in this process
and accept that some objectors, including some legally or professionally
represented, could have been more pro-active in reaching agreements with the
promoter.

307. Moving forward, we would hope that the promoter gives full and proper
consideration to its lines and styles of communication and due care and attention
to the sensitivities of people who will be particularly affected by this railway. We
encourage the use by the promoter of clear, unambiguous language when dealing
with people.

Consideration of objections

308. Having regard to all of the evidence, the Committee is satisfied that
the benefits of the scheme outweigh the disbenefits. We are also satisfied
that an appropriate balance has been struck between the rights of those
adversely affected by the scheme and its benefits to the wider community.

309. In particular, the Committee is satisfied that the promoter has taken
appropriate steps to minimise land take and that land will only be acquired if
required for the purposes of the scheme. We acknowledge the commitments
by the promoter to address the concerns of objectors. However, to further
address the ongoing concerns of objectors, where the promoter has
informed the owner of land included in the Bill that it is no longer required,
we shall amend the Bill at phase two to remove these plots of land. This will
ensure that the Bill only lists those plots that are currently required for the
purposes of the railway’s construction and/or operation. We are content
that, as a result of the compensation provisions as applied by the Bill,
objectors will be appropriately compensated in respect of any land
compulsorily acquired and, where no land is acquired, for any reduction in
value of the land caused by physical factors associated with the scheme.

310. We expect, at the detailed design stage, the promoter to align the
track as far from properties as can be feasibly accommodated within the
limits of deviation. This will assist in reducing noise and may reduce visual
impact at properties.

311. Further, we are satisfied that as regards any adverse local
environmental impacts, the mitigation measures agreed by the promoter will
be sufficient to reduce those impacts to an acceptable degree. As such, we
are satisfied that the provisions of the Bill which impact on objectors’ rights
are necessary and proportionate.
Background
312. The Committee, in its Preliminary Stage report, indicated its clear support for the inclusion of a railway station at Stow. The Committee believed that, in view of its support for the social case for the railway, there was a compelling case for a station at Stow (situated approximately seven miles north of Galashiels). This would provide a third railway stop in the Borders, and offer an opportunity to maximise passenger uptake from not just Stow, but from those villages north of Galashiels and the larger town of Lauder.

313. The Committee indicated in that report the promoter should consult with local residents and community groups as well as bodies such as Stow Station Supporters, the Waverley Route Trust and the Campaign for Borders Rail in taking forward the issues surrounding the creation of a station. Thereafter, we invited the promoter to bring forward evidence on issues such as the station’s location, land take, access, cost, size and design, and car parking.

Parliamentary process
314. The Bill does not provide for a station at Stow. This would require amendment to be made to the Bill at phase two of Consideration Stage. As this proposal for a station may adversely affect people’s interests (eg people who were not adversely affected by the Bill as introduced but who may subsequently be affected by the Bill as amended or existing objectors who may be adversely affected in new ways), an opportunity was given to lodge objections to the proposal.

315. The promoter consulted with the local community on two location options for a station resulting in the favoured site of the old railway station becoming the preferred option. This location would accommodate a double track alignment, a car park and pedestrian access from the village.

316. The estimated capital cost of a station is £980,000. This is in line with the projected cost indicated during Preliminary Stage evidence. There would be additional land take for a station at this location. Some land required, for example for both platforms, could be accommodated from within the current Bill’s limit of deviation but further land take will be required for a car park and pedestrian access.

317. The location would also require re-modelling of the existing vehicle access which is shared with the primary school although the promoter did state in evidence that this access to the school could do with improvement.

318. At our meeting on 16 January 2006, we stated our continued support for further consideration of the option of a railway station at Stow. The procedure that followed was largely the same as when the Bill was introduced. The promoter

---

38Promoter’s memorandum in relation to a railway station at Stow (9 January 2006)
formally lodged its draft amendments on Stow along with the necessary accompanying documents—

- Promoter’s Memorandum
- Environmental statement
- Book of reference
- Estimate of Expense and Funding Statement
- Maps, plans and sections

319. Further, the promoter advertised in local and national newspapers that such amendments were being considered to the Bill and notified those that might be affected. We agreed, in the light of the publicity surrounding this proposal and consultation undertaken by the promoter with the local community, that an objection period of 30 days was justified. In order not to further prolong proceedings, we timetabled this objection period to run in tandem with our oral evidence meetings in respect of existing objections to the Bill.

Objection

320. At the conclusion of the objection period, we gave preliminary consideration to one objection lodged by British Railway Board (Residuary) Ltd to determine whether the objector had shown how it would be adversely affected. We agreed that the objector had shown how its interests would be adversely affected therefore the objection should go forward for substantive scrutiny.\(^{39}\) We then adopted the same process of written evidence gathering to the process adopted and explained earlier in relation to the objections to the Bill. After considering the written evidence and, given that the Committee had already heard oral evidence from the objector and the promoter (on 16 January 2006) in respect of BRBR’s identical objection to the Bill, we agreed there was no need to hear oral evidence in respect of this objection to Stow station.\(^{40}\) Reference is made to our earlier conclusions on the BRBR objection to the Bill and the need for an amendment to the Bill to be made.

Conclusion

321. The objection by BRBR to the Stow station proposal is not upheld.

Assessment generally

322. The Committee has seen no evidence which has changed its mind on the provision of a station at Stow. The capital costs of circa £980,000 are largely as indicated when we first investigated this matter at Preliminary Stage. We recognise that these do not factor in the additional costs of making the recognised improvements that are required to providing safer and easier access to the road at the primary school. However, these safety improvements are required, whether a station at Stow is provided or not. We recognise that there will be an additional operating cost of maintaining a station of approximately £32,000 per annum.

323. We support the proposals submitted by the promoter regarding the proposed design of the station and the provision of suitable car parking provision

\(^{39}\) Official Report, 22 February 2006 (col. 633)
\(^{40}\) Official Report, 19 April 2006 (col. 932)
and pedestrian and vehicular access. We also support the recognition given to making provision for mobility impaired passengers through two designated parking spaces and a footbridge linking both platforms. We support the promoter’s commitment to develop detailed plans for the station through further and detailed discussion with local residents and others. The station at Stow would accommodate twin tracking to allow trains to pass. The platform lengths will accommodate the train units proposed for the railway.

324. We also note the outcome of the promoter’s environmental assessment and that, while there will be some environmental impact through increased noise at the station car park (the area is currently residential) we do note that vehicular noise exists at present due to parents dropping children off at the primary school adjacent to where the station would be. We also note there appears to be little additionally required land take for a station over and above that already required in any event for the railway.

325. While accepting that the journey time savings recently identified by the promoter could be cancelled out by trains stopping at Stow, we still maintain our belief that there is ample justification for providing a third stop in the Borders for the Borders railway. A station here will serve both the inhabitants of Stow, and other neighbouring areas such as the town of Lauder. Further journey time savings may be identified at the detailed design stage.

326. The Committee therefore will amend the Bill at phase two to provide for a station at Stow. However, as this would only effectively provide permission for a station to be constructed, and there is no guarantee that such would happen, we will amend the Bill at phase two to ensure that the provision of the entire railway is subject to there being constructed all of the proposed Borders stations.

Conclusion

327. The Committee continues to support the provision of a station at Stow and will amend the Bill at phase two to give effect to this.

328. The Committee will amend the Bill at phase two to give effect to the agreement reached between the objector and the promoter.
ANNEX B

FURTHER CONSIDERATION OF GENERAL PRINCIPLES

Background
329. The Committee, in its Preliminary Stage report, voiced concerns over a number of issues relating to the promoter's economic case for the railway. While the Parliament has agreed to the general principles of the Bill, and that it should proceed as a Private Bill, that report was quite clear of the need to revisit a number of important issues before the Bill proceeds to the Final Stage when the Parliament makes the decision on whether or not to pass the Bill. The main issues were housing, including water and drainage infrastructure, patronage and revenue yield and project costs.

Approach
330. We invited the promoter to submit further written evidence. In addition, the Committee heard further oral evidence from witnesses for the promoter and from the Scottish Executive Minister for Transport and Telecommunications. Specifically on the issue of housing and water and drainage infrastructure, we also heard oral evidence from Homes for Scotland and Scottish Water.

331. All this written evidence is set out in volume 5 of this report. We do not propose dissecting this evidence but, rather, focussing on what we have regarded as the key issues that arose out of the written evidence and the oral evidence from our meeting on 27 March 2006. The key issues we revisited are set out below.

Housing and water and drainage infrastructure
- lack of firm commitments or prioritisation by Scottish Water over provision of necessary water and drainage infrastructure on committed developments
- achievability of reaching the 10,113 housing target along railway corridor by 2011
- progress through statutory planning process and release of suitable sites
- low completion rates in Midlothian and Borders area in recent years
- concerns over lack of communication between promoter and Homes for Scotland
- lack of staffing resources at council and Scottish Water level to cope with the development projects
- promoter believes minimal impact on business case assumption of not completing until 2016

332. The Committee was pleased to note the assurance given by Scottish Water that existing water and sewerage capacity or plans to increase capacity in the Borders and Midlothian will accommodate the provision of the planned additional housing.

333. Specifically in Midlothian, the increase in capacity at the Roseberry water treatment works and ongoing works with developers will resolve water storage issues at Bonnyrigg, Gorebridge, Mayfield, Newtongrange and Eskbank areas and the proposed 1,600 house Shawfair development. In addition, wastewater from Shawfair and the new housing proposed for the area north of Gorebridge will go to
the Seafield treatment works via the eastern interceptor sewer. A drainage impact assessment is currently underway on this (due for completion by the end of 2006) to assess the impact of further large scale developments.

334. In the Borders, the water treatment works at Howden, Roberton and Galashiels Manse Street are to be upgraded by 2009 or 2010. For example, the Howden works serving Galashiels and Tweedbank has capacity for 3,000 new homes. On wastewater, again there appears to be spare capacity but Scottish Water did indicate that it can also, if necessary, bring forward wastewater proposals to address concerns surrounding further housing expansion plans.

335. In summary, Scottish Water has stated that, ‘as housing developments associated with the Waverley railway line come to fruition we will bring forward plans for providing water and wastewater infrastructure for these developments’. This is most encouraging and has led us to be satisfied that, on this front, the necessary assurances and processes are in place.

336. However, we still have concerns at the rate of house completion rates over recent years and the likelihood of these increasing sufficiently by 2011 to reach the targets.

337. Homes for Scotland were specifically concerned at the time it is taking for new housing to come through the statutory planning process in both local authority areas. While it expects housebuilding rates to increase in coming years, it has—

“serious doubts that they will reach the levels that are required in the structure plan to 2011.”

338. Homes for Scotland indicated that volume builders are continuing to look at the Borders as an area for increased housebuilding development and that the presence of the railway may act as a catalyst to boosting the market there. The house builders believe they can build the houses once the land is released.

339. In response to the doubts expressed about meeting the 2011 targets, Midlothian has pointed to allocated sites within adopted local plans along the railway corridor. The agreements between the council and Homes for Scotland on most of these sites and the programme for building houses on them, and the significant predicted upturn in the 2005 housing audit (from 214 in 2005-06 to 1,016 in 2009-10) were highlighted. In addition, a number of section 75 developer contribution agreements of up to £1,500 per property are in place that will assist in meeting the funding projections set out by the promoter. This also gives some comfort as to developers’ intentions.

340. In the Borders the process of releasing land to allow properties to be built is still some way behind where we think it should be, given the importance of the housebuilding programme to the viability of the project. The local plan for the Scottish Borders has still not been adopted although the council has produced an

---

41 Scottish Water further written evidence (March 2006)
42 Official Report, 27 March 2006 (col.880)
43 Section 75 of the Town and Country Planning (Scotland) Act 1997 (see also section 38 of the Bill)
interim housing policy guidance note that will allow it to grant permissions for sites within the local plan where housing land shortfalls exist. The local plan will be subject to a local inquiry commencing in September 2006. There remains uncertainty on achieving the 2011 Borders housebuilding target.

341. Both local authorities contend that they are progressing action to deliver on these targets and that they will meet the targets. We have no doubt as to their commitment in this regard, but we remain unclear as to achievability. Largely, however, we remain disappointed at the low rate of completions in recent years.

342. We are encouraged that further resources have been directed within both local authorities to progress the work involved in meeting the 2011 housing targets and that specific dialogue is taking place with Scottish Water and house builders in identifying and resolving site infrastructure constraints. Both authorities have delegated to some staff powers to approve planning applications (although this obviously does not apply to major housing applications). While we expect rates in both local authority areas must increase over the coming years we are unconvincing the increase will enable the targets set for 2011 to be met.

343. We note the Minister for Transport and Telecommunications in his oral evidence stated that housebuilding completions were not the only criterion that the Scottish Executive took into consideration when assessing the business case. We trust the Scottish Executive recognises the central importance to the project of housebuilding particularly through patronage forecasting (new residents travelling to Edinburgh) and project funding (S75 agreements).

Patronage forecasts and revenue yield assumptions
- impact of delays in housebuilding programme on patronage forecasting and fare revenue yield
- further benchmarking to quantify patronage forecasts and underlying assumptions
- likelihood of promoter’s contention that the railway will be operating subsidy free within six years of operation

344. We remain sceptical over the promoter’s patronage forecasts, so closely tied in we believe with the house building programme. In addition, we remain unconvinced that this railway will, unlike most other passenger railways, be operating subsidy free within six years of opening (2017). We note the promoter believes it has taken a conservative approach in its modelling and forecasting and that with the delay to perhaps 2011 until the railway becomes operational this will have a ‘positive impact on its business case’. Ultimately, it is for the Scottish Executive to be satisfied as principal funder and as the body responsible for the distribution of rail subsidy payments.

345. The Scottish Executive and the promoter have sought opportunities to reduce journey times which would encourage increased patronage. In evidence,
the Minister stated that the provision of a station stop at Stow would effectively cancel out journey time savings identified so far. It could also have a wider network impact through a reduction in the turnaround times at Tweedbank and the ‘slot’ available to the Waverley service. Any delay to the journey from Tweedbank could impact on east coast services as the Waverley services access east coast main line track to Waverley. We address the issue of Stow station earlier in the report. We do not understand the access point which could be addressed by timetabling amendments to ensure trains arrive at the scheduled slot times.

346. We questioned the Minister on subsidy levels caused by the delay to 2011 before the railway becomes operational. The Scottish Executive believes that delaying the opening to 2011, when more houses will have been built, could reduce the level of subsidy required (there being more passengers on day one of service operation).

347. The promoter believes that the delay to 2011 will have no material impact on patronage or revenue forecasts. It also pointed to the greater pool of passengers available in 2011 rather than in 2008 when it originally planned services would commence. However, we did note that the promoter did not accept that such delays should be seen as a good thing. While it may well have improved its business case, and that is for the Scottish Executive to judge, it does now recognise the importance of keeping this project on timetable and budget.

348. The promoter continues to monitor and adapt its business case projections on patronage and carry out further benchmarking against other railway schemes particularly on its projected 5-6% annual passenger growth. It maintains its conservative approach on patronage and fare forecasting and its estimate that, as a result, the railway will be operating subsidy free within six years of operation (2017) i.e. it will pay a premium to central government rather than receive a subsidy from it. This would make the line almost unique in the Scottish franchise.

Project cost overrun

- manageability of project to date and ability of promoter to keep project on time and budget
- compliance with Scottish Executive’s funding allocation commitments
- application of risk management strategy
- identification and securing of other funding sources

349. At today’s prices, the capital cost of the railway project is £155 million. In evidence, written and oral, both the promoter and the Scottish Executive stated that there had been no increase in the project’s capital costs since we reported in July 2005. We were particularly interested in establishing whether, as the scheme has developed and further work has been carried out into the proposed engineering works, costs have escalated. Not least, having regard to the engineering proposals to address the appropriate assessment mitigation and in respect of solutions and undertakings made to objectors in seeking to address their concerns.

350. Neither the Scottish Executive nor the promoter indicated any increase in project capital costs. The promoter, specifically, indicated that there have been no
increases as a result of the schemes development and the further refinement of engineering work, for example, in respect of the work on appropriate assessment.

351. It is of course for the Scottish Executive to monitor costs on this project as principal funder. The risk management strategy is nearing completion and an independent risk management team will be appointed to oversee aspects of this. We are encouraged that the promoter and the Scottish Executive appear to be working closely together in the development of this project, with the central aim of bringing it in on budget and time.

Conclusion

352. We note the improvements since we reported at Preliminary Stage, not least in relation to the assurances made on the provision of the necessary water and drainage services and that work within the statutory planning process is progressing. However, we remain concerned regarding completion of the 10,000 plus houses to be built by 2011.

353. The position as regards the statutory planning process in Midlothian appears better than that in the Borders and we hope that matters can move forward through that process more in tandem. We cannot underestimate the importance of reaching these targets. The delay until the railway is operational means that the promoter has one target date to work towards.

354. Without a steep upturn in house completion rates we remain unconvinced that these houses will be completed by 2011 which will have a detrimental impact on the patronage revenue yield forecasts and therefore the early viability of the railway.

355. We stated in our Preliminary Stage report that the issue of project costs was a matter for the Scottish Executive and the promoter to satisfy themselves over and we are unchanged in that opinion. It is of concern that the project has been delayed before construction has commenced. Both parties maintain that costs are still on target and are unaware of anything, engineering or otherwise, at this time that will give rise to an increase in costs. Costs, therefore, continue to be the responsibility of both parties to bring the project in on budget and, if possible, ahead of the now delayed completion date.

356. We wish to re-emphasise what we stated in our Preliminary Stage report that the provision of this railway is one to the Borders and not one that terminates at Gorebridge. On the evidence before us, the view of this Committee has not changed. We still believe that this railway must go to Tweedbank from the outset. Accordingly, to ensure this happens, we will amend the Bill at phase two to the effect that the construction of this railway is dependent on the railway being constructed all the way to Tweedbank, including all the Borders stations (and now including Stow). We do not support the termination of the railway at Gorebridge, even with a phased introduction of the railway from there to Tweedbank at some time in the future. This amendment will, we believe, provide clarity to both the promoter and objectors.
Other issues

Waverley Route Trust

357. The Committee’s Preliminary Stage report\(^{46}\) invited the promoter and the Waverley Route Trust (WRT) to enter into dialogue with a view to identifying where and how the project could be improved. We previously made reference to the need for innovative thinking on this project with a view to, for example, identifying further funding sources, project cost reductions, journey time savings, increasing potential for passenger uptake.

358. Some of the perceived improvements advocated by the Trust were outwith this Committee’s remit and are more appropriately matters for the Scottish Executive to reflect on (twin tracking at Newcraighall to Portobello junction, station works at Brunstane junction). We did not discount the good intentions of the Trust in seeking to identify improvements that could perhaps be made to the overall railway project. We therefore called upon both sides to enter into discussion to take such consideration forward.

359. However, there appears to have been little agreement or consensus between both parties on what areas could be discussed. WRT have long believed that the remit for the railway project is too narrow and that there is a real opportunity to consider and adopt some innovative ideas about the railway’s construction and operation. The promoter, on the other hand, believes its project to be the best on offer within the available funding.

360. The Committee is extremely disappointed that this opportunity given to both parties has not been taken. Any improvements that could have been made are to be welcomed and we had hoped that the promoter would not be unreceptive to suggestions or fresh ideas. However, WRT also seemed too focused on scheme improvements that are outwith the scope of the Bill and therefore this Committee.

361. We are therefore disappointed that we have nothing positive to report here. We had expected that both parties might respond positively to our Preliminary Stage report by identifying, discussing and agreeing scheme improvements, be it journey time savings, improvement alignments, project cost reductions. The failure to do so is, we feel, a lost opportunity for all parties.

\(^{46}\) Preliminary Stage Report on the Waverley Railway (Scotland) Bill (paragraph 123)
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

Published in Edinburgh by Astron and available from:

**Blackwell’s Bookshop**
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

**Blackwell’s Bookshops:**
243-244 High Holborn
London WC1 7JZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell’s Edinburgh

**Blackwell’s Scottish Parliament Documentation Helpline** may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**
0131 622 8283 or
0131 622 8258

**Fax orders**
0131 557 8149

**E-mail orders**
business.edinburgh@blackwell.co.uk

**Subscriptions & Standing Orders**
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152
sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:
www.scottish.parliament.uk

**Accredited Agents**
(see Yellow Pages)
and through good booksellers