



OFFICIAL REPORT
AITHISG OIFIGEIL

Pow of Inchaffray Drainage Commission (Scotland) Bill Committee

Wednesday 13 December 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 13 December 2017

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL: CONSIDERATION STAGE	2

**POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL COMMITTEE
7th Meeting 2017, Session 5**

CONVENER

*Tom Arthur (Renfrewshire South) (SNP)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Alison Harris (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Davies

Hugh Grierson (Pow of Inchaffray Commissioner)

Jo Guest (Pow of Inchaffray Commissioner)

Alastair McKie (Anderson Strathearn)

CLERK TO THE COMMITTEE

Nick Hawthorne

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament
Pow of Inchaffray Drainage
Commission (Scotland) Bill
Committee

Wednesday 13 December 2017

[The Convener opened the meeting at 10:07]

Decision on Taking Business in
Private

The Convener (Tom Arthur): Good morning and welcome to the seventh meeting in 2017 of the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee. The first item on our agenda is consideration of whether to take item 3 and future consideration of evidence and of our consideration stage report in private. Are we agreed?

Members *indicated agreement.*

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

10:08

The Convener: The second item on our agenda is evidence on the objections, and I welcome everybody to the meeting. Of the three objectors, only Tom Davies is in attendance. Neither Mr Bruce nor Mr and Mrs Bijum are able to attend.

The committee is grateful to the promoters of the bill for providing a new written submission ahead of the meeting.

As the process is unfamiliar to most of us—I include the committee members in that—I will explain the procedure and how the meeting will proceed.

There are two distinct phases to the consideration stage. The first phase, which begins today, involves our meeting in a quasi-judicial capacity to consider and dispose of the objections. The second phase will see the committee meet in a legislative capacity to consider and dispose of any amendments that have been lodged and to consider each section, the schedule and the long title of the bill.

At today's meeting, the objector and promoters will have the opportunity to set out their arguments and to test those arguments through cross-examination. As the convener, I will manage the proceedings. The committee will predominantly listen to both sides but may come in at times to seek clarification on an issue or to move things along. The committee may also highlight issues that have been raised in the other two objections, given that those objectors are not present today.

I will first invite Tom Davies to set out the points that he wishes to make in relation to his objection. The promoters will then have an opportunity to cross-examine him. After that, the roles will be reversed and the promoters will respond to the points that are raised in the objections and make any other points, and Mr Davies will have an opportunity to cross-examine the promoters.

Either party can refer or respond to the issues that have been raised by the other objectors, who are not in attendance today. Once we reach the end of the session, there will be an opportunity for each party to make a brief closing statement. The committee will then reflect on what we have heard and come to a view when we meet on Wednesday 17 January 2018.

We now move to the formal evidence session. I encourage everyone to be as concise as possible. I invite Tom Davies to open proceedings by setting

out the points that he wishes to make regarding his objection.

Alastair McKie (Anderson Strathearn): Convener, I should just mention that the promoters have prepared some papers for everyone who is here. They are public papers that I intend to use when questioning Mr Davies. Would now be a suitable time to distribute them, or do you want me to do that after Mr Davies has spoken?

The Convener: You can do it now, so that proceedings are not interrupted later.

Alastair McKie: There is also an inventory that goes with the papers. They are for everyone's convenience and should allow us to get through things quickly this morning.

The Convener: Thank you, Mr McKie. Mr Davies, I invite you to go ahead.

Tom Davies: First, I apologise for my lateness in arriving this morning. As many of us will be aware, having three small children in the house often jeopardises your plans for when you intend to leave, and it was no different this morning.

I have drafted my thoughts in my notes, and I will read from them. I will be as concise as I can be.

I thank the committee for inviting me to give evidence. This is new to me—I have not done it before. As I say, I have gathered my thoughts in my notes and will refer to them throughout the meeting. I acknowledge the work that Jo Guest and Hugh Grierson have undertaken and their commitment to the maintenance of their land. Similarly, I take seriously my responsibility to protect my modest ownership, which is why I am sitting here today, setting out my objections.

I live in my property on Eden Square with my wife and three small children, having moved there in 2010 after having lived in Dunblane for some time. I was unaware of the pow and of the Pow of Inchaffray Drainage Act 1846 when we moved in, but, like the committee, I have become very familiar with the pow, its purpose and some of the history associated with its inception, construction and subsequent maintenance.

I am not a farmer or a landowner like Jo and Hugh, but I worked in a land-based industry for more than 20 years, dealing with land use change on a significant scale and its consequential effects on the water environment. Although I am not a hydrologist, nor do I pretend to be an expert on such matters, I have knowledge and experience of drainage and flooding matters.

Before I set out my objection in detail, I wish to make some broad points in summary. I maintain my objection to the bill and believe that it would require substantial amendment before it could be

considered acceptable to be passed into law. I consider the bill to be unfair, disproportionate and lacking in any evidence base. It will confer significant power on a small group of landowners who are very much the minority of those covered by the bill.

Two very different types of people appear to be affected by the bill: the landowners, who run businesses on their land and who undertake a range of agricultural activity that is supported by Government subsidy, and the householders, who own modest plots of land and likely have no or little knowledge or interest in land management issues. That is a key problem with the bill and the process up to today. There are two very different types of owners but the bill attempts to take a one-size-fits-all approach.

It is my understanding that 73 per cent of the heritors live on the Balgowan estate, so I am part of the majority. The valuation amounts under the current act amount to approximately £20,000 per year, and the Balgowan householders are charged £8,100, which is 40 per cent of the total amount. My neighbours and I make up 73 per cent of the heritors and are charged 40 per cent of the total cost, yet the balance of power in the bill is retained by a small group of landowners.

10:15

I will now address in detail my objection and the reasons for it. The bill details the land that is identified as benefiting from the pow, but there needs to be a complete and detailed reassessment of the "benefited land" so that it is clear who benefits and how they benefit. Only once that has been done can the cost of the identified benefit be calculated. The promoters have stated that they consider that the original survey of 1846 remains valid in its identification of the benefited land, but I disagree with that. There have been three obvious changes since 1846 that will have affected the pow, which I will detail briefly.

First, there have been housing developments in the vicinity of the pow since 1846, with varying degrees of mitigation. For example, the Balgowan housing estate was constructed only after the land was built up—the level of the land was raised—as committee members will have seen on their site visit. The Balgowan houses are obviously higher than the top of the pow bank and the fields to the north, downstream and upstream.

Secondly, agricultural practice has changed radically since 1846, and the benefits and impacts of agricultural practice are now very different. For example, intensive ploughing of the fields will have a greater impact on the pow, as significant

volumes of silt enter the pow after ploughing takes place.

Thirdly, the pow itself has changed significantly since 1846. For example, the bed of the pow was lowered at Dollerie bridge in 1995. The committee may remember that we stopped at that bridge on the public road during the site visit and looked over it to see a tremendous drop into the pow—a much bigger drop than you would have expected. Members may also remember that we had to dodge the cars as they drove over the bridge. That is certainly ingrained in my memory.

The note for the heritors' meeting on 2 March 2015 details the changes that have been made to the pow since 1846. It states:

“The availability of powerful 360 degree excavators has enabled the Pow to be significantly improved, particularly over the last 25 years”.

The landscape has changed radically since 1846; therefore, a new assessment is required to see who benefits and how they benefit.

I have come to the conclusion that my property receives no direct benefit from the pow and that, therefore, it should be removed from the benefited land identified in the bill. I do not have any direct relationship with the pow and I do not receive any direct benefit; therefore, my property should be removed from the benefited land and I should not be charged. Numerous other properties do not have a direct relationship with the pow and should also be removed from the benefited land.

I do not release anything into the pow—there is no discharge from my property that goes directly into the pow. I release neither foul drainage nor surface water into the pow. I re-emphasise the point to the committee: I do not release anything into the pow and I have no direct relationship with it. Therefore, why am I included and to be charged? I appreciate that those points may lead to some questions, and I will be happy to discuss them later.

I do not benefit from any flood protection from the pow. I have repeatedly made that point and, so far, no evidence or information has been provided to prove my assessment wrong. The Scottish Environment Protection Agency flood map shows clearly that my house is not considered to be in a flood risk zone. The commission has stated over and over again that my house is at risk from flooding yet has not provided any evidence to support that position. I have reached the conclusion that there is no evidence to support that statement; the question remains why it was made in the first place.

Let me summarise the first part of my objection. I believe that my home should be removed from the category of “benefited land” as I do not release anything into the pow and my home is not at risk

from flooding. Those appear to be the two benefits identified by the bill, yet they do not directly affect my house. Therefore, I should not be charged and nor should many of my neighbours in both new and old Balgowan, who equally do not benefit from the pow. Why should I be charged for something that I do not do?

The second part of my objection relates to funding—specifically, a cap on an increase to the annual charge. However, the issue is relevant to me only if my property is included in the benefited land, which, as I say, it should not be. I maintain that there should be a cap to prevent significant increases in annual pow charges. My objection is largely fuelled by the balance of power in the bill—the fact that all the power will be reserved to a small group of landowners—and the lack of transparency on funding and costs.

The bill will give a small group of landowners the ability to increase my annual charge to whatever they see fit without any reference to me. I will have no control over what I will be asked to pay, and I will have no ability to review the costs, let alone challenge them, which I believe is fundamentally wrong. I understand that the residents of Balgowan equate to 73 per cent of the heritors. Despite that, we—the majority—will be told what to pay and will have to blindly accept that, which is unfair.

There appears to be a lack of transparency in the process, and there is no protection against conflicts of interest. There appears to be no provision for securing the best possible deal for any of the heritors through a fair and open tendering process for the work. Therefore, I am deeply worried about what charges will be added to my annual bill. For the landowners and their farm businesses, the pow charge is a business expense that will ultimately reduce their tax burden. However, I do not have that luxury, nor can I claim the VAT back as many of the farms can if they are VAT registered.

Although the sums that are talked about at this stage might be low, there is the potential that, in the future, the commission may wish to create a very large reserve of funds and I would have to keep paying. Alternatively, it may wish to undertake some very large capital works, such as bank reinforcement, which might be unnecessary, and I would have to keep paying. There is no protection for me against the wishes of the landowning commissioners and their desires for their land. I will have to subsidise the landowners for the works on their land, which might or might not be needed. I will not be able to challenge any such decision; the matter will be decided among the commissioners, who happen to be the farmers who will benefit the most. I do not believe that to be fair, and I believe it to be wrong.

The bill is highly vulnerable to the whims of future commissioners, which might be entirely inappropriate and might result in highly expensive works that cost everyone but are not needed. I make it clear that the view that I have expressed is not a comment on any of the existing commissioners; it is about the need for future proofing.

The third part of my objection relates to previously unpaid bills. I maintain my view that, as the 1846 act is to be repealed and replaced, calculations made under that act are null and void, so those costs should not be pursued.

That concludes my explanation of the three key points in my objection and the detail of why I have objected. Thank you for listening to those points. I will be happy to take questions and to be examined on what I have said.

The Convener: Thank you, Mr Davies. I invite the promoters to pose their questions to Mr Davies.

Alastair McKie: Thank you, Mr Davies. Do you have before you the inventory of papers that was circulated a moment ago?

Tom Davies: Yes.

Alastair McKie: Can you confirm that you are the owner of 5 Eden Square, Balgowan?

Tom Davies: I confirm that I am the owner of 5 Eden Square, Balgowan.

Alastair McKie: I think that you live there with your family.

Tom Davies: I do, indeed.

Alastair McKie: I invite you to turn to document 2 in the inventory. In the top left-hand corner, you will see that it is a land plan that is referred to in the Pow of Inchaffray Drainage Commission (Scotland) Bill. It is entitled "Balgowan Houses, Part 1 of 1". Can you see that?

Tom Davies: Yes, I can see that.

Alastair McKie: Can you confirm that your property, 5 Eden Square, is within the large area that is coloured purple?

Tom Davies: Indeed, it is.

Alastair McKie: I invite you to turn to the next document in the inventory—document 3—which, again, is a plan. It shows the Balgowan area in a bit more detail. Can you see Eden Square just to the north of the centre of that plan?

Tom Davies: Yes. I am familiar with the location of my house.

Alastair McKie: Is your property number 35 on that plan?

Tom Davies: No, it is number 33.

Alastair McKie: I am sorry—is it the pink one that is south of the square?

Tom Davies: No, it is the green one that is north of the square. I do not live at 15 Eden Square; I live at 5 Eden Square, which is property number 33 on the plan.

Alastair McKie: I see—it is the green one that is north of the square. Thank you.

Tom Davies: It is directly opposite the pow.

Alastair McKie: Let us turn to page 9 of paper POI/S5/17/7/1. Do you have a copy of that?

Tom Davies: Yes.

Alastair McKie: You said in your objection that, when you first moved into 5 Eden Square, you were not aware of the nature of the pow or of the requirement to contribute towards its maintenance. Is that correct?

Tom Davies: That is correct.

10:30

Alastair McKie: Can you now look at document 6 in the inventory, which is a copy of your title deed, and turn to page 16?

Tom Davies: I am looking at page 16 of 23.

Alastair McKie: That is correct. If you look at the fifth line up, it starts, "11. Drainage All Plots". Can you see that?

Tom Davies: I am struggling to identify that at the moment.

Alastair McKie: It is on page 16, five lines up from the bottom.

Tom Davies: Oh yes—point 11.

Alastair McKie: Can you just read that sentence please?

Tom Davies: I will read it out for the benefit of everyone here:

"Drainage All Plots shall jointly pay an equal one-fifty-fourth share of the annual drainage levy due to the Pow of Inchaffray Drainage Commissioners in relation to the use of the Pow of Inchaffray for drainage for the Development."

Do you wish me to go on, or shall I stop there?

Alastair McKie: Continue for a bit.

Tom Davies: Okay.

"If and to the extent required by the proprietor of the Development Amenity Ground, payment shall be made to the proprietor of the Development Amenity Ground who will then collect and forward such payments to the Pow of Inchaffray Drainage Commissioners."

Alastair McKie: Just pause there. Your position initially was that you were not aware of the nature

of the pow or of the requirement to contribute towards its maintenance.

Tom Davies: Indeed.

Alastair McKie: May we agree that that specific charge was included in your title deeds when you bought the property?

Tom Davies: I acknowledge that and I have never disagreed with the fact that it may well be in my title deeds.

Alastair McKie: How is it that you were unaware of it, if it was in your title deeds?

Tom Davies: I think that that would be a discussion between me and the solicitor who was acting for me at the time when I took on the property, because I did not read my title deeds. You may say that that was a mistake on my part, but I trusted my legal representative to do that for me. I was not alerted to it at the time and I was not aware of it until I received the first bill.

Alastair McKie: When you bought your property, was it never disclosed to you by the previous owner?

Tom Davies: I was the first owner of the property.

Alastair McKie: You were the first owner of the property, were you? Right.

Tom Davies: I distinctly remember the discussion with the vendor. I asked specifically whether there were any annual charges. I expect that they thought that I meant maintenance charges or something like that, but it was never identified to me at that point.

Alastair McKie: I want to make two points relating to the paragraph that you read out. May we agree that the reference for the charge—what it is for—is drainage? It uses the word “drainage”. I know that you have made some statements about flooding, but can we agree that this charge, per your title deeds, is about drainage.

Tom Davies: There are statements made about flooding, but they were not made by me in the first place—they were made by the commission.

Alastair McKie: I am less interested in that—we can move on to it later—but for the purposes of this title deed may we agree that the reference in terms of the charge being made by the commissioners on your property relates to drainage?

Tom Davies: I would not dispute what it says in the deeds.

Alastair McKie: May we also agree that there is no statement of any cap being placed on that charge in your title deeds?

Tom Davies: The deeds are clear for everyone to see. It does not appear that there is a statement of a cap.

Alastair McKie: Thank you. When did you become aware of the charge?

Tom Davies: I do not recollect a specific date, but I would imagine that it was at about the time that I received the first bill. I moved in in July 2010, so it would probably be at some point in 2011. I do not recollect the exact date.

Alastair McKie: Do you recollect how much the charge was?

Tom Davies: No.

Alastair McKie: Right. If I advise you that it was £150, would that jog your memory at all?

Tom Davies: Yes, and of course there was a different VAT rate then, so it was probably about £175 inclusive of VAT.

Alastair McKie: Have you been paying the annual charge?

Tom Davies: I have paid some, but not all.

Alastair McKie: How much have you paid towards it?

Tom Davies: I do not recollect the figure of my exact payment.

Alastair McKie: The records of the commissioners’ solicitors, McCash & Hunter, show that you are £620 in arrears on your annual charge of £150 plus VAT. They say that you paid £100 towards the 2016 assessment, but that you have not paid in the years 2014, 2015 or 2017. Might that be correct?

Tom Davies: That might be correct.

Alastair McKie: Your written evidence says that you have “come to understand” the nature of the pow and why it is needed and you accept that there should be a charge for it. Given that you accept that, and you accept the principle of paying, why have you not contributed any further sums?

10:30

Tom Davies: I will make two points. First, following the original submission of my objection, I have come to a different conclusion about my property benefiting from drainage, because I do not believe that to be the case. I do not believe that it directly benefits from drainage.

Secondly, the reason for not paying is set out in my objection. I have objected for exactly the same reasons for choosing not to pay at times: I do not believe that what I am asked to pay is fair, proportionate or evidence based; and I do not

believe that I have any direct relationship with the pow.

Alastair McKie: We will come to that in a moment. Staying with the theme of how much it might cost you and what the annual charges would be, can you now have a look at document 4? It is a schedule that the commissioners have supplied to the Parliament and it is on the Parliament's website. Property number 33 on the document is your property at 5 Eden Square. Is that correct?

Tom Davies: Yes, that is where I live.

Alastair McKie: The new assessment for your property is on the basis of an averaged-out £20,000 annual assessment, and we can see from the document that your charge would be £16.90. Can you see that?

Tom Davies: I can see that.

Alastair McKie: Do you have any comment to make on that?

Tom Davies: I am not aware of any of those figures, nor have I seen a valuation, because that was not included in the original notes relating to the submission of the bill earlier this year.

Alastair McKie: I appreciate that this may come as news to you, but it has been on the Parliament's website for some time and it is information that the commissioners have been giving to the committee. However, I think that your position is that you have not seen it.

Tom Davies: Do you mean this spreadsheet?

Alastair McKie: Yes.

Tom Davies: I was unaware of it, but thank you for pointing it out.

Alastair McKie: Doing the same exercise with the next schedule, which is document 5, we see that property number 33 is 5 Eden Square. Again, this is based on a £20,000 annual assessment, and we see a draft new assessment on your property of £51.51. The commissioners have carried out a further exercise to smooth out the potential effects of properties that have a relatively large garden-to-house size, and have put the figure through a multiplier. Under that new method of assessment for a £20,000 annual assessment, your annual charge comes out at £51.43. What is your reaction to that charge, given that the current charge being levied against you is £150, although I appreciate that you have not paid it?

Tom Davies: They are two very different amounts. I presume that those charges are based on the current assessment of the requirements of the pow.

Alastair McKie: They are based on the assessments under the bill.

Tom Davies: So they are based on the requirement for current work on the pow.

Alastair McKie: Yes.

Tom Davies: That is helpful to know. Thank you for bringing it to my attention.

Alastair McKie: I am just interested in your reaction. Your charge was £150 under the old arrangements—I appreciate that you did not agree with them—but under the new arrangement your charge is £51.

Tom Davies: I acknowledge those figures, but I have not done the calculations and I am not aware of how they have come about. I do not know what the methodology behind them is, nor do I know of assessments of the methodology.

Alastair McKie: I am advised that the calculations are on the chart, but I appreciate that you have not had time to look at that because this is the first time that you have seen it. However, can we agree that you are, arguably, getting something of a bargain, given that your previous charge was £150 but the charge is now £51?

Tom Davies: The point of my objection is not necessarily about the money; it is actually about a point of principle.

Alastair McKie: Right. Let us turn to some of those principles. You will know that the promoters have stated in both oral and written evidence that the basis for identifying benefited land in the pow is the original survey prepared in 1846. I think that your position is that you want a reassessment done because you do not trust or rely on that survey.

Tom Davies: No, I do not believe that I have any direct relationship with the pow. That is why I believe that a reassessment should be required.

Alastair McKie: Let us see whether you have a direct relationship with the pow. Document 8 in the inventory is a copy of the original survey plan that accompanied the 1846 act. It is of some length, but you should open it out fully, as the Balgowan section is on the last unfolding. Can you see the red arrow?

Tom Davies: Yes.

Alastair McKie: That was put there by me. May we agree that the area immediately above that, showing a series of enclosures, is Balgowan?

Tom Davies: It is not possible to identify detail. This is not an up-to-date map and it does not have any geo-references on it. I would have to assume that it is Balgowan—I take your word for it—but there is no detail to suggest to me that that is the location.

Alastair McKie: We can take evidence from Mr Guest on that if you dispute it.

Tom Davies: I do not dispute it; I am just pointing out that it is not easy to identify exactly where Balgowan is on this map.

Alastair McKie: I put it to you that, if you go back to document number 2, which shows the parliamentary plans that were derived from the original survey plan, you will see that the Balgowan area is the area that is indicated by that arrow.

Tom Davies: What is that arrow indicating? I do not want to be difficult—I want to be helpful—but it is not clear where Balgowan is on this map.

Alastair McKie: Well, we will have to take that in evidence in chief from Mr Guest.

If one assumes that the 1846 original plan was accurate—it was used for the purposes of an act of Parliament—why should the commissioners go to the expense of undertaking a reassessment?

Tom Davies: Mapping has changed quite significantly since 1846, as has the accuracy of maps. I would have to question whether this map is accurate with regard to the location of Balgowan.

That said, if we assume that your orange-red arrow is the south-west corner of Balgowan, it would appear that Balgowan sits somewhere in that area. However, as I said earlier, when the houses were constructed, there was mitigation associated with the development of the property, and the land was built up. That means that the houses were not built directly on this assumed location—the land was changed. My point is that that is why a reassessment of the land is required. Since 1846, there have been three significant changes, one of which is the mitigation that is associated with the housing development at Balgowan.

Alastair McKie: Would you agree that the most significant change has been the introduction of housing in this area, particularly around the Balgowan area?

Tom Davies: There have been a number of changes and I would not like to say which is the most significant.

Alastair McKie: You say that the land platform on which your development has been built was raised. May we still agree that the surface water drainage from the development flows into the pow?

Tom Davies: I do not know whether it does.

Alastair McKie: The position of the promoters is that it does. The land is at a higher level than the pow, is it not?

Tom Davies: When the surface water drainage leaves my property, it goes on to someone else's property and I do not know what happens to it thereafter.

Alastair McKie: We will have to agree to disagree. May we agree that there is a waterworks that has been built for serving your development?

Tom Davies: Indeed there has been.

Alastair McKie: May we agree that that waterworks ultimately outfalls into the pow?

Tom Davies: I do not know where it goes. All I know is that it leaves my property and goes into someone else's property.

Alastair McKie: If we assume that your surface water drainage and the outfall from your sewerage system flow ultimately into the pow, might we agree that you are benefited by the pow?

Tom Davies: I do not believe that I have any direct relationship with the pow or any direct benefit from it, so I am sorry to say that I do not agree on that point.

Alastair McKie: But if your property drains directly into the pow, as does your sewerage system, which we know exists and which I think the politicians saw when they visited—I think that you were on the site visit—is it not the case that you are living on land that is benefited by the pow?

Tom Davies: Who owns the sewerage system?

Alastair McKie: You tell me.

Tom Davies: I do not own the sewerage system.

Alastair McKie: I believe that it is in private ownership.

Tom Davies: I understand that it is owned by Bett Homes, which took on Manor Kingdom, which was the builder of my property.

The sewage leaves my property and thereafter goes into the community sewerage system and drains. I do not know any detail about that. It goes into someone else's property, and I do not know what they do with it. I do not know how they treat it or where it goes. Therefore, I do not have any direct relationship with the pow.

Alastair McKie: Okay. You do not know the answer to the question, but can we at least agree that, when your title deeds were being prepared, those who drafted them were aware that you received some drainage benefits from the pow, because that is in your title deeds?

Tom Davies: It may be in my title deeds and in accordance with the 1846 act, but we are moving on—that act is going to be repealed and we are moving on to a new act. Therefore, it is

appropriate to consider what the points would be under that new act. That is why I am raising my objection. The foul water drainage leaves my property and goes elsewhere. It does not go directly into the pow. I do not know where it goes. I assume that it goes into the drainage network.

Alastair McKie: Let us assume, just for the sake of it, that it goes indirectly into the pow. You are still receiving a benefit from the pow, are you not?

Tom Davies: The detail is important, hence my statement at the beginning. I do not own the sewerage works. I do not release anything into the pow.

Alastair McKie: Yes, but you release something into the waterworks that then goes into the pow.

Tom Davies: Yes, but it is not up to me when it is released into the pow or who releases it into the pow. For all I know, they put it in tankers and take it away. I do not know what happens with it. It goes into the treatment works, and then what happens with it is entirely up to the owner. I do not own the treatment works and therefore I have no control over what happens when it goes to the treatment works and what happens to it afterwards. On that basis, I have no direct relationship with the pow.

Alastair McKie: When the water lands in your garden or on your roof and the surface water runs off your property, it is at a higher level than the pow. Is it reasonable to assume that it ends up in the pow?

Tom Davies: I own 192m² of land, and I have a small garden at the back of my property. That 192m² is 0.192 of a hectare or 0.47 acres. Jo Guest and Hugh Grierson obviously own significantly more, as do all the farmers. Part of that—maybe 20m², 30m² or 40m²—is my garden. A lot of the water will be dealt with through interception and transpiration by the plants in the garden. The water that drains from the roof and gutters into the drainage soaks away and goes into the communal drainage system. It then leaves my property and I do not know where it goes. I can only assume that it goes into a communal drainage or sewerage system, but I have no control over what happens to it once it leaves my property.

Alastair McKie: The waterworks and the surface water drainage from your property have a dependency on the pow, so what do you think would happen if the commissioners stopped maintaining the pow and there was a problem that in some way meant that surface water would not drain from your property and the sewerage system would not work? Would you not want that to be

repaired? Do you not have a dependency on the commissioners?

Tom Davies: The water that releases from my house goes into systems that are under the ownership of other organisations or people. I imagine that those who choose to release water into the pow would want to take that up with the commission but, as I do not release anything into the pow, I do not have any direct relationship with the pow and nor do I have any direct relationship with the commissioners.

Alastair McKie: But, come on, Mr Davies, you have a direct contractual relationship, because it is in your title deeds.

Tom Davies: It is important to get to the detail of what actually happens, although I appreciate that you want to do that—I do not dispute that. When the foul water leaves my property, it goes into the sewerage works, which is owned by Bett Homes. Then I presume—although I do not know—that it goes into the pow. As I said, however, I do not release it into the pow and nor do I have any control over its being released into the pow—that is not within my power or ownership. Therefore, there is a legal point about how I could possibly be charged for something that I do not have any control or power over.

Alastair McKie: Our position is that you are clearly a directly benefited person, Mr Davies. We are disagreeing on quite a lot, but can we agree that there is a direct contractual relationship in your title deeds requiring you to pay a one 54th share for the drainage into the pow?

Tom Davies: Under the 1846 act and the benefited lands identified, yes. However, we are moving on to a new act and, through this process, I am objecting on the basis that the benefited lands need to be re-identified because I argue that I do not directly benefit from the pow.

10:45

Alastair McKie: We will need to choose to disagree.

We will move on to the points about flood alleviation. You have made some big points about that and about what, if anything, the pow does for you—you have said that it is definitely not flood alleviation. On that basis, will you look at document 1, which is the bill, and turn to section 27, which is on page 9. If we move down the definitions to the definition of “benefited land”—can you see that?

Tom Davies: Yes.

Alastair McKie: May we agree that the bill says that it is

“the land drained by the Pow shown”

on the coloured plans, which are the parliamentary plans?

Tom Davies: Yes.

Alastair McKie: On that basis, can we agree that the purpose of the pow bill in terms of benefited land is to ensure drainage, not flood alleviation, although I agree that flood alleviation may obviously be indirectly related to effective drainage?

Tom Davies: Is that a concession on the part of the commissioners that it is not flood alleviation?

Alastair McKie: In certain parts of the benefited land, there is some flood alleviation because drainage and flooding are obviously related concepts but, for the purposes of the charging system under the 1846 act and the bill, may we agree that the bill is about maintaining effective drainage?

Tom Davies: If there was any direct benefit for my property—with which I disagree; there is not—are you stating, Mr McKie, that it would be drainage and not flooding?

Alastair McKie: For the purposes of your property, I think that the pow fulfils a drainage function. It may, ultimately, fulfil a flooding function. If, for example, the pow did not flow, there might be flooding. Over what period, I do not know. However, the pow's primary function, in so far as your property is concerned, is drainage.

Tom Davies: I thank you for making that concession and acknowledging that it is drainage.

Alastair McKie: Sorry, Mr Davies, it is not a concession; it is what the bill says. The bill is not called the "Pow of Inchaffray Flood Alleviation Commission (Scotland) Bill"; it is the Pow of Inchaffray Drainage Commission (Scotland) Bill.

Tom Davies: Thank you for that clarification. I will make a point on that that may be helpful for the committee. On 13 January 2015, I received a letter from McCash & Hunter. It says:

"The Pow Commissioners' charge is levied for the purpose of ensuring that the Pow Burn is cleared and dredged so as to prevent flooding of the lands in this area. Inspections are periodically carried out and maintenance works to the Pow and its banks are carried out each year so that the full length of the Pow of Inchaffray continues to flow unobstructed.

Your property benefits from these works, in the absence of which it would be at risk of flooding and possible uninsurability."

A note was prepared for the heritors meeting at Gask hall at 6 pm on 2 March 2015 and given to all the heritors. On page 1, it says:

"The Commission's role in preventing the floods which had blighted the low lying land in Strathearn for centuries means that the land drained is among the most fertile agricultural acreage in Scotland. In addition, the

Commission's work has made residential development possible in some areas such as the former Balgowan Sawmill Site. It is therefore vitally important that the Pow is maintained to prevent flooding in this area."

This sentence is used again in the promoters' memorandum:

"It is therefore vitally important that the Pow is maintained to prevent flooding in this area."

Again, exactly the same sentence is used in the consultation paper of May 2016, which states:

"It is therefore vitally important that the Pow is maintained to prevent flooding in this area."

If flooding is not the issue, why has it been repeatedly stated that it is "vitally important" to prevent the flooding of my house?

Alastair McKie: That is a question that you will need to put to the promoters when they come to give evidence. I am asking the questions just now, but I think that we can agree that those words could have been better chosen in the correspondence with you.

Tom Davies: I will come back to that point. "Better chosen" is an interesting choice of words. I would perhaps use another word, which I will come to when I ask a question.

Alastair McKie: I say "better chosen" because we have agreed, have we not, that there is a relationship between drainage and flooding, because if you do not drain, you could flood? Also, it is a fact that residential properties need to be able to drain both surface water drainage and foul water drainage. If that drainage cannot happen, at some future point there will be a flood, or a higher propensity to flood.

Tom Davies: It is important to have a proper hydrological assessment of the catchment to identify the risks.

Alastair McKie: Your next big point is that you are concerned about commissioners—perhaps not the current commissioners but future ones—setting budgets at a level that you do not agree with, so you want to impose some form of cap or limitation.

I come back to this point: if you are not correct and we are correct that your property benefits from the pow, if the pow were not maintained, you would suffer some deleterious effects—not the least of which would be that you could not outfall the sewage from the waterworks and surface water drainage would not operate. Would not that then have the effect of reducing the value of your property? Would not you want the commissioners to have the freedom to do works that are needed solely—I stress the word "solely"—to maintain effective drainage?

Tom Davies: I will answer your question, Mr McKie. As I said earlier, I do not believe that my property has any direct relationship with the pow and it should be removed—

Alastair McKie: Can we just be a bit hypothetical here? In fairness, you cannot answer the question by saying that you totally disagree. Can you just humour me and answer this question: on the basis that your property is benefited by the pow, would you like the commissioners to maintain the pow?

Tom Davies: On the theoretical point that my property benefits directly—although I do not believe that it does—the commission has a duty to undertake works to maintain the pow. However—maybe I misunderstood the bill and I would be happy to receive further clarification—I do not believe that the bill currently provides the necessary protection to ensure that unaffordable increases are not unilaterally added to bills for me, my neighbours or any other heritor.

Alastair McKie: Okay. We will come to that in a moment. You have a developed point on that. You also mention in your letter of objection that you have concerns that the commissioners may build up a financial reserve. That is probably a related point—

Tom Davies: Yes. It relates to a potential financial reserve in the event of unexpected expenditure—the beaver gate has been talked about—as well as future proofing. What happens if, for example, all the farms are amalgamated and are owned by one owner, and that farmer then chooses to do unrequired works all along the length of the pow? A significant proportion of the cost of those works would have to be paid by the residents of Balgowan, who make up 73 per cent of the heritors. I believe that a mechanism needs to be in place to identify transparency, to resolve such conflicts of interests, and to ensure that there is a free and open tendering process for the work. A mechanism is needed that would allow control of expenditure.

Alastair McKie: I will just deal briefly with the financial reserve point. Do you agree that, as a prudent measure to address unforeseen circumstances, it is reasonable for the commission, in its duties, to be able to have a financial reserve for exceptional circumstances?

Tom Davies: In budgeting for maintenance of any piece of ground, it is appropriate to be able to call on reserves to deal with emergencies.

Alastair McKie: Schedule 1 on page 10 of the bill sets out the functions of the commission. What you were concerned about, in your lengthy answer to my question, was transparency in the possibility of amalgamation to one large farm whose owner then chose to do something that you would

ultimately have to pay for, so you are worried about levels of control. In terms of the statutory functions that the commission would have if the bill were passed, the commission can only do the following things:

“maintain, repair and renew the Pow”,

take out the weeds on affected land and

“carry out improvements . . . and protective works”,

but only

“in so far as the Commission considers necessary or desirable to maintain effective drainage of the benefited land.”

Can we agree that that places a limitation on what the commissioners can authorise? It would have to be within those statutory duties. If it is not for effective drainage, they should not—they cannot—do it.

Tom Davies: Within those duties that would be conferred through the bill, I can see an opportunity to interpret the requirements of the pow—not to interpret the legislation but to interpret what is required. For example, what happens if an owner decided to reinforce the bank along the entire length of their ownership?

Alastair McKie: As I understand it, such work has been undertaken already.

However, if that were the case, the commissioners would have to pay for that as well, and they are trying to keep costs down, are they not?

Tom Davies: Is there a mechanism in the bill for the commissioners to keep the costs down?

Alastair McKie: There is not a statutory cap.

Tom Davies: That is my point.

Alastair McKie: Let us turn to document 7, on council tax banding, which is published by Perth and Kinross Council—your local authority. It breaks down the council tax banding by property value and what the individual charges are.

On page 1, at the bottom of the page, we see a “wastewater charge” column—which goes over the page—that starts at £154.20. Further on, the document talks about the value of properties and the charges for the next years. That is perhaps easier to see. You have, I understand, a property in the C to F range of council tax bands, so can we agree that you would, if you had an adopted sewerage system rather than a private system, be paying council tax of £200 plus?

Tom Davies: Yes—that is exactly right.

Alastair McKie: Under the current arrangements, on an assessment of £20,000, using the multiplier of 5, you would be paying £51 for that.

Tom Davies: I do not disagree with any of that. My understanding is that, in time, the sewerage system will be adopted by Scottish Water and the local authority. Therefore I will be paying the £200 plus in the future. The sewerage system has not been adopted, and I do not know the details of why—it has been suggested to me that it might not be up to standard, but I genuinely do not know. However, I understand that I will pay when the sewerage system is adopted by Scottish Water.

Alastair McKie: However, at the moment the sewerage system is an unadopted private system, is it not?

Tom Davies: Yes, absolutely.

Alastair McKie: So, looking at the situation purely financially, if you pay £51 with an assessment of £20,000, the local authority might charge a lot more. You may well know that the commissioners approached Perth and Kinross Council to ask it to look after the pow. It refused, as did Scottish Water, the Scottish Environment Protection Agency and all the rest. That is the situation that we were left with. If we set £51 against roughly £200 plus, you are not in an unreasonable state of affairs just now, are you?

Tom Davies: No. There is a difference of £150. However, if the sewerage system is adopted, at some point I will have to be charged. My second concern is that I cannot see in the bill any mechanism to prevent the amount being increased to an annual £200, £250 or £300, should the commissioners see fit to do that.

11:00

Alastair McKie: On that specific point, are you aware that the commissioners wrote to the Scottish Parliament on, I think, 11 October, setting out a possible amendment to give a right of appeal to heritors in respect of the annual assessment?

Tom Davies: I do not necessarily understand all the detail, but I am aware that a right of appeal was identified.

Alastair McKie: Perhaps I can explain a little bit about the appeal and then we can explore your views. The right of appeal would apply if 10 or more heritors—I stress that, because it is an important point—wish to challenge the draft budget that comes before the annual assessments are raised. Heritors can have that budget assessed by an independent expert, at no cost to themselves. There is no fee for making the appeal.

One of the concerns that have been expressed about a right of appeal—and why it has been resisted by the commissioners—is about its potential cost impact on all the other heritors. If a right of appeal were to be exercised, and the case had to go to an independent expert, the cost of

that expert would have to be paid by the commission. The commission has no source of income other than the annual assessment. If just one heritor were to appeal, all the rest would have to pay for the appeal. On the calculations that we have made and have given to the committee, the fear of the commission is that if the appeal costs were to run into a few thousand pounds—and even if the independent expert were to uphold the appeal and say that the budget was too high and that everyone needed to pay £15 or £20 less—the annual assessment would still be higher because the costs of the appeal would need to be borne by the finite pool of heritors.

That explains why we have put in place the threshold of 10 heritors. It is to prevent someone from making an appeal just because they want to do so. I am interested in exploring your view of that right of review.

Tom Davies: Thank you for explaining that. That is my understanding, having read it.

It is interesting that, in providing for the ability to review the cost, the proposal is to go straight into an appeal process. Other parts of the process need to be identified: it should not go straight to an adversarial approach. First, there should be transparency about the costs of the maintenance. Secondly, there should be an open and fair tendering process for the works. I feel that a much bigger explanation and provision are needed and that heritors should not just be told that they can appeal, which takes them straight into an adversarial situation. Also, what would heritors be appealing? It would be the assessment of the cost of the works. They would not have the right to appeal against the actual requirement for the works or the tendering process. Therefore the proposal directs the right of appeal to a very narrow part of the overall picture. It needs to be much broader.

At one of the very first heritors' meetings that I attended, which was probably back in 2015, there was a real sense—this is my view; Jo Guest may disagree—that people wanted to know what the proposal was all about, why we were being charged, what the pow was and what the associated costs were. The approach should not be just to say that heritors can appeal against the assessment of the cost of works, which is quite a narrow part of the overall picture. The right of appeal needs to be much broader than that. If a contractor states that it will cost me £X to dig the pow, but I say that I do not think that it will cost that much and I appeal against it, we will have to go to an expert. Who will that expert be?

Alastair McKie: The expert will be appointed by, I think, the Association of Drainage Authorities, because we would be looking for an expert who would be a surveyor, I imagine.

Tom Davies: What would we be appealing against? The likelihood is that there would not be a substantial difference in the cost of the digging. My question would be this: is the work actually needed, and has there been a thorough and proper explanation to demonstrate that it is needed?

Although a right of appeal is welcome, there is a much bigger picture that needs to be inclusive of all the heritors, so that they can understand why the pow is being dug and the costs, and so that they can see that there has been a fair tendering process, to get best value for the heritors. They should also have the ability to veto or have some mechanism to challenge the rate. A right of appeal on just one point is narrow.

Alastair McKie: You are saying that the grounds for appeal are narrow, but I do not agree with you, because the independent expert would obviously look at the budget, the work and the costs of the work.

Tom Davies: Is that all detailed in the more recent submission?

Alastair McKie: Yes.

Tom Davies: So will the independent expert look at the requirement for the work?

Alastair McKie: It is a right of appeal to an expert, and I assume that he would look at all those matters. He or she would need to form a view as to whether the annual budget is reasonable and is within the terms of the eventual act, because the duty of the commissioners is to ensure that there is effective drainage. That is their function. If the money is not being used for effective drainage, he or she is likely to say that the commissioners cannot charge that.

Tom Davies: That is an assumption. Perhaps more detail needs to be included, so that I can fully understand the proposed approach. As far as I can see, there can just be an appeal on the cost of the works, rather than on whether they are required, full stop.

Alastair McKie: No. I assure you that the right of appeal goes beyond looking merely at costs. An appellant would not just say, "This is far too much"; they would have to say, for example that the cost is too much because of some items that should not be included. It would be for the independent expert to look at all the issues in the round and take a view.

Tom Davies: Does the bill say that?

Alastair McKie: We have not formally drafted the right of appeal; it is only a suggestion and we are negotiating on that point at the moment. I can see what you want, but may I record—I do not

want to do so wrongly—that you broadly welcome such a right?

Tom Davies: There needs to be further provision in the bill to protect all the heritors from unaffordable increases and to create transparency, to secure best value for money and protection from conflicts of interests. I welcome what you have proposed, but I do not think that it goes that far.

Alastair McKie: Okay. You would like it to go further.

Tom Davies: Much further.

Alastair McKie: I have no further questions.

The Convener: Thank you, Mr McKie and Mr Davies. We will have a five-minute comfort break.

11:08

Meeting suspended.

11:15

On resuming—

The Convener: I invite the promoters to put their case.

Alastair McKie: Thank you, convener. The promoters stand by the oral and written evidence that has already been given to the committee. In particular, the promoters rely on their responses to all three objections to the pow bill and the written representations, as set out in the letter on their behalf to the committee clerk dated 6 September 2017, which has been encapsulated in the committee papers. I respectfully request that the committee takes that as read and I will develop four points before we move to questioning.

The first point—I just have headings—is the drainage function of the pow. The principal function of the pow and the 1846 act relate to maintaining effective drainage. The function of the commissioners in paragraph 1 of schedule 1, following that in the 1846 act, is also to maintain effective drainage and is not specifically about flooding, although flooding is indirectly related to effective drainage, as I have pointed out. Although the consequence of effective drainage might be to alleviate flooding in certain areas of benefited land, the central purpose of the pow bill relates to drainage. Benefited land, as defined in section 27 of the bill,

"is the land drained by the Pow",

as shown on the parliamentary plans.

The second point that I want to advance is on the reasons why a reassessment, in the sense of a resurvey, is not required. In my questioning of Mr Davies, I indicated why that is not needed. The

promoters have stated in oral and written evidence that the basis for identifying the benefited land in the pow bill is the original survey plan that was prepared for the 1846 act. The promoters believe that the original survey plan identifies benefited land and remains accurate and, in the promoters' view, there is no evidence to the contrary. In preparing the parliamentary plans for the pow bill, the promoters have examined the enclosures and fields shown on the benefited land on the 1846 plan, and have faithfully transferred them on to the parliamentary plans. Therefore, there is no reasonable basis for any reassessment of benefited land to be undertaken, nor is it necessary.

On that point, perhaps I could pass over to Mr Guest and ask him, as the author of the parliamentary plans and as someone who has interpreted the original survey plan, to explain what he did, as I think that that would be helpful. Again, it would be helpful if we had before us the survey plan—paper 8 in the promoters' papers—and opened that up to where the pink arrow is shown. I should say that the pink arrow is not on the original plan; I put it on for ease of reference today. I invite Mr Guest to explain his understanding of the way in which the Balgowan area, which is what we have been dealing with today, is benefited land in terms of the 1846 plan and why that plan is reliable, and to explain how he transferred the identification of the benefited fields and enclosures on to the parliamentary plans.

Jo Guest (Pow of Inchaffray Commissioner):

The 1846 survey shows not only the pow and side ditches but the enclosures that comprise the benefited land. I appreciate that the plan was prepared before Ordnance Survey maps were brought in but, given that those maps started in about 1870, not that much before.

If you look at the Balgowan area, where Alastair McKie has put a red arrow, you can see the main pow; the Bachilton pow; the Jessie Burn, which goes north towards the north point; and the Cowgask, which is the side ditch running southwards. If you look at the double line, which is obviously the road that we drove along during the inspection, you will see that the enclosures between the road and the pow are shown as benefited land.

In preparing the plans in support of the present bill, we looked at the 1846 survey—I have a larger version back in the office—and, as accurately as we could, we transcribed the benefited land as shown on to modern Ordnance Survey vector data. I do not know whether you are familiar with it, but the Macaulay institute has classified all the agricultural land in Scotland into different grades, and there are maps showing where the different

grades are. We transcribed those on to the new plan, and with digital mapping, it is very simple to work out the areas of the different categories of land. That is the approach that we took. We then took the values per acre for the different land classifications, whether it be the different grades of agricultural land, forestry land, residential land or commercial property land, and applied them to the areas that had been worked out using the digital plans.

Alastair McKie: That was very helpful. What is your understanding of the key changes that might have occurred in the area since the 1800s?

Jo Guest: I do not believe that the levels of the land have changed at all—the topography of the land is as it always was. There have been changes in the bed level of the pow where we have been able to achieve a better gradient, as we saw at Dollerie bridge, and in the late 1980s, we regraded the pow under Balgowan bridge. Indeed, during the inspection, I pointed out the underpinning work that had been done on the bridge, and that regrading work was what enabled the installation of the outfall for the wastewater treatment works.

Alastair McKie: I was actually asking about physical changes to the benefited land.

Jo Guest: Obviously there have been changes in land use. I can think of one area that used to be agricultural land but which is now forestry land, but other than that—

Alastair McKie: Perhaps I can direct the question at the Balgowan area. On the original survey plan that I am looking at, there appears to be no development there.

Jo Guest: No. Originally, the land was part of Balgowan estate, which was primarily to the north of the pow. Then there was a sawmill, which I imagine would have started off as the estate sawmill.

Hugh Grierson (Pow of Inchaffray Commissioner): Yes.

Jo Guest: And then it would have been taken over by an independent timber merchant.

Hugh Grierson: With the railway in between.

Alastair McKie: So am I right in saying, then, that at the time that the plan was drawn up, the land was undeveloped and that it was subsequently developed for a sawmill?

Jo Guest: Yes. It would have been agricultural land.

The other change on the survey plan is, as Hugh Grierson has just pointed out, the railway; there was no railway in 1846. Of course, it was

closed by Mr Beeching, but a railway was constructed in the area.

Alastair McKie: Thank you, Mr Guest. I have a couple of other questions, the next of which relates to the imposition of a cap or ceiling. As the committee will know, the promoters oppose a cap on the annual assessments because it might place an unworkable and unacceptable limitation on the exercise of the statutory duty of the commissioners in repair, maintenance and improvement in order that the pow's drainage operates effectively. However, there is perhaps a relationship between the right of appeal that is being suggested by the promoters and a cap, in that it would allow some check and balance to be exercised by heritors, should they choose to do so.

The right to a review or appeal to an independent expert was suggested in the promoters' letter of 11 October 2017 and it might be helpful if I were to unpack that a little. As committee members are aware, the principal concerns of the commissioners about introducing a right of appeal related to cost, efficiency and speed, as well as fairness to all heritors. As has been illustrated by the promoters in evidence today, if one heritor seeks an appeal, the cost of that appeal must be borne by all the heritors. It is a unique position to have a right of appeal when there are a limited number of people who have to contribute to the cost of processing the appeal and paying for it whether it succeeds or fails. That is why we introduced the concept of 10 or more heritors having to agree to exercise that right.

The commissioners also gave serious consideration to individual rights of appeal on the basis that, because there was going to be an impact on costs—whether the appeal succeeded or failed—the independent expert should be given the right to award costs. However, because we are dealing with relatively small sums, the existence of a right to award costs would be a deterrent to those who might want to appeal; the appeal might be a few hundred pounds—they might be £500—but if the costs were awarded against the appellant, they would be enough to negate that right of appeal. That is why we moved away from the idea of having a right of appeal by just one heritor towards a combined weight of heritors, such as 10.

In our discussions, we considered to whom the right of appeal should be made. We opted for the independent expert appointed by the Association of Drainage Authorities because we thought that that would be faster. We considered arbitration but decided that it would be too lengthy. We are dealing with a relatively short window in which to set the budget. We considered using the Lands Tribunal for Scotland and the sheriff, but we

decided that they would be too costly and not quick enough in their decision making.

Jo Guest: Have you talked about the timetable? Up to now, the process is that we check the pow around February and carry out work in the summer months—partly because of SEPA and partly for the practical reason that the water is low in the summer months and, if the banks are disturbed, they have time to grass up again before the winter floods. We always aim to do the work in the summer, which means that we have to book the contractor by April, to be certain that he will turn up. That means that we have to instruct the contractor by March. We inspect the pow in February, we decide what the priorities are, we have a meeting to confirm what needs to be done and we then instruct the contractor, so that he has plenty of time and notice to do the work.

What is proposed is a review, followed by an appeal process. We would have to allow time for that, working backwards from booking the contractor in April, so, instead of deciding on the work in March, we will have to decide on it two or three months earlier, or even as early as October or November. The budget will inherently be less accurate, because we will not know at that point what damage will be done to the pow over the winter months. We will also not know whether there will be an appeal. Therefore, we will have to include in the budget a provisional sum for winter damage and for a potential appeal. When we get to spring, we will know whether an appeal has been made and what damage has been done over the winter, at which point we will be able to confirm the work to be done.

11:30

Alastair McKie: The commissioners have been reflecting on the preliminary stage report and, indeed, the preliminary stage debate, and whether it would be possible to offer additional protection. I will unpack that for you, and you may have questions afterwards.

What may be possible—I stress that this is not the commissioners' preference, because they think that the proposal that we have on the table involving 10 heritors is adequate—is to introduce a right of appeal for any heritor. A heritor could lodge an appeal if the draft annual budget were to exceed, for example, three times the index-linked £20,000 annual assessment. Therefore, if the budget were to increase to £60,000, a heritor would have an automatic right to appeal against the budget to an independent commissioner. Although that would not quite be a cap, it would be similar to a cap.

Mr Davies's charge under a £20,000 budget would be £51; if that tripled, he would have an

automatic right individually to a right of appeal to have the matter looked at, to see whether the budget was acceptable in terms of the legislation and in the judgment of the independent commissioner. We are using that £20,000 budget figure as the benchmark—as the base—but the amount would be index linked. Therefore, the bill will go up and, in that example, the amount would be three times the index-linked figure.

In effect, there would be two rights of appeal—one would be for the 10 heritors, who could appeal whatever the budget is set at; the other one would be for individual heritors, who could appeal if, for example, the budget increased threefold. As I say, that would not be our preference, but those two rights of appeal could operate in combination. We have reflected on the matter, and I know that you feel strongly about rights of appeal. We are certainly open to discussing the matter further if you have questions about the issue.

That is all that I have to say in presenting our case. We would welcome any questions from Mr Davies, or from members.

Jo Guest: I make a supplementary point: from a practical point of view, we have used the same contractor—it has been the same person—to do the work on the pow for the past 30 years. He does an excellent job—he pretty much does all the land drainage for the farms in the surrounding area, he knows all the farmers, he is totally trustworthy and his charges are very reasonable.

I am worried that, if we have to go out to tender every time, we would lose that continuity and the intimate knowledge of how the pow works. We would have someone in for a year, but we would not know whether he would be there the following year. There is a lot of interaction with the local farmers to get access to the pow and to make practical day-to-day arrangements. If we have a contractor who does not know all the local farmers and other people, we might save a few quid on the cost of the work, but there would be a lot more time and expense spent supervising the work and making sure that it was done properly and did not upset all the farmers.

The Convener: I thank Mr Guest and Mr McKie for their comments. I invite Mr Davies to make any comments, or to put any questions that he has to the promoters.

Tom Davies: I have a few questions to ask. The charge is for those who benefit from the pow. In relation to the Balgowan estate, who releases water into the pow?

Jo Guest: The Manor Kingdom development drains to the wastewater treatment works. I think that the original idea was that the development was going to be common property, like the open areas in the development. It is rather like a block

of flats where the external walls and the stairway are in the common ownership of the people who own the individual flats. My understanding is that that was the intention when Manor Kingdom started the development and that the open spaces and common areas of the development, including the wastewater works, would be under the common ownership of all the householders. I think that there was originally a deed of conditions.

Alastair McKie: Yes, there was.

Jo Guest: That is what is reflected in your title, Mr Davies. What happened was that, once Manor Kingdom built all the houses, it just wanted out, so it offloaded the development to an organisation called Greenbelt, which was given a lump of money that in theory lasts for ever and covers the cost of running the treatment works and maintaining the common areas for ever—we hope.

Tom Davies: So who releases water into the pow?

Jo Guest: It is from that wastewater treatment works.

Hugh Grierson: I will go further. The wastewater treatment works releases its sewage effluent into the pow, but I believe that every house releases its own drainage water into the pow.

Tom Davies: How do they do that?

Hugh Grierson: Through the drains.

Tom Davies: So when the water leaves my property and goes into the drains, who owns the land through which those drains flow?

Hugh Grierson: Are you asking me who owns the land between your house and the pow?

Tom Davies: Yes.

Jo Guest: I think that it will be in common ownership in the same way as the ownership of the green area in the middle of the development.

Hugh Grierson: I do not think that you can lose responsibility for your drainage water, Mr Davies, just because it passes through someone else's land. Lawyers can correct me, but I do not think that that means that it is not your drainage water.

Tom Davies: That is not necessarily my question. Who owns the land from which the water is released into the pow?

Hugh Grierson: You own the land from which the water comes. You release it.

Tom Davies: I do not release anything into the pow. It goes from the sewage treatment works.

Hugh Grierson: You release it from your property and it ends up in the pow.

Tom Davies: But it does not go directly into the pow from my property; as I understand it, the water goes to the sewage treatment works.

Jo Guest: That is right.

Tom Davies: I do not know where it goes after that.

Jo Guest: I can tell you that it goes into the pow.

Hugh Grierson: The old drains in the ground on which your property is built will not go to the sewage treatment works; they will go straight to the pow.

Tom Davies: I doubt that the old land drains are still functioning.

Hugh Grierson: They are everywhere else.

Jo Guest: There are two pipes: one from the wastewater treatment works into the pow and another one that goes into the Cowgask, which runs into the pow. Those are two large pipes.

Tom Davies: It appears that you are not entirely clear about who releases water into the pow, but it is my understanding that the owner of the treatment works releases water into the pow.

Jo Guest: I am not sure whether the owner of the treatment works is Greenbelt or the house owners who have common ownership of the whole thing.

Tom Davies: It is a bit disappointing that you do not know who releases water into the pow.

Hugh Grierson: Legally, we know who benefits from the water being released into the pow, and that is what is legally important.

Tom Davies: I am not sure. I think that what is important is who actually benefits.

Hugh Grierson: Why do you think that? We are with you on benefit.

Tom Davies: Who actually benefits? Who releases water into the pow?

Hugh Grierson: Those are two different things. You have been trying to separate the two. We are happy for the people who benefit to be charged. You are now trying to say that you do not directly benefit because the water goes through a drain that someone else owns before it gets to the pow, and that seems a bit spurious to us.

Tom Davies: I do not agree that it is spurious. A landowner has to receive the water that comes from upstream of their property. For example, if the sewage treatment works was a community sewage works and the sewage was all transported away and disposed of elsewhere—which it could be, for all I know—it would not release anything into the pow.

Jo Guest: On that basis, the whole pow would be maintained by the landowner who owns the land at the bottom, where it runs into the River Earn, would it not?

Tom Davies: Yes, but it is all about benefit.

Jo Guest: Exactly.

Tom Davies: I do not believe that I receive any direct benefit, because water passes from my property to what is under someone else's ownership: the treatment works. I understand that those treatment works are owned by Bett Homes—I do not understand exactly what happened to Manor Kingdom, but Bett Homes now owns the treatment works. That might be new information to you but, because of that, I imagine that it is Bett Homes that releases anything into the pow.

Hugh Grierson: We do not do drainage; we enable drainage. We dig a bigger hole so that your drains can work.

Tom Davies: But—

Hugh Grierson: Our hole is still there, and you are benefiting from it.

Tom Davies: It is not my drain, though. I do not release—

Hugh Grierson: Well, that is where we have got to. That is the nub of the matter. You might be correct in saying that it is not your drain, but I do not think that that gets around the issue of your benefit.

Tom Davies: I think that it entirely does. I do not think that I should have to pay for someone else's direct benefit.

Jo Guest: If the pow were not maintained and those outfalls blocked up, your house would not be worth a lot, because you would have no drainage.

Tom Davies: That might be a point, but I do not think that it is entirely relevant.

Jo Guest: It is perfectly relevant.

Tom Davies: The person or organisation that actually releases water into the pow is the one that directly benefits.

Jo Guest: When the Manor Kingdom development started, we wanted to raise a single assessment against Manor Kingdom and let Manor Kingdom deal with the householders, who would all pay a service charge. That would have been much simpler for us, as we would have had to do one assessment instead of 54. That was our preference, but Manor Kingdom would not do that, which is why we have to deal with 54 individual people.

Tom Davies: It is obvious that you are not exactly clear about who releases water into the pow, who owns the land and who owns the infrastructure. It is concerning that the bill has got to this point and it is not clear who releases water into the pow. My point is that the one who releases water directly into the pow is the one who benefits and is therefore the one who should be charged. That charge might be passed on to a third party, but that is another point.

Jo Guest: It will not do it. We have already asked for that arrangement. We asked Manor Kingdom to do that years ago, but it would not agree to that. As I said, we wanted to make a single charge to whoever was going to be factoring all the common parts of that development, and we wanted them to deal with the individual householders, but Manor Kingdom would not agree to that.

Tom Davies: That is disappointing, but that is a historical point.

Jo Guest: That is why we have to deal with all the individuals.

Tom Davies: Under the current act.

Hugh Grierson: There are houses uphill from you. Do you accept that you are responsible for their drainage water because it goes under your house to get to the pow?

Tom Davies: It depends what you mean by drainage, because some water will flow into the groundwater under the property. Drainage from the rooftops will go into the communal drainage system, I assume. If we are going to get down to how much surface water is contributed through my garden and how much is contributed from someone else's garden, we will be discussing very minimal amounts of liquid, because you will have to factor in the transpiration and the interception that occurs through the vegetation in my garden.

My point is that all the water that hits my roof goes into the drains and on to someone else's land. I do not own that land and I do not know what they do with it. All the foul water goes out of my property and into someone else's land, and I do not know what they do with it.

Alastair McKie: We are having quite an interesting academic discussion about whether your property is or is not benefited. However, in your letter of objection, you state:

"I have however, come to understand the purpose of the Pow and its history and I understand and accept I have to contribute towards its maintenance."

May we agree that, when you made that statement, you must have had it in your mind that you were, in some way at least, benefiting from the pow? If you did not, you would not have

accepted that and would not have said that you were prepared to contribute to its maintenance.

Tom Davies: Thank you for repeating my objection. Earlier today—perhaps I was not clear—I stated that I have since come to a different position to the one that I expressed in my original objection. I have come to the conclusion that I do not directly benefit and that my property should not be in the benefited land. I appreciate that that is different from what I said in my original objection and that it is arguable that I should have given that point greater consideration at the time.

I do not agree that my property benefits directly from the pow, because there is no direct relationship with the pow.

Alastair McKie: We will have to disagree.

Tom Davies: I will move on to another question. In relation to flooding, I went through various documents in relation to flooding. Would it be worth quoting them again, given that they are already on record?

The Convener: You may quote them again if you wish.

11:45

Tom Davies: On 13 January 2015, McCash & Hunter sent me a letter explaining that

"The Pow Commissioner's charge is levied for the purpose of ensuring the Pow Burn is cleared and dredged so as to prevent flooding of the lands in this area."

The letter goes on to say:

"Your property benefits from these works, in the absence of which you will be at risk of flooding".

The note for the heritors' meeting at Gask hall on 2 March 2015 says:

"It is therefore vitally important that the Pow is maintained to prevent flooding in this area."

The consultation paper that was prepared by the Pow of Inchaffray commissioners in May 2016 repeats that line. It states:

"It is therefore vitally important that the Pow is maintained to prevent flooding in this area."

The promoter's memorandum to the bill, which was submitted to the Parliament earlier in 2017, also says:

"It is therefore vitally important that the Pow is maintained to prevent flooding in this area."

Even on the site visit, we had a brief dialogue about flooding, which was captured in the notes.

Jo Guest: It is quite clear that flood alleviation is a side benefit of the drainage commission. When the Manor Kingdom development was under consideration, Manor Kingdom's flood consultants, Arup, came to see me. I showed them the plans,

which showed the regrading of the pow under Balgowan bridge. They were very interested in the longitudinal section that shows it all in great detail. It is interesting that the outfalls from the waste water treatment works and the surface water outfall are set at levels that they could not have been set at had those regrading works not been carried out by the commission.

Tom Davies: Thank you for that. My question is this: if flooding is a side or minor issue—I believe it is even less than a side issue, because no evidence has been provided to support the statement that flooding is an issue—why has it been stated several times that it is “vitaly important” that the work of the commission is carried out to prevent flooding in the area?

Jo Guest: There are quite large areas of agricultural land in the benefited area that flood in bad weather. However well we maintain the pow, we will not be able to prevent them from flooding. Nevertheless, they can be drained, because the pow is deep enough to allow drainage. I have such fields on my farm. They flood in bad winter weather and I would not dream of growing winter crops on them. However, I can grow spring crops on them because they can be drained.

Tom Davies: I accept that in respect of agricultural land. However, the note for the heritors’ meeting says that the benefit relates specifically to the Balgowan sawmill residential site:

“In addition, the Commission’s work has made residential development possible in some areas such as the former Balgowan Sawmill Site. It is therefore vitaly important that the Pow is maintained to prevent flooding in this area.”

The linking of those two sentences suggests to me that the commission is saying that it is vital to undertake the work to prevent flooding on the Balgowan site.

Hugh Grierson: I stand by that. We are clear in the legal documents that the service that is provided is one of drainage. The reason that I pay the drainage bills is to prevent flooding. I believe that your site would flood if we were to undo the 1,000 years of drainage. I believe that the reason that you should pay for it is also to prevent flooding.

Tom Davies: Those are two separate things. We are past those 1,000 years of drainage work. We are where we are with respect to the pow and its current state. That is history.

Hugh Grierson: No. The pow requires maintenance to preserve it.

Tom Davies: The work that was undertaken on the pow is history.

Hugh Grierson: No, it goes on every year—at least, we would like it to go on every year. If we stop that work, the land will revert to its original state.

Tom Davies: The original state of 1,000 years ago?

Hugh Grierson: Yes.

Jo Guest: If you look down the valley, you will see that, until you get to the Balgowan development, all the houses are above the area of the plan—and for very good reason.

Tom Davies: I understand that, but I am not talking about the other houses; I am talking about my house.

Jo Guest: Your house is in the benefited area, but all the houses at that time were built above the benefited area.

Tom Davies: Yes, but it was built on higher ground. Do you have any evidence to say that flooding is an issue for my house?

Hugh Grierson: No. The evidence is that you benefit from the drainage.

Tom Davies: Flooding is not the issue.

Hugh Grierson: It is not the legal issue. However, if I were you, I would be very concerned about flooding, too.

Tom Davies: I am not very concerned, because there is no evidence that flooding is an issue.

Hugh Grierson: What evidence do you want—water in your home?

Tom Davies: The SEPA map supports my point, but it is an assessment, a model. There is still no evidence to support the statement that flooding is an issue. Has there been a hydrological assessment of the catchment and the potential flooding by a relevant expert?

Hugh Grierson: Of course not.

Tom Davies: It has been stated several times that

“It is ... vitaly important that the Pow is maintained to prevent flooding in this area”—

which, it is fair to assume, includes my house—but there is no evidence to support that. Flooding has been identified as a minor issue. There has been no hydrological assessment. As Jo Guest says, it is a side issue.

All my neighbours and I have been under the impression, from the documentation, that flooding is an issue, although I have maintained my position from the outset. If flooding is not an issue, why does the documentation repeatedly say that it is “vitaly important” that it is prevented?

Flooding is an emotive issue. We see pictures of people's houses flooded on the news and think, "I don't want that to happen to my house." However, there is no evidence whatever to support the statement that

"It is ... vitally important that the Pow is maintained to prevent flooding in this area."

We do not know how people would have reacted to the bill if that statement had not been included in the consultation documents at the outset.

I am surprised that it is still being maintained that it is "vitally important" that the pow is maintained to prevent flooding, because there is no evidence to support that.

Alastair McKie: I will answer your question, at least in part. On flood risk mapping, one of the conclusions in the preliminary stage report is:

"The Committee also notes the comments from the Scottish Environment Protection Agency which indicate that its flood risk mapping should not be used to assess the land which benefits from the Pow."

Another conclusion that was reached is:

"Having visited the area in question, the Committee is satisfied that the drainage the Pow provides is essential for the drainage of surface water and waste for the houses in the Balgowan area."

Tom Davies: That is a helpful clarification, but the point that SEPA makes about benefit from the pow is different from the point about flooding. SEPA is not saying that the land might be at risk from flooding; its point about its map is a different one.

I submit that all the documentation has indicated to me and my neighbours that our houses will flood if the pow is not dug.

Jo Guest: When representatives of Ove Arup came to see me, they were very interested to know that the regrading works that we had carried out would be maintained.

Tom Davies: There is no evidence to support what has been said. It is not in the bill.

Jo Guest: Why should it be in the bill?

Tom Davies: Because you said that it is "vitally important" to prevent flooding in the area. If it is of vital importance, why is it not in the bill?

Jo Guest: We have an obligation to maintain the pow as a proper drain.

Tom Davies: I am not saying that it is in any way deliberate, but I think that some of the wording is a little misleading.

Jo Guest: I do not think so. We are trying to update the Pow of Inchaffray Drainage Act 1846, which states in its preamble that it is for better

"draining and improving Lands adjacent to the River or Stream called the Pow of Inchaffray".

It does not talk about flooding; it talks about better draining.

Tom Davies: You have maintained that it is

"vitally important that the Pow is maintained to prevent flooding in this area."

Jo Guest: The 1696 act—the Act in favours of the Heritors adjacent to the Pow of Inchaffray—says exactly the same thing.

Tom Davies: Then why is it being repeated that it is

"vitally important to prevent flooding in this area"

if that is not in the 1696 act or the 1846 act and will not be in the 2018 act—or whenever the bill passes?

Hugh Grierson: Primarily because we cannot actually prevent flooding. We can drain as much as we want, but we cannot promise in the bill that there will be no floods. We cannot promise that in an act of Parliament; we believe that it will happen anyway, to a certain extent. What we will do is work as hard as we can to improve the drainage. Thereby, as a free benefit, we all get what we need, which is freedom from flooding.

Tom Davies: My point is that those are misleading statements. I do not think that that is deliberate; I simply make the point that we do not know how heritors would have reacted to the bill and the so-called consultation that you undertook prior to introducing it if the flooding statement had been removed—if the bill specified that it was about drainage and that flooding was not an issue. That has undermined much of the process to date.

Alastair McKie: The promoter disagrees.

Tom Davies: I accept that. I will move on instead of labouring that particular point. Do we have a timeframe for the conclusion of the evidence session?

Alison Harris (Central Scotland) (Con): An hour ago. [*Laughter.*]

Tom Davies: An hour ago, was it? I will look at the questions that I have prepared. I do not want to make points just for the sake of it.

Making my final points in summing up, rather than continuing to question, might be a quicker way to get to what I wish to state. Would that be okay?

The Convener: Yes. Thank you, Mr Davies. I invite the promoters to make any final points that they wish to make in summing up.

Alastair McKie: Thank you, convener. I will be brief. In the promoters' view, benefited land is

properly identified on the parliamentary plans that are before you.

In terms of fairness and proportionality, the promoters maintain their position that the basis for charges under the pow bill—an annual assessment—is fair and equitable across all the different categories of land: agricultural, woodland, amenity, commercial and residential. Those are the categories of land that benefit directly from the pow.

As the commissioners are all heritors, they will continue to have a strong and vested interest in avoiding unnecessary expenditure and in minimising the level of the annual assessment.

It is considered that the rights of appeal review that were suggested by the commissioners, and indeed the new right that I announced today, are both present and proportionate and have regard to the unique circumstances of the commission.

The Convener: Thank you. I invite Mr Davies to make some closing remarks.

Tom Davies: Having listened to the points that have been made today, I maintain that the proposed bill is unfair, disproportionate and lacking in any evidence base. It will confer significant power on to a small group of landowners who are very much the minority of those who are covered by the bill.

I believe that my property should be removed from the benefited land because I do not discharge anything into the pow, nor does it provide any flood mitigation benefits to me. I do not own any of the systems that discharge water into the pow, so why should I be charged?

The balance of power in the bill is wrong. The promoters should reassess the mechanisms to protect heritors and ensure transparency and value for money, and they should stop significant annual charge increases.

I will make a couple of supplementary points. I presume that the pow was maintained in good order prior to the construction of the Balgowan estate, yet it seems that a tremendous amount of income is derived from the properties at Balgowan under the previous assessment, and there has been no new assessment of the impacts of Balgowan. Therefore, I consider the bill to be disproportionate.

I presume that, prior to Balgowan being built, the pow was managed and maintained correctly. Balgowan was then built, and, although it has had an impact and the charge should be resolved for that impact, Balgowan's charge has been set at 40 per cent of the total bill, which is disproportionate to the benefit that Balgowan receives.

Secondly, there has been no assessment of the actual relationship between the pow and the land of the differing land ownerships. For example, the Balgowan estate benefits in some way and inputs in some way, but a farmer benefits greatly because of the pow's potential to remove flood water from their property and their impact on the pow is very significant. We have also not considered the intensive ploughing work that takes place in the catchment. When ploughing takes place and there is significant rainwater, silt is washed into the pow, and I would argue that the most significant costs for the maintenance work on the pow are for digging out that silt. Therefore, farmers both benefit from and impact the pow the most, and no proper assessment has been made of that.

Lastly, the consultation process that was undertaken prior to the introduction of the bill was poor. I asked whether any changes to the bill had been made as a result of the consultation and for a record of the comments that were made. However, as of today I have not received any of that information. I can only assume that the bill that has been introduced to Parliament is exactly the same as the one that the commissioners drafted prior to the consultation being undertaken.

I conclude my summing-up on that point.

The Convener: Thank you very much, Mr Davies. On behalf of the committee I thank everyone for attending today. The next meeting of the committee will be on Wednesday 17 January 2018 at 10 am, when it will be for the committee to consider the objections to the bill and its consideration report.

It just remains for me to wish everyone a happy Christmas and a very good new year.

11:59

Meeting continued in private until 12:37.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba