

GLASGOW AIRPORT RAIL LINK BILL COMMITTEE

Tuesday 14 November 2006

Session 2

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GLASGOW AIRPORT RAIL LINK BILL COMMITTEE

† 13th Meeting 2006, Session 2

CONVENER

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

DEPUTY CONVENER

*Marlyn Glen (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

Michael Matheson (Central Scotland) (SNP)

*Mr Brian Monteith (Mid Scotland and Fife) (Ind)

*attended

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 3

† 12th Meeting 2006, Session 2—held in private.

Scottish Parliament

Glasgow Airport Rail Link Bill Committee

Tuesday 14 November 2006

[THE CONVENER *opened the meeting at 13:00*]

The Convener (Margaret Jamieson): Good afternoon. I welcome the press and public to the 13th and final meeting of the Glasgow Airport Rail Link Bill Committee. I ask everyone present to ensure that their mobile phones and pagers are switched off. We have apologies from Michael Matheson and Marlyn Glen has agreed to move the amendments in his name.

The only item on the agenda is the second phase of the consideration stage of the Glasgow Airport Rail Link Bill. We will consider and process all the admissible amendments to the bill that have been lodged.

The procedures that we will follow are similar to those that are followed at stage 2 of a public bill, except that it is only members of the committee who may lodge amendments and participate in the meeting. The 35 amendments that have been lodged fall into three broad categories: those that arise from issues that were highlighted in the committee's consideration stage report; minor or technical amendments that have been provided by the promoter and lodged on its behalf by a member of the committee; and amendments that arise from the discussions that were held on the committee's behalf between the clerks, our legal adviser and the promoter.

Glasgow Airport Rail Link Bill: Consideration Stage

Sections 1 and 2 agreed to.

Schedule 1

SCHEDULED WORKS

13:01

The Convener: Amendment 1, in the name of Andrew Arbuckle, is grouped with amendment 21.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): In its evidence to the assessor, Renfrewshire Council was concerned that there was ambiguity about whether a viaduct was covered by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223). Amendments 1 and 21

are designed to remove any doubt about that. They will ensure that the council has input to the specification and design of the viaduct through the prior approval process.

I move amendment 1.

Amendment 1 agreed to.

Schedule 1, as amended, agreed to.

Section 3 agreed to.

Schedule 2 agreed to.

Sections 4 to 9 agreed to.

Schedule 3 agreed to.

Section 10—Discharge of water

The Convener: Amendment 2, in the name of Andrew Arbuckle, is grouped with amendments 3 to 5.

Mr Arbuckle: Amendments 2 to 5 relate to controls over the discharge of water by the authorised undertaker.

Amendment 3 will delete section 10(6), which refers to statutory provisions that have been repealed since the bill was introduced. The authorised undertaker will still be obliged to comply with the general law on discharges into watercourses.

Amendment 5 will amend the definition of "public sewer or drain" to recognise that bodies other than Scottish Water or a roads authority may have rights over sewers and drains. Similar drafting improvements were made to the equivalent provisions in the Edinburgh Tram (Line One) Bill and the Edinburgh Tram (Line Two) Bill.

Amendment 4 will ensure that the permissions that are granted in section 10 will be subject to European Community law on the regulation of controlled activities. Controlled activities must be authorised by the Scottish Environment Protection Agency before they are carried out.

Amendment 2 merely proposes a change of emphasis and reflects the wording of earlier bills.

I move amendment 2.

Amendment 2 agreed to.

Amendments 3 to 5 moved—[Mr Andrew Arbuckle]—and agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

Schedule 4 agreed to.

Section 12—Authority to acquire land

The Convener: Amendment 6, in my name, is grouped with amendments 7 and 10. When we

considered the assessor's report and evidence in relation to the objector CGM (Oswald) Ltd, we noted that the promoter stated in evidence that it no longer required to acquire permanently those parts of plot 45 that are occupied by the objector.

Taken together, amendments 6, 7 and 10 make the necessary changes. Amendment 6 will restrict the promoter's powers of compulsory purchase under section 12 of the bill, within the area leased by the objector, to the air space only. That space is required to allow the roof and pillars to be strengthened to protect the new platform for airport trains. Amendment 10 will permit the promoter to take temporary possession of CGM's land to be used as working space and access for construction purposes. Amendment 7 amends section 14 to permit the promoter to acquire rights of access to CGM's property for the purpose of maintaining its works.

I move amendment 6.

Amendment 6 agreed to.

Section 12, as amended, agreed to.

Section 13 agreed to.

Section 14—Purchase of specific new rights over land

Amendment 7 moved—[Margaret Jamieson]—and agreed to.

Section 14, as amended, agreed to.

Schedule 5 agreed to.

Section 15 agreed to.

Section 16—Temporary use of land for construction of works

The Convener: Amendment 8, in the name of Andrew Arbuckle, is in a group on its own.

Mr Arbuckle: Amendment 8 removes some unnecessary words from section 16(7). As currently drafted, the subsection makes it clear that it does not restrict the application of section 20, which is concerned with ensuring that compensation cannot be paid twice for the same loss. However, sections 16(7) and 20 are standalone and therefore the words to be deleted are unnecessary. They add nothing to the effect of the provision and can be safely removed.

I move amendment 8.

Amendment 8 agreed to.

The Convener: Amendment 9, in the name of Andrew Arbuckle, is in a group on its own.

Mr Arbuckle: Section 16(8) provides that the promoter does not require to compulsorily purchase land when it needs only to take

temporary possession, even if it also needs to acquire rights over the land, such as access rights. On closer consideration, it became clear that there is no overlap between the land that the promoter can acquire outright and the land of which temporary possession can be taken. The promoter has the power to acquire such rights under section 14, so section 16(8) is not necessary. Deleting it tidies up the drafting of the bill without in any way altering the promoter's powers.

I move amendment 9.

Amendment 9 agreed to.

Section 16, as amended, agreed to.

Schedule 6

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Amendment 10 moved—[Margaret Jamieson]—and agreed to.

Schedule 6, as amended, agreed to.

Sections 17 to 23 agreed to.

Section 24—Further powers of entry

The Convener: Amendment 11, in the name of Marlyn Glen, is in a group on its own.

Marlyn Glen (North East Scotland) (Lab): Section 24 allows the authorised undertaker to take entry on to land without first complying with the provisions of the Lands Clauses Consolidation (Scotland) Act 1845. That act requires that an undertaker taking early entry on land must pay compensation on the terms provided in that act. Amendment 11 makes it clear that the more modern provision under which compensation on early entry can be addressed applies, namely section 48 of the Land Compensation (Scotland) Act 1973. Amendment 11 does not change the existing position under the bill, but has been produced for clarification only, given the complexity of compensation provisions. It also ensures that the bill does not contravene a landowner's human rights in relation to compensation.

I move amendment 11.

Amendment 11 agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Section 26—Period for compulsory acquisition of land

The Convener: Amendment 12, in the name of Marlyn Glen, is grouped with amendments 13 and 14.

Marlyn Glen: These amendments introduce control over the maximum period within which the promoter can compulsorily acquire land under the bill. Under the bill as drafted, the promoter has the power compulsorily to acquire land and rights until a date 10 years after the act comes into force. Several objectors were concerned that that period was too long and created uncertainty for them. The promoter, however, pointed to other projects, notably the reopening of the Larkhall to Milngavie line, to demonstrate that the period of 10 years was required.

The promoters have repeatedly stated that the target for the opening of the Glasgow airport rail link line is 2011. In our consideration stage report, we agreed that 10 years was appropriate but that, after five years have elapsed without the compulsory purchase powers being exercised in relation to all land, the authorised undertaker should be required to seek an order from the Scottish ministers to extend the allowable period. The maximum length of extension is restricted to a total of five years, leaving the theoretical maximum period unchanged at 10 years. The requirement to seek any extension of the initial period by order should, I hope, encourage the promoter to work towards the initial five-year deadline.

I move amendment 12.

Amendment 12 agreed to.

Amendment 13 moved—[Marlyn Glen]—and agreed to.

Section 26, as amended, agreed to.

After section 26

Amendment 14 moved—[Marlyn Glen]—and agreed to.

Section 27 agreed to.

Section 28—Correction of errors in Parliamentary plans and book of reference

13:15

The Convener: Amendment 15, in the name of Brian Monteith, is in a group on its own.

Mr Brian Monteith (Mid Scotland and Fife) (Ind): The bill will authorise the compulsory acquisition of land as shown on the plans and sections and as described in the book of reference. A minor mistake in a description in one document might result in it being inconsistent with the other, which might in turn prevent proper identification of land that is to be compulsorily acquired. The new section that amendment 15 will insert should ensure that implementation of the bill, if enacted, is not prevented by such errors.

Amendment 15 will also provide a mechanism for amendment of the plans, sections or book of

reference to reflect any agreement that is reached with landowners to limit the land that is to be taken under the bill. The effect of such amendment would be that the powers of compulsory purchase in the bill would no longer apply to the land that was identified in the amended documents. Amendment 15 will make changes similar to those made to earlier works bills by their committees.

I move amendment 15.

Amendment 15 agreed to.

Section 28, as amended, agreed to.

Section 29—Restrictions on compulsory purchase in respect of operational airport land

The Convener: Amendment 16, in the name of Marlyn Glen, is grouped with amendment 17.

Marlyn Glen: Amendments 16 and 17 will replace the existing provision for the protection of Glasgow Airport Ltd. Section 29 was designed to provide safeguards for the airport in relation to the exercise of the powers of the bill over its land. As it stands, it would give the airport operator powers to require protections to maintain the airport's safe operation. After extensive discussions between the parties, it was agreed that the protection should go further and should cover the operation of the airport as well as its safety. A practical example of how that could apply relates to the fuel farm, which is to be relocated. The demolition of the fuel farm would not necessarily affect the safe operation of the airport, but it would prevent the airport from operating if a replacement was not immediately available. The amendment to section 29(1) will thus protect the wider interests of the operation of the airport.

The first of the new subsections that amendment 17 will insert into section 29 will require agreement to be reached—either by negotiation between the parties or, should that fail, by arbitration—before the authorised undertaker may take possession of any land or commence any works. Of course, we all hope that agreement on such matters will be reached without the need for arbitration. The second new subsection will introduce a leasing option as an alternative to compulsory purchase. Although leasing was always an option, under the Abolition of Feudal Tenure etc (Scotland) Act 2000, the maximum lease would be 175 years. Amendment 17 will increase that period to a maximum of 250 years.

Finally, the revised section 29 will cover the possibility of another company taking over the operation of Glasgow airport. If that happened, the protections that are afforded by section 29 would be available to the new operators by virtue of the third new subsection that amendment 17 will insert. I confirm that I will move the amendments with the agreement of both parties.

I move amendment 16.

Amendment 16 agreed to.

Amendment 17 moved—[Marlyn Glen]—and agreed to.

Section 29, as amended, agreed to.

After section 29

The Convener: Amendment 18, in the name of Michael Matheson, is in a group on its own. The amendment will be moved by Marlyn Glen.

Marlyn Glen: Amendment 18 was sought by Renfrewshire Council to ensure that public access to the football pitches on both sides of St James park is maintained once the park is bisected by the viaduct. Plots 76 and 83 are on the line of the viaduct as it crosses the park, with plot 75 being the part of the park to the north of the viaduct and plot 78 the part to the south. Amendment 18 will require the promoter, when it compulsorily acquires plots 76 and 83, immediately to grant pedestrian and vehicular access across the plots. That right endures for as long as there are football pitches on the park.

Subsection (4) of the new section that amendment 18 will insert recognises that it might be necessary to restrict those rights temporarily to protect the works and the railway's operation, provided that suitable alternative rights of access are made available. Under the same amendment, the promoter may also restrict the nature of vehicles that may pass under the bridge.

I move amendment 18.

Amendment 18 agreed to.

Section 30 agreed to.

Section 31—Powers of disposal, agreements for operation etc

The Convener: Amendment 19, in the name of Brian Monteith, is grouped with amendment 31.

Mr Monteith: The amendments are technical amendments suggested by our advisers to bring the drafting into line with previous railway bills that the Parliament has approved. Section 31 allows for the powers granted by the bill to be transferred from the promoter, enabling the railway to be built and operated by some other body. Although Strathclyde partnership for transport is the promoter, it is not anticipated that it will operate the railway. The expectation is that the powers conferred by the bill regarding the completed railway will be transferred to Network Rail as the national rail infrastructure operator.

If required, I can provide members with a detailed description of the new section that amendment 19 will insert—do not tempt me;

otherwise I will restrict my comments to three of the subsections.

Subsection (3) of the new section improves the drafting of the provision that it replaces, making it clear that any restrictions, liabilities or obligations on the promoter or any other authorised undertaker will be equally binding on any subsequent authorised undertaker. That applies whether the restriction, liability or obligation was under the bill or by way of an undertaking or commitment given before or after the bill receives royal assent.

Subsection (4) maintains the requirement to notify the Scottish ministers within 21 days of the details of any transfer to another of the responsibilities and rights.

Subsection (6) gives the authorised undertaker greater flexibility regarding the range and content of agreements that will come under the section. That is necessary, given the complexity of the contractual arrangements that will have to be put in place in order to build the railway.

The new section mirrors the drafting of equivalent sections in recently introduced private bills, such as the Edinburgh Airport Rail Link Bill and the Waverley Railway (Scotland) Bill. The wording of the section is considered to be an improvement on the existing provision in the bill.

Amendment 31 amends section 43, "Interpretation", to update the name of the promoter, which has changed since the bill was introduced.

I move amendment 19.

Amendment 19 agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Schedule 7 agreed to.

Section 33—Arbitration

The Convener: Amendment 20, in the name of Brian Monteith, is in a group on its own.

Mr Monteith: Section 33 of the bill provides arbitration provisions. It has been suggested that the adjudication provisions in section 108 of the Housing Grants, Construction and Regeneration Act 1996 may apply in addition to the arbitration provisions of the bill. Amendment 20 states expressly that section 108 of the 1996 act will not apply in the case of disputes that the bill requires to be settled by arbitration. The amendment therefore removes any possible confusion that could have arisen over which dispute resolution procedure should be used to resolve disputes under the bill.

I move amendment 20.

Amendment 20 agreed to.

Section 33, as amended, agreed to.

Sections 34 and 35 agreed to.

Schedule 8 agreed to.

Section 36—Saving for town and country planning

Amendment 21 moved—[Mr Andrew Arbuckle]—and agreed to.

Section 36, as amended, agreed to.

Sections 37 and 38 agreed to.

Section 39—Certification of plans, etc

The Convener: Amendment 22, in the name of Brian Monteith, is in a group on its own.

Mr Monteith: Amendment 22 is simply a plain English rewrite of the process for obtaining and using certified copy documents in any future proceedings and does not affect the purpose, effect or intent of section 39.

I move amendment 22.

Amendment 22 agreed to.

Section 39, as amended, agreed to.

After section 39

The Convener: Amendment 23, in the name of Marlyn Glen, is in a group on its own.

Marlyn Glen: Amendment 23 is highly technical and is designed to address a problem with land registration. Members will recollect from the Title Conditions (Scotland) Act 2003 that servitudes are rights over land such as, for example, a right of access over land belonging to someone else. The amendment seeks to provide that a servitude acquired by the promoter under section 13 or section 14 of the bill will apply to all the land acquired under the bill. The amendment also avoids the need for dual registration, as servitudes created under the bill need be registered against only the land burdened by those servitudes.

I move amendment 23.

Amendment 23 agreed to.

The Convener: Amendment 24, in the name of Michael Matheson, is grouped with amendments 26 to 28 and 32 to 35.

Marlyn Glen: Both the assessor and the committee took evidence from objectors and the promoter on mitigating the effects that will inevitably arise during the scheme's construction and operation. We carefully considered the promoter's approach to controlling noise and

vibration, which was set out in the code of construction practice and in the noise and vibration policy paper that were submitted in written evidence. We took a lot of evidence on environmental issues and concerns and our careful scrutiny of the promoter's environmental statement included seeking advice on its terms from our external adviser.

Although we broadly welcome the promoter's commitments in all those documents, we are aware of objectors' concerns about, for example, construction noise monitoring. As a result, we stated in our consideration stage report that we would amend the bill to make specific reference to the various documents.

Contractors must now apply the standards of mitigation set out in the code of construction practice, the noise and vibration policy and the environmental statement. Moreover, any subsequent revisions to the latest versions of the code of construction practice and the noise and vibration policy will not be permitted to reduce the standards of mitigation that are detailed in those documents. The latest versions include all the changes that we sought in our consideration stage report, which cover matters such as construction hours; more local noise monitoring; an enhanced role for local liaison groups and community councils in commenting on proposed road closures; and the commitment to upgrade the football pitches at St James park as well as to provide two new football pitches at Ferguslie park prior to closing any pitches at St James park.

The code of construction practice is now a much more robust document than it was originally and reflects many concerns that were expressed by objectors about the day-to-day impact of the railway's construction.

The practical effect of the amendments in this group is to give the documents enforceability and to ensure that failure to comply will result in the local authority being able to enforce compliance in the same way that it can enforce any planning condition. The amendments seek to ensure that the minimum standards that have been set must be met.

It might assist the committee if I provide a little detail on how the amendments work in practice. Amendment 24 seeks to meet the requirements that we sought in our consideration stage report. After considering the evidence, we agreed that it was imperative that the railway's environmental impact is no worse than the residual impact identified in the bill's environmental documents. If impacts can be mitigated, such mitigation must be put in place. However, amendment 24 makes it clear that, as a minimum, the scheme's design, building and operation must reach the standards set out in the environmental statement.

That said, amendment 24 also gives the promoter flexibility in how the standards are met and should enable the benefits of good design and developing practices to be incorporated. If, due to technological advances, the railway is quieter than has been assumed in the environmental statement to the extent that specific noise mitigation measures are not required, the authorised undertaker is not obliged to institute any stated measures if the incorporated technological advances achieve the same, or better, end result on the level of noise. The inclusion of that requirement in the bill will ensure that the promoter must deliver what it promised with regard to environmental protection.

13:30

Amendment 24 also seeks to ensure that the standards embodied in specific pledges made by the promoter to objectors or to this committee are delivered. That means either that the proposed mitigation will be provided or that the standard of protection envisaged in the pledge will be met. Again, that will provide the promoter with the flexibility to include technological advances. For example, if the promoter has agreed to provide a noise barrier to reduce noise for a particular objector to an acceptable level, but it turns out that the same level of noise can be achieved with a quieter train, there will be no obligation on the authorised undertaker to provide the barrier as well.

As I have already said, extensive evidence from objectors and the promoter on mitigation proposals, especially on noise and vibration, was heard, particularly by the assessor. We carefully considered the promoter's approach to controlling noise and vibration as set out in its code of construction practice and its noise and vibration policy. Although we broadly welcome the promoter's commitments in these documents, we are aware of the concerns expressed by objectors about, for example, construction noise monitoring. We therefore stated in our consideration stage report that we would amend the bill to make specific reference to those two documents. As with the amendment on environmental monitoring, amendments 26 and 27 seek to make the code of construction practice and the noise and vibration policy enforceable. Failure to comply with those documents will result in the local authority being able to enforce compliance in the same way that it can enforce any planning condition.

Amendment 28 seeks to ensure that the minimum standards that we have agreed must be met and amendment 32 is a technical amendment that defines the term "code of construction practice", which is used in various sections of the bill.

Amendment 33 is a technical amendment that provides a definition of "the Committee", which is referred to in various sections of the bill. For example, amendment 24 refers to undertakings given to us or the assessor. The amendment will define "the Committee" as

"the Glasgow Airport Rail Link Bill Committee",

and ensure that the assessor who heard evidence on our behalf and reported to us is included within that definition.

Finally, amendments 34 and 35 add definitions of the Scottish Environment Protection Agency and Scottish Natural Heritage to the bill.

I move amendment 24.

Amendment 24 agreed to.

The Convener: Amendment 25, in the name of Andrew Arbuckle, is in a group on its own.

Mr Arbuckle: The committee heard evidence from objectors on the general question whether the promoter would be required to return land compulsorily acquired to the original owner in the event of it no longer being necessary for the scheme.

The Crichton Down rules set out the circumstances in which surplus land acquired compulsorily should, as a matter of good practice, be offered back to former owners. The committee is satisfied that the rules should be binding on the authorised undertaker in respect of land compulsorily acquired under the bill. The effect is that if such land or part of it is no longer required by the authorised undertaker for the scheme, the authorised undertaker will be obliged to offer the land back to the person from whom it was acquired.

Amendment 25 will ensure that the Crichton Down rules are applied by the authorised undertaker or its successors, which meets a commitment that we made in our consideration stage report.

I move amendment 25.

Amendment 25 agreed to.

Amendments 26 and 27 moved—[Marlyn Glen]—and agreed to.

After schedule 8

Amendment 28 moved—[Marlyn Glen]—and agreed to.

Section 40—Incorporation of enactments

The Convener: Amendment 29, in the name of Marlyn Glen, is in a group on its own.

Marlyn Glen: Section 40 applies specific provisions of the general law of compensation to land use under the powers contained in the bill. Incorporating those provisions is essential to ensure that compulsory purchase and land use under the bill operate on the same basis as other compulsory purchase and land use provisions in Scotland. Rather than repeat the content of four 19th century statutes, the bill applies the relevant provisions with reference to the specific statutes, which means that they become part of the bill. Section 40 also disapplies any provisions that are not relevant to the bill.

On a closer inspection by our legal office, it was suggested that sections 51 and 57 of the Railways Clauses Consolidation (Scotland) Act 1845, which deal respectively with obligations to repair damage to roads, and to bridges and so on over public roads, should be applied. The promoter agrees that that omission is an oversight, and amendment 29 applies both those sections, adding to the obligations placed on the promoter.

I move amendment 29.

Amendment 29 agreed to.

Section 40, as amended, agreed to.

After section 40

The Convener: Amendment 30, in the name of Marlyn Glen, is in a group on its own.

Marlyn Glen: Amendment 30 has been specifically requested by BRB (Residuary) Ltd, which objected to the bill on the basis that historic statutory liabilities would remain with BRBR despite land passing to the authorised undertaker. We agreed in our consideration stage report to make this amendment. The new section inserted by the amendment will take effect from the authorised undertaker's acquisition of land, or entry on to the land, whichever happens first. From that date, BRBR is discharged from any obligations that it may have in relation to that land, as imposed by any statutory provision relating to the former railway. The amendment ensures that responsibility for railway-related obligations and benefits that might have existed now rest with the authorised undertaker.

I move amendment 30.

Amendment 30 agreed to.

Sections 41 and 42 agreed to.

Section 43—Interpretation

Amendment 31 moved—[Mr Brian Monteith]—and agreed to.

Amendments 32 to 35 moved—[Marlyn Glen]—and agreed to.

Section 43, as amended, agreed to.

Section 44 agreed to.

Long title agreed to.

The Convener: That ends the committee's consideration of the bill at consideration stage. Before I close the meeting, I would like to thank my committee colleagues, who have spent much time in reading the documentation that came to the committee while we were going through consideration stage. I have found it quite difficult at times, and members have expressed concern about the level of detail that we have had to go into, given that we are not experts in the field. However, Professor Hugh Begg assisted us greatly as we went through the process. He assessed the evidence in a professional and diligent way, and I think that those members of the public who objected to the bill found it a helpful exercise. Professor Begg produced a comprehensive report for us to scrutinise, and I can tell him on behalf of my colleagues that we are all extremely grateful for that.

I also extend our thanks to the staff at Renfrewshire Council for their help, assistance and forbearance throughout the assessor meetings in Paisley. I also thank the clerks and legal advisers for their help. We would certainly not have found ourselves where we are today without their assistance. Even though the process was meticulously set out for us, we still had some difficulties, so I am extremely grateful to them.

I now close this, the final meeting of the Glasgow Airport Rail Link Bill Committee.

Meeting closed at 13:39.

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