PROCEDURES COMMITTEE

Tuesday 23 November 2004

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 23 November 2004

PROCEDURES COMMITTEE
15th Meeting 2004, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
*Mark Ballard (Lothians) (Green)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Mr Bruce McFee (West of Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Robin Harper (Lothians) (Green)
Tricia Marwick (Mid Scotland and Fife) (SNP)
Irene Oldfather (Cunninghame South) (Lab)
Mr Keith Raffan (Mid Scotland and Fife) (LD)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

John Dick (Kincardine Railway Concern Group)
Jackie McGuire (Clackmannanshire Council)
Mac West (Clackmannanshire Council)
Tara Whitworth (Jacobs Babtie)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 6

Scottish Parliament

Procedures Committee

Tuesday 23 November 2004

[THE CONVENER *opened the meeting at 10:16*]

Item in Private

The Convener (Iain Smith): Good morning, colleagues. We are a little light on numbers, but I am sure that others are on their way. We have apologies from Karen Gillon, who is on committee business elsewhere in the country. It is hoped that Irene Oldfather will attend as her substitute.

Agenda item 1 is consideration of whether to take in private item 3, which is on our continuing discussion of question times. Do members agree to that?

Mr Jamie McGrigor (Highlands and Islands) (Con): Is there a particular reason to take the item in private?

The Convener: We are still negotiating various aspects internally, particularly with the political groups, so we want to keep the discussion confidential until that negotiation is completed. We hope to be in a position to make decisions at our next meeting.

Mr McGrigor: Okay.

The Convener: Do members agree to take item 3 in private?

Members *indicated agreement*.

Private Bills

10:17

The Convener: Item 2 is on our private bills inquiry, for which two panels will give evidence. The first panel represents the promoter of a private bill—the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill. We welcome Jackie McGuire, who is the head of administration and legal services at Clackmannanshire Council; Mac West, who is the roads and transport development manager at that council; and Tara Whitworth, who is a technical director at Jacobs Babtie, which is the project manager and technical adviser to the promoter. I ask the witnesses to make a few opening remarks, after which members will ask questions.

Jackie McGuire (Clackmannanshire Council): As promoter of the first works act to be enacted by the Scottish Parliament, Clackmannanshire Council is pleased to be asked to give evidence to the committee on the Parliament's private bill procedure. The council is mindful that the committee has received written submissions from a range of parties and we do not wish to duplicate unnecessarily what others have said.

Our comments are limited to a small number of points that should be key in the committee's consideration of the bill process. It is fair to say that the views that we express are those of the council and not necessarily of the wider team that worked on promoting the bill.

Parliamentary standing orders should be amended to clarify the role of bodies such as the Scottish Environment Protection Agency, Scottish Natural Heritage and community councils in the bill process. Those bodies should be afforded the status of statutory consultees, as they are in the planning process by virtue of article 15 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992/224). The council is concerned about community councils, whose status as potential objectors is not clear in standing orders.

The preliminary stage of the bill process should be limited to consideration of whether a bill justifies close examination. All admissible objections, including those to the bill's general principles, should be dealt with at the consideration stage. The current procedure undoubtedly led to confusion among objectors to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, who entered the consideration stage believing that they still had an opportunity to object to the bill's general principles. Clarification of that would prevent expectations from being dashed at the consideration stage.

The requirement in rule 9A.2.3(d)(i) of standing orders that the promoter should notify

"persons … having an interest in heritable property affected by the Private Bill"

is insufficiently precise and leaves the onus on the promoter to take the initial decision as to whom to notify. In the absence of guidance, that is fair neither to the promoter nor to parties with a potential interest in a bill's effects.

The council supports the removal of the requirement that objections must be accompanied by payment of a £20 fee. Elected council members feel quite strongly about that. We understand that the fee is intended to dissuade frivolous or vexatious objections, but the council's view is that the fee amounts to a tax on the fundamental human right to object to interference with one's property rights. Moreover, the fee introduces discrimination between those who can and cannot afford to pay it. More effective ways of sifting out frivolous or vexatious objections exist. We understand that the committee has received comments on that aspect of the bill process from the Society of Parliamentary Agents.

As for alternative processes, the council does not support the introduction of a process such as the authorisation procedure under the Transport and Works Act 1992, because that procedure does not strike a sufficient balance between expediency and the equity, openness and accountability that should be associated with the Scottish Parliament.

The consideration stage process might be amended so that an appropriately qualified person or persons could take evidence on behalf of, and report to, the bill committee. However, we stress that we do not want erosion of the focus that the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee placed on the promoter and the objectors seeking to establish as much common ground as possible or of the restriction of oral evidence to matters that could not be agreed—that approach was of particular benefit to unrepresented objectors.

The council suggests that Parliament should regularly review standing orders and the "Guidance on Private Bills" and introduce such changes as experience dictates will lead to improvement.

At all times during the bill process, the council was impressed by the professionalism and manner of the bill committee. It was apparent that all committee members recognised the importance of the proceedings to the promoter and the objectors. In particular, we were impressed with the efficiency and focus that the committee's convener brought to proceedings. The fact that the committee met in Alloa was the subject of positive feedback from council members and officers, objectors and members of the public who attended committee meetings as a consequence of their interest in what was regarded as an historic step.

The Convener: I thank Jackie McGuire for her helpful introductory statement and open the meeting to questions.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I thank Jackie McGuire for her useful and brief statement. The committee is examining the private bill procedure because the Parliament believes that people who want to object feel confusion and that objectors think that the procedure is unsatisfactory. The committee has been attracted by evidence that it has taken about how the 1992 act operates at Westminster. Will you elaborate on why Clackmannanshire Council strongly opposes any change in that direction?

Jackie McGuire: The general feeling is that if a bill will have a direct impact on such matters as personal property rights, the right to amenity and property values, everything that it seeks to do should be subject to open scrutiny in which all interested parties have equal rights to address the party that will decide whether to recommend that the bill be enacted. That can be provided only through a proper inquiry process, similar to that which the SAK bill committee undertook.

Cathie Craigie: The procedure under the 1992 act operates in a similar way to a planning inquiry under planning legislation. Is that not sufficiently open to scrutiny and open for objectors to have their say?

Jackie McGuire: I will put on my other hat—that of a lawyer working in local government with some experience of the planning inquiry process. Some people who have provided written evidence to the committee thus far have suggested that the planning inquiry process might be a better model, because it is inquisitorial as opposed to adversarial. However, that is not my experience of what happens at local public inquiries. The planning inquiry world is populated by members of the legal profession. In my view, simply by virtue of the role that those legal professionals take in that process, planning inquiries are extremely adversarial. They also involve running evidence that might already have been submitted in writing, so that everything is rerun from the beginning.

The process that the SAK bill committee adopted—in which as much of the evidence as possible was committed to writing and the focus was on agreeing as many issues as possible before the committee started taking oral evidence—had much to commend it. The role of the committee prevented the process from degenerating into becoming unduly adversarial—the committee brought a presence to the

proceedings that prevented that. Although the process was adversarial in that there was examination in chief and cross-examination, it was also inquisitorial because the bulk of the questioning was done by committee members as opposed to professional parties representing either the promoter or the objectors.

The Convener: Is it not the case that an aspect of the procedure associated with the Transport and Works Act 1992—feel free to say if you are not an expert on this—is concerned with trying to resolve any objections before inquiry stage, with the aim of avoiding having an inquiry if possible?

Jackie McGuire: Yes. A similar process exists in connection with the planning system, whether one is dealing with a local planning inquiry or with a planning appeal. However, in practice, because that system has been up and running for such a long time and because the legal profession plays a heavy part in it, one reaches the situation very rarely where either there is no inquiry or, going into an inquiry, one does not have a rerun of a lot of the evidence that is already committed to writing.

Richard Baker (North East Scotland) (Lab): Obviously, I agree entirely with Jackie McGuire's comments about the bill committee being efficient and focused—that is very true. However, I do not agree that taking evidence and resolving issues between objectors and the promoter is better undertaken through the private bill process. I admit that I have limited experience of the planning process and the kind of inquiries arising under the 1992 act. However, although we had open scrutiny, as you put it—the SAK bill committee held the meetings in Alloa and the process was an open one that people could understand—the current private bill procedure is heavily weighted in favour of people who can afford to employ Queen's counsel. The promoter employed a QC, whereas the objectors, although the clerks gave them as much help as they could, started with the odds stacked against them—they were up against QCs and lawyers who were employed to participate in the inquiry process.

Jackie McGuire: Regardless of which process one adopts, that will always be an issue. I felt, and I think that my colleagues will support me in this, that the role of the QC—you are right that the council had a QC to represent us—was particularly limited by the committee. One notable example of that was in the way in which we were directed to limit the summing up. I suggest that, if the Parliament were to adopt a process similar to that laid out in the 1992 act, such guidance might be issued to inquiry reporters. I have sat through inquiries where there have been days of evidence followed by a summing up that could run to a day.

Richard Baker: That sounds to me like thorough scrutiny.

Jackie McGuire: Yes or no, depending on the elements that the QC picks out and puts before the committee again.

Richard Baker: The private bill procedure involved a shorter process and was more efficient in that sense. However, it is still up to the QC to decide which aspects of the case should be highlighted to the committee.

10:30

Jackie McGuire: Yes, but I respectfully suggest that the committee limited the length of time that was available for the summing up and that the limit was defined in minutes rather than hours. Summing up can often take hours at a planning inquiry.

Richard Baker: Do you think that having a shorter summing up improves scrutiny? You seem to be suggesting that time can be used more efficiently.

Jackie McGuire: Your starting point for the question was about the equality of arms. Given that in most cases the promoter of a private bill will have access to funding and therefore to better arms, if you like, as regards legal representation, I suggest that the promoter would benefit more from extensive summing up than unrepresented objectors.

Richard Baker: So you are saying that a planning process creates greater inequality than the private bill procedure does.

Jackie McGuire: In my view, if the committee has taken evidence and if questions have been asked, particularly by committee members, a lengthy summing up on behalf of the promoter is not as fair to objectors as a shorter summing up is.

Richard Baker: Am I right in saying that at a planning hearing—I have been to some in my constituency—members of the council ask questions of the promoter of the application and so play a similar role to that of private bill committee members?

Jackie McGuire: Are you talking about when a planning application is before a committee?

Richard Baker: Yes, and in public hearing.

Jackie McGuire: That is not the same as an inquiry process. You are talking about an arrangement whereby some councils permit persons who have an interest in a planning application to address the planning committee before a decision is made on the application.

Richard Baker: But that can be part of an inquiry process.

Jackie McGuire: It can, but I suggest that, in most local authorities, that kind of hearing is not

akin to a planning process; it is a much curtailed process in which individuals have the right to address a committee briefly before a decision is taken. It is true that councillors can ask questions. However, in my local authority, for example, we have not yet introduced that process. We are in the throes of setting out a procedure, but we do not use that process at the moment.

Richard Baker: You said that you thought that the SAK bill committee and its convener were efficient—I am pleased that that came across. However, you will be aware that participation in such a committee places a huge burden on MSPs. As Tara Whitworth knows, the number of documents that we had to read was incredible. We made every effort to take on board a huge amount of data and to go out and visit the planned route for the line. Would not inquiry reporters, by dint of what they do, be more experienced, professional and better at analysing that data than five MSPs on a committee? Would not the reporters' greater experience better inform their decisions?

Jackie McGuire: I would not like you to misunderstand Clackmannanshire Council's position, which is not necessarily that the Parliament has to stick with its current private bill procedure. We recognise, particularly in relation to some of the bigger projects in the pipeline, that the amount of time demanded from MSPs is substantial and that it might lead them into conflict with other duties and responsibilities. I appreciate that the private bill procedure asks MSPs to comment on matters outwith their technical expertise. However, we suggest that, if the procedure is to be replaced, due regard should be given to the nature of the procedure that will replace it.

Richard Baker: Certainly, but do you agree that the experience and background of a reporter to an inquiry might be beneficial for decision making? If a member is overwhelmed by information, not having relevant experience can be limiting.

Jackie McGuire: Indeed it can.

Mr McGrigor: The idea behind our inquiry is to speed up the process and make it easier. If we make SEPA and SNH statutory consultees, will that not slow things down to an enormous extent?

Tara Whitworth (Jacobs Babtie): No. We do a lot of consulting with SEPA, SNH and Historic Scotland in preparing environmental statements and carrying out environmental impact assessments. We got into an unfortunate position with the SAK bill because it was the first private bill of its kind and those bodies were not used to being consulted in that manner. In the first instance, they responded as they would to a normal inquiry, but unfortunately they did not follow the process through as they would have done in a public inquiry or some other process with which they were more familiar. I do not think that making those bodies statutory consultees would achieve anything other than to make apparent to them the importance of responding in a timely manner, early in the proceedings, so that they do not have to respond to questions in a short period at the end of the process.

Jackie McGuire: It is fair to say that, during the passage of the SAK bill, neither SEPA nor SNH was entirely sure what was expected of them, which led to their feeling quite uncomfortable when they gave evidence to the committee.

Mr McGrigor: Whose fault was that?

Jackie McGuire: I do not think that it was anyone's fault. The standing orders are framed in such a way that those bodies do not have official consultee status. They were served with notifications, but only in the same way as other interested parties with land interests that would be affected. They were not specifically directed or alerted to the fact that at some point they might be required to give evidence to the committee.

Tara Whitworth: It would have been useful if the Parliament had not only, when the bill was introduced, advised Historic Scotland, SNH, SEPA and safety bodies such as Her Majesty's railway inspectorate that they were directly affected—for example, because the bill might impact on a water course in which SNH had a particular interest—but had acted as a normal planning body by flagging up the fact that a bill submission had been received and was being introduced and by seeking comments from those bodies. When a planning application is made to a local authority, there are guidelines to follow, which state which bodies should be advised. However, there does not seem to be the same process for the Scottish Parliament. A lot of those bodies were awaiting advice from the competent authority, but only at the last minute did they receive a letter asking them to appear in front of the committee.

Mark Ballard (Lothians) (Green): SNH made the point that the Environmental Impact Assessment (Scotland) Regulations 1999 (SSI 1999/1) do not apply to acts of the Scottish Parliament. It says that the expectations of an EIA in a planning process are much greater than the expectations of an environmental statement in relation to a private bill, so surely there would be a qualitative difference in the detail of the response that is expected from SNH.

Tara Whitworth: That is a difficult point to address. We carried out an EIA of the project and an environmental statement was produced from that. By its nature, an environmental statement is a snapshot in time. The bill process as it stands requires the environmental statement to be lodged

when the bill is submitted. The SAK bill process took the best part of two years, from the beginning of discussions with the clerks and the non-Executive bills unit to the bill's receiving royal assent and becoming an act of the Scottish Parliament. An awful lot can change in two years—we spent 18 months progressing the project before it got to the stage at which the objectors and the committee started to review the environmental statement for compliance. Our snapshot in time was required earlier in the process than may have been useful.

What I am trying to say is that we produced the statement 18 months before it was considered, whereas an EIA is a continuous process. Currently, as we progress the scheme, we are reviewing the EIA to ensure compliance and we are working with SNH, Historic Scotland and the other bodies to make sure that everything that was promised in the environmental statement is carried out. The EIA process is continuing, but the point is that the timing of the environmental statement did not help the discussions that were held 18 months later.

Jackie McGuire: We are almost going through the process in reverse, in that Clackmannanshire Council has now entered into formal agreements with SEPA and SNH, under the terms of which we will continue to monitor the environmental impact of the rail project. We have established that both bodies have the power to enforce the terms of that agreement.

The Convener: In your opening remarks, you commented on the confusion about the various stages of the bill and about who can give evidence at the preliminary and consideration stages. Will you amplify those concerns? How should we resolve those problems?

Jackie McGuire: It is possible that people will have objections to the general principles of a private bill. That was certainly the case with at least one objector to the SAK bill. The objector found himself in an unfortunate situation because the bill had gone through the preliminary stage and had moved on to the consideration stage, but most of his objection concerned the general principles of the bill. He had quite a difficult time in front of the committee, because the general principles had been decided at the preliminary stage and, in common parlance, he felt that he had missed the boat in relation to presenting his views to the committee. He felt disadvantaged by that.

Tara Whitworth: A lot of objectors were upset to realise, during the consideration stage, that the core of their objection was not relevant to the bill. For example, as Richard Baker will well remember, a number of people objected to noise, vibration and the hours of operation of the Stirling-Alloa-Kincardine railway. At consideration stage, it became apparent to everybody that the bill covered the reconstruction of the railway and did not legislate on matters such as hours of operation, the type of trains on the route or the technical details relating to noise and vibration. The objectors went through the bill process, objected to the bill and then found out at a very late stage that their objection had nothing to do with the bill that was in front of them and that another piece of legislation already covered the hours of operation of trains and so on. The objectors were not clear about how they could object to the elements that they disliked.

Jackie McGuire: It is fair to say that we had to clarify that issue for the committee. The promoter was required to submit a memorandum on the scope of the bill and the other processes that govern issues such as safety and the operation of the line. I make a suggestion that we thought about including in our opening comments: the Parliament might want to review the information that is required in such memorandums. It might be useful for something along those lines to be distilled into guidance for objectors to similar projects in future.

The Convener: Are you suggesting that there should be a different process and that the preliminary stage should consider in more detail objections to the general principles? Should the objections be dealt with at that stage so that the consideration stage addresses only the detailed and specific objections?

Jackie McGuire: The preliminary stage could be curtailed somewhat so that it considers whether the bill meets the requirements of standing orders and is accompanied by the proper documentation.

The Convener: You are suggesting the opposite: that there should be less in the preliminary stage.

Jackie McGuire: Yes.

Cathie Craigie: How did Clackmannanshire Council, as the promoter of the bill, consult local residents? Was there any pre-consultation and involvement with the local population on how the project should proceed?

Tara Whitworth: A large volume of public consultation was carried out before the bill was lodged with the Parliament. For example, there were public meetings, public presentations and presentations to elected members. The council also went through processes to ensure that it could promote a private bill, which is not something that councils usually do. We had to advertise to notify people when the bill was submitted and we followed the standing orders by notifying everyone who was directly or potentially affected by the bill. A great deal of public

consultation was carried out. There was also a formal consultation process when the bill was introduced to the Parliament.

10:45

Cathie Craigie: Despite the informal consultation that was carried out with and the notification that was given to local people, there was still confusion about what the bill would do.

Tara Whitworth: The public consultation was on the project. The bill is a portion of the project, but it is not the entire issue. The Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 covers only the reconstruction of the railway. It does not cover the future operation of the trains, which was the focus of many objectors' concerns. For example, objectors did not want trains to run past their houses at midnight, which is understandable. They were consulted on that point, but because it is covered by existing legislation and because of the nature of the project, the promoter of the bill could not affect it. The project will hand over a completed railway to Network Rail. The Scottish Executive and others have a franchise to run the passenger trains, through First ScotRail. That franchise, which has just been reawarded, covers issues such as the level of service and the hours of operation.

The public consultation that we held discussed the entire process. It did not focus on what was and was not covered by the bill. That is why the objectors became upset. They did not like the timetable and the type of trains that would be run and believed that they should be able to object to the bill on that basis. However, during the consideration stage, they discovered that those issues were not covered by the bill. They may have felt that the consultation had misled them—I think that they described it as a tick-box type of process. They believed that we had consulted them but had not diverted the trains away from their backyards or changed the hours of operation. The objectors were consulted and believed that they should make their objections during the bill process, so they were not happy when they found that they could not do so.

Mark Ballard: Perhaps you can help me to clarify something. Obviously, there are no public inquiries on rail or light rail schemes, because those are dealt with by the private bill process. However, my experience of public inquiries suggests that they include debate about issues relating to the operation of schemes, such as timings. If there were no private bill procedure for rail schemes and such schemes were dealt with by the standard public inquiry procedure, would it be possible for people to discuss the kind of issues that you have raised and about which they feel so strongly, such as the timings of trains?

Jackie McGuire: In my view, that would not be appropriate. If there were a properly trained reporter who was fully aware of the scope of the inquiry, he would close down the leading of evidence on issues such as the timings of trains. There is little point in building up people's hopes by permitting them to lead evidence, only for them to find out that the evidence that they have led relates to a subject that is not a matter for those who will take decisions about the bill.

One issue that was raised during consideration of the SAK bill was safety standards on the railway. The bill could not specify what those standards would be, because that was outside its scope. Obviously, that was a genuine issue to those who are concerned about rail safety, but it should have been made clearer at the outset that it was not within the scope of the bill. There is nothing worse than believing that you can lead evidence and have something done about an issue, only to find out during the process that you cannot.

Mark Ballard: I understand that the public planning inquiry on the additional Heathrow runway included a discussion of when planes would fly. Why is it possible to do that in a process that is reliant on a public inquiry model, rather than a private bill model?

Tara Whitworth: I did not attend the Heathrow inquiry, but I believe that the environmental statement attached to the project is one of the conditions for it. I do not know whether this is the case, but I understand that the hours of operation and the noise levels are limited by an environmental condition. That was done through the environmental statement and the EIA. In our project, it was possible only to amend the bill. No amendment could have been made that covered hours of operation or noise levels, because those matters were not included in the bill to start with. However, I do not have direct experience of the Heathrow inquiry.

The Convener: You mentioned the possibility of appointing an external expert to report to the committee. How would that system operate? Effectively, would the inquiry process take place outwith the Parliament, as a public inquiry process, or would there be some other way of sifting the evidence to reduce the inquiry down to a few issues? What exactly did you have in mind?

Jackie McGuire: Like others who have already submitted written evidence to the committee, we are seeking an inquiry process. However, as I have said repeatedly, considerable thought must be given to the nature of the process to ensure that it is fair and equitable and that the focus on driving issues forward is not lost. I have no wish to denigrate the Scottish Executive inquiry reporters unit but, if the Stirling-Alloa-Kincardine rail project

had been before a public local inquiry, the council would still be awaiting the reporter's decision.

The Convener: At present, private bill committees can group objectors and appoint one objector to act as spokesperson for the group in giving evidence. Is that fair, or should the people who are grouped together have the right to nominate someone to speak on their behalf?

Jackie McGuire: The system is fair, in so far as the objectors are happy with it. It can lead to frictions if groups of objectors cannot agree on who should be the spokesperson.

Tara Whitworth: As the promoter's team, we dealt with every individual objection. Richard Baker will no doubt remember the wads of paper that we submitted. We believed that each objection had to be considered on its merits and went through each one line by line. The only benefit of grouping objections for the promoter was that it allowed us to turn up on one day and to question and to answer the questions of one spokesperson. The system did not cut down the amount of work that was done in the background in response to the objections.

The Convener: Should anyone who has submitted a valid objection have the right to give oral evidence to the committee or an inquiry?

Tara Whitworth: I agree with what Jackie McGuire said. It depends on whether people are happy with the person who is proposed to speak for them. Many objectors found it very daunting to appear before the Parliament—as did the rest of us, but some of us are more used than others are to doing such things. If I were objecting as an individual, I would probably like to defend my case, but if I were unused to public speaking I would not want to appear before the committee to answer questions and to cross-examine in the presence of television cameras, public address systems and so on. I would be far happier if someone else were appointed to do that for me. However, the unrepresented objectors did an incredibly good job of being articulate and putting across their point, helped by the committee in some cases. In general, they made a valid plea to the Parliament to change something for them.

Jackie McGuire: The groupings for householder amendments were based largely on geography. Although there was some commonality between the objections made by people in Clackmannan and Kincardine, exactly what is important in objections may differ from objector to objector.

Mac West (Clackmannanshire Council): A reasonable way forward might be for the parliamentary committee to suggest groupings. However, if an individual is very keen to put their case, they should be allowed to do so.

The Convener: Is there not a potential danger that individuals would use that provision to slow down the process and to knock it off the rails?

Mac West: That must be guarded against. The experience of the SAK bill was that a strong committee convener will keep things under control.

Tara Whitworth: Another key issue is the need to ensure that only points in dispute are discussed. Once we got into the detail of the objections, a lot of objectors found that there was nothing in dispute. If the committee sticks to taking oral evidence only on items of dispute, that helps to prevent time wasting.

Jackie McGuire: On the occasions when there was a duplication of evidence, Bill Butler was fairly quick to close down the discussion at the point at which it became clear that the evidence had been heard before. That meant that the same evidence was not repeated over and over again.

The Convener: You mentioned that you favour dropping the £20 fee. One alternative that has been put to the committee is that the fee should be dropped in the case of valid objections. In other words, the fee would become a form of deposit. The objector would pay a deposit and, if their objection was considered valid, they would get their money back; however, if the objection was considered to be vexatious or not valid, they would forfeit the fee. Is that a reasonable compromise approach?

Jackie McGuire: We have made many comparisons this morning to the planning process. There is no requirement for a fee to be lodged with a planning objection, so it seems out of kilter for a fee to be required to be lodged with an objection to a private bill. I am not aware that any frivolous or vexatious objections were lodged to the SAK bill. A judgment has to be made in that regard, but I do not think that someone who is affected by a project such as SAK would lodge an objection on frivolous or vexatious grounds.

The Convener: At the same time, objectors in the planning application process have no right other than to have their objection lodged with the committee; they do not have the right to be heard or to appear at the inquiry and developers do not have a duty to try to resolve the objections. Objectors have more rights under the private bill process.

Jackie McGuire: You are correct that objectors do not have the right to be heard in the consideration of a planning application. However, as third-party objectors, they have the right to be heard at the planning appeal stage.

The Convener: As there are no other questions, I thank the witnesses for their helpful evidence this morning, which has given us even more ideas to think about in our inquiry.

10:57

Meeting suspended.

10:59

On resuming—

The Convener: For our second evidence-taking session this morning, we will hear evidence from the other side of the debate. We have with us one of the objectors to the SAK bill, John Dick, who is a representative of the Kincardine railway concern group. Thank you for coming this morning. As we did with the earlier witnesses, we will give you the opportunity to make a few opening remarks, after which the committee will ask questions.

John Dick (Kincardine Railway Concern Group): After I gave evidence to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee in Alloa, I left the hall, went home, took all the papers that I had collected over a vast period of time and dumped them. I swore that I would never again have anything to do with any committee. However, as time went on, I became more and more annoyed about the way in which we had been treated, so, when I had the chance to come before the Procedures Committee and give my side of the story, I decided that that was an opportunity that I was not prepared to miss.

I agreed with a lot of Ms Whitworth's evidence this morning. We thought that the evidence that we were putting forward was relevant. Within a very short time, however, it became apparent that that was nonsense. We realised that, although we might not exactly be wasting our time, the end result was obvious. We felt that the procedure was unfair. The promoter had an array of legal, technical and engineering experts. It also had financial facilities at its disposal. However, anything that we wanted to do, we had to pay for ourselves. We had to find the information and put forward our case within timescales that we thought were quite tight.

We organised a couple of the public meetings that the promoter attended. Who should pay for such meetings? We were inviting people in our street to attend a meeting, but should we also have gone round with a hat asking them for money to help us to pay for it? As it happened, two or three of us ended up paying for almost everything. As the process went on, we felt increasingly helpless. We were not objecting to the bill as a whole; we just wanted to have it amended.

The Convener: Thank you for those opening remarks. I remind members that we are not here to discuss the merits of the SAK bill; we are here to discuss the process by which it was undertaken.

Cathie Craigie: Thank you, Mr Dick. I am interested in the points that you made. Do you know where the confusion arose? I asked the Clackmannanshire Council representatives earlier whether they had consulted publicly before the bill was lodged. Did the confusion start at that point?

John Dick: It would be disingenuous of me to say that the promoter misled us. That is not what I meant. Our lack of knowledge of parliamentary bills and the routeing, rerouteing or reopening of railway lines was minimal—in fact, we had no knowledge of those matters. From a standing start, all of a sudden we found out that huge trains were going to run on a railway line that was just feet from our homes.

The biggest criticism that I would make of us is that we were naive. We thought that, if we put forward a reasonable case and tried to find alternatives, the situation would clear itself—we thought that it was in everybody's interest for that to happen—but that was not the case. The consultation was undertaken and I have no objection to it. The promoter attended our meetings and discussed things with us. However, it quickly became clear to us—although perhaps not quickly enough—that the promoter's interests and our interests were not one and the same thing.

Cathie Craigie: How could that have been made clearer to you at the start of the process?

John Dick: One of the things that we found out was that the railway line that runs behind our houses had never officially been closed, even though no trains had run along it for several decades. If it had been explained to us straight away that the status of the railway line was different from what we thought it to be, we would probably not have lodged an objection. We did not realise what the line's status was. As far as we were concerned, as there was no track and no trains, there was no railway line, but the legal position is obviously slightly different.

We pursued our objection because we thought that we had a case. We were not trying to prevent the reopening of the railway line. As I think I said in evidence to the bill committee, there are Kincardine residents who have friends, colleagues and neighbours who work in Scottish Power's power station at Kincardine and it is probably more in their interest than it is in that of the promoter to get the railway line going again. It is just that our interpretation of the bill was wrong. We could not achieve the things that we thought we could achieve.

I was pleased to hear Ms Whitworth say that many of the things that we thought we could do something about—such as the number of trains, their weight and the nature of the material that they would carry past our houses—were nothing to do with the bill at all. However, we spent a lot of

time and effort trying to find out about those things.

Cathie Craigie: Was your organisation's confusion to do with the fact that you thought that you would have the same opportunities as you might have had in a normal planning process?

John Dick: I would not know what a normal planning process was—that is part of the problem. You mentioned my organisation. My organisation was my next-door neighbour and other next-door neighbours. Although our name is the Kincardine railway concern group, we should have been called the Ochil View railway concern group, after the name of the street in which we live. We are not talking about a lot of people; we are talking about a small group of joiners and retired people and so on who are just trying to protect their homes.

Cathie Craigie: For anyone who wanted to object, was the process confusing?

John Dick: The process of lodging an objection was not confusing; it was explained well by the bill committee's clerks, whom I found to be superb. They helped us, as did the committee; I have no beef about that at all.

As an objector, one day I found myself confronted with highly technical legal and engineering documents. I do not have the necessary training. We were expected to combat the qualified engineers, lawyers and advocates on the promoter's side. I was disappointed by the fact that the system is adversarial. As far as the promoter was concerned, it was right to pursue its agenda. We wanted to find a resolution that would have been acceptable to both sides, but that is not what the promoter was after. It followed its agenda.

Mr McGrigor: I was interested in your statement that, if you had known that the railway line had never been closed, you might well not have gone through the objection process. Were you led to believe that the railway line had been closed?

John Dick: Yes—or rather, I have lived in Kincardine for 18 or 19 years and, until the bill's introduction, I had never heard that the railway line was still officially open. As I said, most people would have the idea that a railway line with no trains and no track was not a railway line.

Mr McGrigor: Surely at some stage in the process people would have been informed that the railway line was still open and had not been closed. It seems extraordinary to me that that was never made clear.

John Dick: That was eventually made clear to us on the first occasion on which we appeared before the committee, when the validity of our objection was being checked. Our objection became valid only because the building of the railway line as a whole would affect us, not because just the section of line that ran past our house would affect us. That was the way in which our objection was framed. The people in Kincardine were not aware that the railway line was still officially open.

Mr McGrigor: I have a broader question. In your view, what would have made the process fairer? I realise that it might be difficult to sum that up. You obviously think that the process was extremely unfair, as you said that, after it, you dumped all your papers because you had had enough of it. Fundamentally, what would have made the process fairer?

John Dick: It would probably have been fairer if we had been able to seek advice from an independently appointed lawyer and to call on independent experts for information. If we had not had access to a computer, our information would have been nonsense. We were trying to deal with engineering ideas, but we were up against people from Babtie, who are experts in their field. To be fair to them, they never made us feel stupid about the suggestions that we made, but they could shoot us down. Part of the problem was that part of the evidence that we put forward was irrelevant and had no bearing on the bill.

The Convener: With due respect to Richard Baker and his colleagues on the SAK bill committee, who I am sure did the best that they could, given the knowledge that they had, would it have been helpful to the objectors if the inquiry had been conducted by people who had technical knowledge and who could therefore have assessed more accurately the validity of what was being proposed? The members of the committee did not necessarily have that technical background.

John Dick: I have thought about that and I am not in favour of the proposal. If experts ran the show, they might have even less sympathy for objectors' views than would people who had the same level of knowledge about the information that was being considered as the objectors had.

We have no complaints about the way in which we were treated by the clerks, the committee or the promoter. It is not necessary to have people such as engineers on bill committees; the members of the SAK bill committee were fine. However, what was necessary was the appointment by the committee of an expert engineer and a legal adviser to give advice to the objectors at the Parliament's expense.

I will give an example of a situation in which legal assistance would have been helpful. One of the biggest bones of contention concerned the status of a playing area at Kincardine power station. Scottish Power, which owned the ground,

had said that it was going to close the playing area, but the promoter maintained that that could not be done, as the area was a playing field. We got so much conflicting information that we did not know whom to believe. If we had been able to seek legal advice on the matter, that would have made an awful lot of difference to us—although we would probably still have included our proposal because, as far as we were concerned, the promoter was wrong. That is the kind of situation that arose.

11:15

Richard Baker: One of the options that we are considering is for ministers to put a project such as SAK out to inquiry. Under that option, a reporter would be appointed, which would give the process the benefit of an expert. The committee members were in exactly the same boat as the objectors: all of us were given vast amounts of documents and had to try to reach some level of knowledge and expertise. From your efforts, you know the huge job of work that was involved in the SAK bill. Under the inquiry model, an expert—the reporter—would report to a politician, the minister, part of whose political role would be to empathise with people who are in the position that you were in. Would the inquiry option address some of your concerns?

John Dick: Yes.

Richard Baker: As we heard from the promoter's team, we know that the promoter was happy with the procedure. In a sense, we knew that already, because of the fact that it got its project; we also knew that you would not be happy, because of the fact that we did not agree to your objections. The promoter's representatives said that not only is the current process expeditious to the progress of a project, but it gives objectors a greater opportunity to have a say than would be the case under other processes.

The objections were disagreed to not because of any lack of quality in the evidence that objectors presented to the committee. Indeed, the evidence that was presented was extremely good—the evidence that your group gave us was particularly good. However, as you will remember, the promoter's representatives included a QC. The committee did everything that it could to help the objectors, but the level of expertise and legal representation that is available to a promoter means that the playing field is not level.

John Dick: That is my complaint: the way in which the process is organised means that it never could be. We decided that, as we had started the process, we would finish it, but it became apparent early on that we were not going to win.

Richard Baker: Some of the evidence that we have heard concerned the inquisitorial style of the inquiry process as opposed to the adversarial style of the bill process. The adversarial system was not of much benefit to you, was it?

John Dick: No. As one of the committee members, Mr Baker, you know how we felt: the thought of being asked questions by an advocate is terrifying. The reason why I became the spokesperson for the group is that no one else would do it. I had no expertise in talking to committees, but someone had to do it. As it turned out, when we gave our evidence, we did so with our MSP and our local councillor; we could find no one else who would give full evidence for us.

Richard Baker: There is no doubt that the objectors equipped themselves very well against the QC. However, the playing field is not level. Some people are always going to be more prepared to give evidence than others are.

The process takes up a huge amount of parliamentary resource. As you said, it is also a difficult procedure. Having experienced the process as a committee member, I wonder whether all the investment that is put into a private bill such as the SAK bill makes the process better. In many ways, the time and resource that is put into the process is additional to the main business of the Parliament. Does the process allow for a more thorough analysis and scrutiny of projects such as SAK? I am asking you the question because I remain to be convinced that that is the case.

John Dick: As I said earlier, if I had known at the beginning of the process what I know now, I would not have objected. If the situation arose again, I would have nothing to do with it—I would just live with it. I agree: the playing field is not level. As I said, the end result of the process proved that our fears were well founded. We spent an awful lot of personal time, a lot of energy and not a little money in making our objections to the bill.

Richard Baker: I was worried to hear that you had had to pay for that meeting yourself. The committee was not told that.

John Dick: There were several meetings. It takes time and effort to have a meeting in one's house. My telephone bill was huge as a result of computer use. I downloaded a phenomenal amount of material just from the Parliament's website. I was not the only person who took days' holidays to read through and try to understand such documents. Even when we found information that we understood and highlighted it to use as evidence, we would discover when we got to the committee meeting that it was irrelevant, because it did not relate to what was in the bill.

The Convener: Is it fair to say that the private bill process needs to be reviewed to allow more

discussion before the formal stages, so that people have a better understanding of the scope of the bill and of what they can and cannot object to? More discussion between objectors and the promoter could resolve objections before the formal stages of a bill's consideration began.

John Dick: Yes, that is right and, as I have said, there needs to be an independent adviser to explain what can be done and what is required.

I followed a line of questioning that I thought had been reasonably successful but, a few months later, when I discussed the matter with someone who knew a bit more about railway lines than I did, he told me that I had asked the wrong questions. By that time it was too late but, even if I had asked the right questions, I do not think that that would have changed the outcome.

Mark Ballard: Did you find the division between objecting to the bill as a whole and objecting to details in the bill useful?

John Dick: We had to object to the bill as a whole, even though we did not object to it in principle; we objected to certain provisions in the bill. Your question is difficult to answer. We did not want to impede the bill in any way; all that we wanted was recognition of the fact that it is not possible to go back to the world as it was 30 years ago and expect it to be the same. The world has moved on since the last train went along the railway line. The railway company sold the land for houses to be built on and our houses were built on that land.

Could you repeat your question?

Mark Ballard: There is a distinction between objections to details in the bill and objections to the bill as a whole. It sounds as though you did not find that a useful way of understanding how to object to the bill.

John Dick: I do not think that we gave the matter that much thought. We dealt with issues as they arose, as best we could. We were astounded when we were told that the railway line was live, but we had to deal with the situation. That was when our objection to the bill as a whole came into being. To be honest, I cannot answer your question.

Mark Ballard: Fair enough.

The Convener: As there are no other questions, I thank Mr Dick very much for putting himself through the ordeal of speaking to another parliamentary committee. I hope that we were not too harmful and that you will not need to dump more huge piles of paper. The fact that you dumped so many papers for recycling is probably the main reason why recycling in Fife has been boosted. Your evidence has been helpful.

Before we move into private session, I indicate that we will have to start our next meeting, which is in two weeks' time, at 9.30 am, because we have a packed agenda.

11:24

Meeting continued in private until 12:34.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 30 November 2004

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Astron Print Room, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament and annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Astron Print Room.

Published in Edinburgh by Astron and available from:

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

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

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

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

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

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

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

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron