

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 21 November 2000  
(*Afternoon*)

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## **PUBLIC PETITIONS COMMITTEE** **17<sup>th</sup> Meeting 2000, Session 1**

### **CONVENER**

\*Mr John McAllion (Dundee East) (Lab)

### **DEPUTY CONVENER**

Pauline McNeill (Glasgow Kelvin) (Lab)

### **COMMITTEE MEMBERS**

\*Helen Eadie (Dunfermline East) (Lab)  
Dr Winnie Ewing (Highlands and Islands) (SNP)  
\*John Scott (Ayr) (Con)  
Mrs Margaret Smith (Edinburgh West) (LD)  
Ms Sandra White (Glasgow) (SNP)

\*attended

### **THE FOLLOWING ALSO ATTENDED :**

Mr Ian Arnott (Haddington and District Amenity Society)  
Clive Fairweather (Sidegate Residents Association)  
Alan Melville (Napier Students Association)  
Mr Alex Murray (Silverknowes Residents Action Group)  
William Watson (Haddington and District Community Council)

### **CLERK TO THE COMMITTEE**

Steve Farrell

### **ASSISTANT CLERK**

Jane Sutherland

### **LOCATION**

The Hub



## Scottish Parliament

### Public Petitions Committee

*Tuesday 21 November 2000*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:20*]

**The Convener (Mr John McAllion):** I welcome everyone to the 17<sup>th</sup> meeting of the Public Petitions Committee this year. I apologise to the members of the public for the delay in starting the meeting—it is entirely members' fault. On MSPs' behalf, I thank members of the public for their forbearance in waiting patiently for so long for the committee to get under way.

We have received apologies from Pauline McNeill, Sandra White, Margaret Smith and Winnie Ewing.

### New Petitions

**The Convener:** The first item is new petitions. Petitions PE292, PE293 and PE294 call on the Scottish Parliament to investigate the recommendations made in the most recent public inquiry on the designation of land for housing at Briery Bank, Haddington and to initiate a new, fully independent public inquiry.

We have had letters in support of PE294 from Haddington and District Amenity Society and from a distinguished group, including the Scottish Civic Trust, the Association for the Protection of Rural Scotland, Haddington history society, the Architectural Heritage Society of Scotland, Charles McKean, professor of architectural history at the University of Dundee, Rev Clifford Hughes of St Mary's parish church in Haddington, the Duchess of Hamilton and Margery Clinton.

We have been handed a plate, which shows St Mary's church and Briery Bank. It is not a gift from the petitioners but should give members of the committee some idea of the area. I invite Mr William Watson, Mr Ian Arnott and Mr Clive Fairweather to speak in support of the petitions.

**William Watson (Haddington and District Community Council):** I am here today as a community councillor and as a parent of a child at Haddington Infant School. The other signatories of the human rights petition are four activists representing the area most directly affected, and Fraser Spowage, who was the previous provost of Haddington. Fraser led the campaign against the development 10 years ago.

Members may remember that they were kind enough to support petitions PE181 and PE182, which were concerned with traffic congestion and pedestrian danger at Haddington Infant School. The proposed housing at Briery Bank, together with housing at a nearby site, will generate a considerable increase in the number of car journeys past the infant school each morning. That increase in traffic will completely overwhelm the minor improvements to safety achieved as a result of the two previous petitions.

Petition PE293 focuses on the procedures adopted by the local council and the Scottish Executive. We are concerned that those procedures have been unable to give the objections raised by the community a fair hearing. We are shocked that East Lothian Council has not been obliged to inquire into the objections. The committee should also note that, in our opinion, the Executive's structure plan for housing in East Lothian directly contradicts the Executive's policy of reducing congestion in Edinburgh and reducing greenhouse gas emissions.

**Mr Ian Arnott (Haddington and District Amenity Society):** I am chairman of Haddington and District Amenity Society. Our petition asks the Scottish Parliament to recognise that St Mary's church and its setting are a national asset and that anything that adversely affects that asset is a matter of national interest. The church's importance is confirmed in "The Buildings of Scotland", which brackets it and its setting with St Giles cathedral because of their significance in Scotland's history and architecture.

The local plan inquiry reporter and East Lothian Council are prepared to desecrate this greenfield site. Having handed it to a developer, the reporter suggested safeguards to limit the damage. Those are inadequate, because they fail to address problems of access, traffic and loss of amenity. Such safeguards are merely palliative; they are akin to cosmetic surgery to treat the scars following an operation that has gone wrong due to misdiagnosis. It is self-evident that no development on the site—regardless of quality—can preserve or enhance the conservation area. The public seem intuitively to have understood the argument that if you corrupt the setting, you corrupt the jewel. The strength of numbers—around 1,200—who have made their dissatisfaction known has been ignored by East Lothian Council. There has been no attempt at communication with the public, no consultation, no co-operation and no explanation of the apparent collapse of the council's previous commitment to the protection of the area.

HADAS has been especially concerned at instances of what appears to be misinformation circulating in the council during the decision-

making process. We have asked publicly for clarification, but have had no response. We therefore first ask the Scottish Parliament to direct East Lothian Council that the local plan should, in dealing with a building and setting of national significance, follow national planning policy, which should not be changed in respect of Briery Bank.

Secondly, we ask the Parliament to direct East Lothian Council that no decision on changing the local plan should be taken before all relevant information on traffic, flooding, drainage and any other matter affecting the site is available. Finally, we ask the Parliament to investigate whether the public interest has been properly served.

**Clive Fairweather (Sidegate Residents Association):** I am chairman of the Sidegate Residents Association. I have given some maps to the clerks, which, in addition to the plate, might help—although the plate is more elegant.

There are about 200 residents in the Sidegate, which is about 300 yards from Briery Bank on the only main route to the site proposed for development. In the past few years, despite the fact that there has been no development, there has been a major increase in traffic in the Sidegate. Our main concern is that accidents and fatalities are becoming a distinct possibility. I am not sure that the council is as focused on that as we are. We believe that traffic is bound to increase if the project at Briery Bank goes ahead.

I ask the committee to consider whether a public inquiry would be appropriate in the circumstances, as the plan is fundamentally flawed without proper traffic information about Haddington as a whole and the Sidegate in particular.

I have one further request. Since we submitted our petition, we have received a letter stating that the plan will be adopted on 11 December. I ask the committee whether it is within its powers to have that date postponed and whether, in the interim, a survey on traffic in the Sidegate and Haddington could be carried out in which the rest of the residents in the Sidegate can participate. Surely, after 10 years, a wee delay would do no harm. Indeed, it may, in the long run, save the life of a child or old-age pensioner.

**The Convener:** You referred to a letter that says that the plan will be adopted on 11 December. Would the Scottish Executive give the approval?

**Clive Fairweather:** As I understand it, it would be the local council.

**The Convener:** But the proposal is before the Scottish Executive minister for consideration.

**Clive Fairweather:** It would seem so.

**The Convener:** So it is not finalised yet.

**Clive Fairweather:** No.

**Helen Eadie (Dunfermline East) (Lab):** Good afternoon, gentlemen. I have two questions. First, have you involved your local MSP, John Home Robertson?

14:30

**Mr Arnott:** HADAS has involved him. He asked for information on the course of action that we were taking and we sent him a brief résumé of the facts. He also received some 300 representations from members of the public.

**Helen Eadie:** Have you met John Home Robertson?

**Mr Arnott:** Yes, I have.

**Helen Eadie:** To discuss this issue?

**Mr Arnott:** Yes.

**Helen Eadie:** Obviously, the planning authority is obliged to follow procedures. Do you feel that it has not done so at any point?

**William Watson:** A standard form was sent out, inviting anyone who had any objections to make representations to the council. That form indicated that, if the local authority received any new objections, it would be obliged to hold a public inquiry. We believe that the council received new objections, but no public inquiry has been proposed. The council has therefore not followed the correct procedure.

**Helen Eadie:** Your submission states that there has been a case in Glasgow in which planning issues have been included in the terms of an independent tribunal under article 6 of the European convention on human rights. Do you feel that that is relevant to this case?

**William Watson:** Yes. The ECHR is an interesting, developing beast in relation to a whole set of procedures. The case in Glasgow appears to show firmly that the ECHR applies to planning matters.

**The Convener:** I must make everyone aware of the fact that neither as a committee nor as a Parliament do we have powers to extend the statutory period of 28 days during which representations can be made to Executive ministers on this plan. However, we can ensure that the representations that you make to us are considered by ministers within those 28 days.

**John Scott (Ayr) (Con):** You maintain that there has been no consultation, explanation or clarification. Are you content to make those assertions?

**Mr Arnott:** At the time of the submission of objections to modification of the local plan—which was the last advertised opportunity for objections to be received—we suggested to the authority

that, if the objections did not oblige it to hold a planning inquiry, a hearing such as referred to in the code of practice for local planning inquiries should be held, as it would provide a forum for those members of the public who had objected at least to hear an explanation of the council's actions. Nothing happened.

**The Convener:** In the papers that have been circulated to committee members, you seem to say that the authority has agreed reluctantly to the reporter's proposal. Can you explain why that is? In the past, the local authority has taken your side and opposed development on this site. Why has it changed its mind?

**Mr Arnott:** That is one of the aspects of the case on which we would welcome some clarification. The previous local plan inquiry lasted for seven months and was conducted at some cost to the local authority. I imagine that the council has accepted the reporter's recommendation—which it was free not to accept, as the recommendation is not statutory—because it envisaged that, if it did not, a further, expensive public inquiry would be necessary.

**The Convener:** If it had refused to accept the reporter's recommendation, would the developer have been able to appeal?

**Mr Arnott:** The developer would have submitted an application, which I presume the council would have refused on the ground of its being contrary to the local plan. The developer would then have been free to appeal and, in his appeal, he would have been able to quote the reporter's findings. That situation has arisen in the past and has not always been indefensible.

**The Convener:** There seems to have been no rationalisation of why the new reporter's findings are different from those of the reporter 10 years ago. Was any explanation given of the difference in the reporters' findings?

**Mr Arnott:** No.

**Clive Fairweather:** No.

**The Convener:** If anything, the traffic congestion is worse than it was 10 years ago.

**Mr Arnott:** The circumstances are worse than they were, and the reporter was concerned 10 years ago.

**The Convener:** No explanation was offered of why the decision was different this time. Reference has also been made to a traffic assessment plan that will be carried out in the area. Does that reassure you?

**Clive Fairweather:** Conducting a traffic survey sounds to me rather like putting the cart before the horse. The indications are that there will be a survey but, as a resident, I would be surprised if

that survey finds what the residents feel—that the traffic has increased enormously. That may sound cynical, but it seems as though there has been a build-up of activity and I would be surprised if the impetus was to cease. That is why I request that the Sidegate residents association be allowed to take part in the survey. I see no reason why we should not do so; the process should be transparent and we should be able to contribute to it.

I believe—although this is hearsay—that traffic surveys have been conducted at favourable times of the year, such as holidays. We would therefore like to have some say in when the survey went ahead.

**The Convener:** One of the principles behind this Parliament is that it should be open and accountable. That should apply to transport assessments as well, which are carried out on behalf of the Parliament.

**Helen Eadie:** The plate that the petitioners have brought for the committee has a beautiful view on it. Were historical and natural heritage organisations consulted when objections to the plan were submitted to the council? If so, did they submit objections?

**Mr Arnott:** I cannot answer that. In her findings, the reporter did not cite any such organisations as having submitted objections. Briery Bank had been defended successfully over 10 years, on two occasions, by a council that acted contrary to its own planners. At the time of the public local inquiry, the matter was felt to be in safe hands and so was not paid the attention that, given subsequent events, it should have been.

**Helen Eadie:** Are you aware of an organisation called Planning Aid for Scotland? Have you approached that organisation?

**Mr Arnott:** I am aware of it, but we have not approached it yet.

**Helen Eadie:** That might be a good idea.

**Mr Arnott:** Yes, I agree.

**The Convener:** Thanks very much for answering our questions so well. We now proceed to consideration of the petitions.

The notes for committee members make it clear that we do not have the power or right to intervene in the development of local plans. In view of the fact that this local plan is currently before the ministers for the statutory period of 28 days during which representations can be made to them, it seems appropriate for the petitions to be passed quickly to the Executive and for us to request that they be taken into account when the minister responsible reaches a decision on whether to intervene.

**John Scott:** Perhaps we should note the fact that this third planning decision appears to be out of step with the previous two.

**Helen Eadie:** I support that.

**The Convener:** We should also make the *Official Report* of this meeting available to the minister. That will allow the points made by the petitioners today to be taken into account. However, I do not know when the *Official Report* will be available.

**John Scott:** We should send the material to the minister as quickly as possible, to allow the minister the maximum amount of time in which to consider the matter.

**The Convener:** We will send the petitions to the minister tomorrow; the *Official Report* might take longer.

**John Scott:** The planning decision seems to fly in the face of the policy of keeping open spaces in and around town centres. It would be a shame to lose that open space.

**The Convener:** It would be fair to say that committee members are sympathetic to the petitioners. We should ask the minister to take that into consideration.

**Helen Eadie:** I suggest that a copy of the correspondence go to John Home Robertson as well, as he is the local MSP.

**The Convener:** Are those proposals agreed?

**Members** *indicated agreement.*

**The Convener:** The next petition is PE295, from Mr Alex Murray, on behalf of the Silverknowes residents action group. The petition calls on the Scottish Parliament to urge the City of Edinburgh Council to review its plans for the relocation of the football pitch in Silverknowes Green and to ensure that the future planning applications allow sufficient opportunities for interested parties to voice their concern. I welcome Mr Murray to the committee and ask him to make his statement.

**Mr Alex Murray (Silverknowes Residents Action Group):** I have provided a plan of the area to the committee. I would appreciate it if members would have a look at it before I speak.

**The Convener:** The plan was received today and is being handed out now. Some photographs were also received.

**Mr Murray:** I will refer to them later.

I speak on behalf of the residents of Silverknowes View, Silverknowes Green and the surrounding area. Our petition relates to planning procedures and the right of appeal. We feel greatly aggrieved that reasonable, law-abiding, undemanding, tax-paying citizens have an

unacceptable situation imposed on them without the right of appeal. We maintain that we were not properly informed or consulted during the planning process. A council-backed development on council land has received planning permission from the council's planning committee and will be developed by the council. All that has been done in the interests of the local community. We maintain that we are part of that community and that we have not had a fair and impartial hearing.

The local plan, which was adopted in 1992, defines the area involved as a significant area of public open space on which no development is allowed. A football pitch, which was located on the Muirhouse side of the land, was relocated close to Silverknowes without notification. We have since been regularly subjected to foul language, shouting and people urinating in public against the fences of our properties.

Since October 1997, three planning applications have been approved, resulting in plans for housing and a park for the community. The football pitch will be moved even closer to us. Approval was subject to consultation with all local communities. A consultation meeting was advertised in Muirhouse Library, Silverknowes Primary School and on the lamp posts surrounding the park. However, our local library is in Blackhall, our local school is Davidson's Mains Primary School and we have no direct access to the park. Therefore, we did not attend the meeting and were not consulted, which means that the conditions attached to the planning approval were contravened.

The second notice to neighbours clearly showed a football pitch, but the notice was not issued to us. The third notice to neighbours, which we received, did not mention a football pitch or a 40 ft high fence. When we discovered the detail, we tried to have the matter removed from the planning committee agenda until we had been properly consulted. We have since proposed that an existing pitch in Silverknowes Primary School be retained. The pitch is recognised by sportscotland as a substantial playing field of good quality that is conveniently located. The school and field will be sold for housing development.

I ask members to take time, please, to look at the four photographs. Photograph A shows the level, well-drained playing field in the school grounds. Photograph B shows the area of the intended football pitch, close to our properties. You can see the type of soil on which it is planned to put the pitch. Photograph C shows the 40 ft fence and the height in relation to our two-storey properties. The effect does not include that of any netting that will be erected. Photograph D shows the impact of the fence from our rear gardens. Again, the netting is not included.



14:45

To the council, we have pleaded article 6 of the European convention on human rights, on a fair and impartial hearing, and article 8, on the individual's right to peaceful enjoyment of assets. We have not yet received a response. We feel that the smart movers—the experienced players in the planning game—have succeeded at the expense of the innocents who do not know the law. We have discovered that we do not have the right to speak at the planning committee, that we have no right of appeal, that no independent authority ensures fair play during the planning process and that planning permission, once granted, is difficult to reverse.

We ask the Parliament to protect its citizens, allowing us—and no doubt many others in similar situations throughout Scotland—the freedom to enjoy our homes and gardens peacefully. We believe that the Parliament has it in its power to correct the situation.

**The Convener:** Will you elaborate a bit on the ways in which you have approached the council and any responses that you have received from it?

**Mr Murray:** When the first notice to neighbours was distributed, many of us objected. The notice informed us of a housing development and a reallocation of open space. There was no mention of the football pitch. At that time, our objections related to the lack of detail about the housing, which appeared to be right up against our boundary fences. We asked questions about the orientation, density, height and type of housing that would be built. The response was that it would be low-rise, low-density, low-cost private housing.

At its meeting, the planning committee had to take notice of the local councillor's requirement that the existing football pitch be retained and I think that sportscotland said that it would not like to lose a football pitch. We were unaware that the proposals were being made to the planning committee, so we had no opportunity to raise objections. Outline planning permission was granted, but decisions on the retention of the full-size football pitch and consultation with all local communities were reserved.

**Helen Eadie:** Have you requested a meeting with the leader of the City of Edinburgh Council? Have you involved a local councillor?

**Mr Murray:** We have involved many people so far. As soon as we realised that the third application would succeed and that we could not object, we set up a public meeting. Margaret Smith, who is not here today, Lord James Douglas-Hamilton, who is one of our list MSPs, and Councillor Lowrie all attended the meeting. If Margaret Smith were here, she would vouch for the number that attended. We feel that if we had

been invited to the consultative meeting, the turnout would have been the same and we would have had the opportunity to raise our objections to the location of the pitch. However, we were not given that opportunity.

One of the reasons why we are here today is that Margaret Smith recommended that we send a petition. We collected the names and submitted that petition. Councillor Lowrie is a member of our action group and gives us advice about council procedure and some information about progress.

**Helen Eadie:** You say that a public meeting was called. Have you sought a meeting with the leader of the City of Edinburgh Council?

**Mr Murray:** No, not with the leader, but we tried to communicate with the convener of the planning committee. We delivered letters by hand, and I sent a fax, to try to get the item removed from the agenda until we had been consulted. Those requests were all turned down.

I have been in communication with the chief executive, trying to persuade him that proper procedure was not followed. On behalf of the action group, I have had a meeting with the head of planning, the acting head of leisure and recreation and a representative from housing development who has been involved in the project from its early days. At that lengthy meeting, I explained, as I have explained to you, the shortcomings in the procedure that was followed.

We have since had letters back from those officials saying that they feel that the council followed correct procedure. We have had a letter from the chief executive saying that, having investigated the matter internally, he feels that the council followed proper procedure. We have communicated with Steve Cardownie, who is the executive member for leisure and culture. He wrote back, in what now appears to be the standard letter, to say that he is convinced that the council followed proper procedure.

We have invited all those people down to have a look at the site so that they can see it from our point of view, but none has yet accepted. The only acceptance that we have had has been from Robin Harper MSP. Subject to his schedule, we hope to have a visit from him in the next few weeks.

**John Scott:** I want to be sure that I have understood correctly. When you were first notified of this development, you were told that it was to be for housing.

**Mr Murray:** That is correct.

**John Scott:** So when you objected to the development, you were objecting to a housing development. The council subsequently changed the plans and the area was designated not for

housing but for a football pitch. Were you given an opportunity to object at that stage?

**Mr Murray:** No, and that is my point. Initially, we objected because of the lack of detail about the housing: we did not want tower blocks right at the boundaries of our properties. As I have said, we understand that sportscotland made representations to say that it did not want to lose another football pitch, and we understand that the local councillor, Lesley Hinds, made representations in the council that sportscotland wanted to retain the pitch. As a result of that, the outline planning permission included, among other things, the provision of a full-sized football pitch, subject to the developers consulting all the local communities.

**John Scott:** Which you maintain that they did not adequately do.

**Mr Murray:** They maintain that they did, but they did not tell us about the meeting on the issue. They advertised it in areas that we do not frequent. Silverknowes is quite an extensive area. Silverknowes Primary School serves the north end, but we are at the south end and our children go to Davidson's Mains Primary School. The Muirhouse library is in the centre of Muirhouse but the most accessible library for us is in Blackhall. From Silverknowes, we do not have access to the open space concerned, so we would not see any notices on lamp posts.

**John Scott:** Do you feel that an attempt has been made to deceive you?

**Mr Murray:** We would have to use the word "allegedly", but yes, we do feel that. We feel that we have been not outmanoeuvred but cheated, in that we have not had proper consultation or information. In the third notice given to people in the neighbouring houses, the development was described as a park for the community. Accompanying that notice was a diagram showing a blank area. There was no mention of the pitch being within 25 or 35 feet of properties. Please correct me if I am wrong now that we have gone metric, but those who play football will know that 35 ft is just under the distance from the penalty spot to the goal line.

**The Convener:** It is a long time since I went metric or played football.

**Mr Murray:** Is it 12 yards? I cannot remember.

**The Convener:** I notice in your papers that you are considering an application to the local authority ombudsman about maladministration on the part of the council. Are you going to do that?

**Mr Murray:** Again, you can correct me if I am wrong when I say that the ombudsman can investigate the planning approval but cannot change it. We submitted all the necessary papers

up to July, which was about the time that the petition was originally completed and signed. The ombudsman wanted to close the file because we had not gone through the council's proper complaints procedure. We had complained to just about everybody on the council to whom we thought we could complain. We received replies in which they all said that proper procedure had been observed.

We delayed taking the matter further with the ombudsman, and he or she was aware of that. We delayed submitting this petition to allow the council to consider our alternative proposal of retaining what is a perfectly good, level, well-drained playing field. As members can see from the photograph, there is no water lying on the pitch, even after lengthy periods of rain.

Silverknowes Primary School and the pitch have to be sold. They are no longer required. The proceeds of the sale will go towards a new primary school in Muirhouse, which will replace more than two or three schools in the area. Those schools have playing facilities, which will be open for community use. We maintain that there is no need for another football pitch. There are many football pitches all around Silverknowes. We tried to put that case to the council's recreation committee. It listened, but it did not do anything.

**John Scott:** Did you say that you were not given the right to speak before the council's planning committee?

**Mr Murray:** No, I said that we understand that we do not have the right to speak. We can speak by invitation.

**John Scott:** Which was not extended to you.

**Mr Murray:** If we had been aware that a local councillor was going to support the retention of the football pitch, we would have presented a case against that.

**The Convener:** But no forward notice of the matter was to be raised at that committee?

**Mr Murray:** Indeed not.

**The Convener:** You understand that the Parliament cannot intervene in local democratic planning decisions. That is, in a sense, why councils are elected. We can discuss procedures, but the individual decisions of any council are a matter for its elected members, who will be held to account by the voters when the time comes.

**Mr Murray:** Yes, but the Parliament surely has some say in the procedure and in the application of law. In this case, we are saying that the law should be changed: we should have a right of appeal. My understanding is—again, you will have to correct me if I am wrong, as we are lay people with respect to the law—that when planning

approval has been granted, virtually the only way of reversing or changing that is through a judicial review.

**The Convener:** There is no right of appeal. A number of petitions have been referred from this committee to the Transport and the Environment Committee, dealing with the specific problem that people do not have the right of appeal against such decisions. I know that the Transport and the Environment Committee is considering that. We may decide to refer this petition to that committee as well, but I reiterate that we cannot interfere with the council's actual decision. We can only talk about the procedures and processes. Otherwise, the Convention of Scottish Local Authorities and local authorities themselves will get irate.

**Mr Murray:** Yes, but we are also entitled to get angry because we were not consulted.

**The Convener:** I agree.

**Mr Murray:** The whole point is that the decision was not democratic. To reiterate what I said earlier, this is a council-backed development on council land, which has received planning permission from the council's planning committee. It will be developed by the council.

**John Scott:** For council gain.

**Mr Murray:** What is fair and impartial about that? Does the Human Rights Act 1998 have any application in this area?

**The Convener:** We cannot make a judgment on that.

**Helen Eadie:** I concur with the convener, but you might want to explore this with the local government ombudsman, whose task it is to ensure that all the due processes and procedures have been observed. I am not sure whether you have thought about doing that.

**Mr Murray:** We did explore it with the ombudsman.

**Helen Eadie:** John McAllion is absolutely right: it is our task to change the legislation, to investigate any guidelines that the Minister for Finance and Local Government needs to consider and to investigate any pertinent statutory instruments.

The rights of smaller people in the community, so to speak, to have a line of appeal against planning decisions form one of the most frequent subjects of the petitions that the Transport and the Environment Committee has received from us. Developers have a right of appeal. There seems to be an imbalance in society, and I know that the Transport and the Environment Committee will consider that in due course.

**Mr Murray:** If the ombudsman finds that proper procedure has not been followed in this case, we

still have no means of getting the football pitch moved. I question the legality of the decision. Again, we are left without a leg to stand on.

15:00

**The Convener:** Thank you very much for a comprehensive presentation. There are no more questions.

We will now discuss how to handle the petition. As I said, it is not within our remit to investigate decisions that have been made by elected councils such as the City of Edinburgh Council. We cannot take any further action in relation to that aspect of the petition.

In relation to the other issues that have been raised, as I said, we have passed several similar petitions that have called for changes in the planning system to the Transport and the Environment Committee. It is suggested that the petition should be passed to that committee to be considered with those previous petitions.

Do members think that any other action might be possible?

**John Scott:** The ECHR is increasingly going to come into play in those planning decisions. I understand that some councils offer individuals the right to speak and make representations at planning committees as a matter of right.

In the context of changing the legislation, if we decide to pass this petition to the Transport and the Environment Committee, we should urge it to fully examine how ECHR issues relate to planning. If the committee does not do so, we will be forced to do so by court action.

**The Convener:** In passing petition PE295 to the Transport and the Environment Committee, we could ask them to consider the implications of the ECHR for planning applications, especially in relation to the right of individuals to make representations to councils about planning decisions.

**John Scott:** I wonder if we should write to the council to ask whether it is satisfied that it has complied with all procedures known to it and has complied with the ECHR. That would invite it to take a look at its own position.

**The Convener:** As well as passing the petition to the Transport and the Environment Committee, we could also pass it to the City of Edinburgh Council to ask it to respond to the points made by the petitioners about the lack of consultation and the lack of the right to object to this planning decision. We would consider the replies when we get them.

**Helen Eadie:** The petitioners might want to contact Planning Aid for Scotland.

**The Convener:** I have been advised to stress again—I think for legal reasons—that the committee recognises that it cannot intervene in the decisions of a democratically elected body such as the council. We are trying to help the petitioners by getting the council to explain its position.

Are members agreed?

**Members indicated agreement.**

**The Convener:** The final new petition today is PE291 from Mr Alan Melville, on behalf of Napier Students Association, calling on the Scottish Parliament to implement the Cubie report in its entirety. I welcome Mr Melville to the committee.

For the information of members, we have received this—sorry, one of the members has to leave urgently. We will have to suspend the meeting for a few minutes; otherwise we would be inquorate.

15:03

*Meeting adjourned.*

15:09

*On resuming—*

**The Convener:** I reconvene this meeting of the Public Petitions Committee. We are short-handed today, Mr Melville, as you can see.

**Alan Melville (Napier Students Association):** I have noticed.

**The Convener:** I welcome you again.

PE291 has been running on the international teledemocracy centre e-petitioner website for the past four and a half months. The centre has provided the committee with a very useful briefing on the background to the petition, which is not usually available with a petition. That highlights the useful way in which electronic petitions can be sent to this Parliament. I commend Napier Students Association on the way in which it has organised this—it is very good. It is now for you to make your case.

**Alan Melville:** Thank you for inviting me to speak today. The petition before you calls on the Scottish Executive to implement in full the recommendations of the Independent Committee of Inquiry into Student Finance, which is popularly called the Cubie report, after the chairman of that committee, Mr Andrew Cubie.

Members will be aware that this is not the first petition to be placed before the committee on this subject. I am sure that you probably wonder why another petition is being made. There are two reasons. The first is that, as the convener

mentioned, this petition is, as far as I know, the first of its kind—it is an online petition. People all over the globe have signed it. The figures about where the people who signed it come from are in the brief from the international teledemocracy centre.

The second reason is perhaps more pertinent. I was asked, on delivery of this petition, whether I believed that it still had relevance as the legislative process is in train and enabling bills are being passed. My answer was, and remains, simple. The process is not over simply because certain ministers seem to want it to be. This issue cannot be shelved; there are still students who do not have any money.

The previous petition that we sent to this body was sent to the Enterprise and Lifelong Learning Committee, which decided that the matter had been discussed enough and filed it, since the matter was under discussion at the time. We do not believe that the issue has been discussed enough.

Every student representative body in the country, from individual student associations such as Napier to the Scottish ancient universities and the National Union of Students Scotland, has informed the Scottish Executive repeatedly that the proposals contained in the consultation document, "Scotland: A Learning Nation", were unsatisfactory, ill thought out, unfair and short-term. The Executive nevertheless continued to push forward what I consider to be an ill-conceived agenda.

I do not know how many times we have to drag the Executive, kicking and screaming, back to this issue. Andrew Cubie and his committee took account of the financial constraints of the Scottish Parliament. The Cubie report was costed at £62 million over the first year and £71 million thereafter. That is less than £15 per head of population. It is £20 million, a fiver a head, more than the current series of initiatives and grabs at headlines that are currently being put forward. It is not too much to ask that, for once, the Scottish Parliament puts the long-term welfare of the nation above politics, above the mandarins from the Treasury's budgetary constraints and above the ideological differences of members of committees.

The Executive appears to consistently ignore the people that it represents. The Cubie report has the backing of all the students, universities, lecturers, business and the thousands of ordinary people with whom the Cubie inquiry consulted. An ICM poll for *The Scotsman* showed that 80 per cent of the public backed Cubie. However, the Parliament has never been asked whether it supports the Cubie report. I suggest that that question needs to be put.

I recommend that this committee, if it has the power to do so, place the Cubie report before Parliament so that we can find out its views. That is all that I have to say.

**The Convener:** Thank you very much. Members may now question the witness.

**Helen Eadie:** I have no questions.

**John Scott:** I do not have any questions either. The petitioner has made a good and full presentation of his case, to which I am entirely sympathetic.

**The Convener:** There is considerable cross-party sympathy for the points that the petitioner made.

You mentioned that the Enterprise and Lifelong Learning Committee—

**Alan Melville:** The committee received an earlier petition from Napier Students Association.

**The Convener:** It was petition PE78. The committee decided to ask the Enterprise and Lifelong Learning Committee to consider the points made in the petition when it came to consider the Education (Graduate Endowment and Student Support) (Scotland) Bill at stage 1.

**Alan Melville:** We were able to find out only that the petition had been discussed.

**The Convener:** We have been informed that the Enterprise and Lifelong Learning Committee agreed at its meeting on 23 February to consider the issues that are raised in the petition when it examined student finance—when it considered the Education (Graduate Endowment and Student Support) (Scotland) Bill. The bill was before the committee, but it had to be withdrawn.

**Alan Melville:** I am aware of that.

**John Scott:** The petition was submitted before the weekend announcement of Wendy Alexander's munificence to students. Had you known about that announcement, would it have had any material bearing on your petition?

15:15

**Alan Melville:** No. The minister said that universities would receive £750 per place to fund 12,000 places for students from poorer backgrounds. The total for that is £9 million. The Executive's prior proposals cost £50 million. That produces a total of £59 million. We are talking about a difference of £3 million between the cost of implementing the Cubie report in full and the amount the Scottish Executive appears willing to spend. Cubie was costed and designed as a complete package.

The money the minister has announced will go

to universities, not to students. Given the current position of student finance, I do not believe that students from poorer backgrounds will take up the 12,000 places for which provision has been made.

**John Scott:** Do you believe that Cubie's recommendation that fees should be paid back only once students have reached an income threshold of £25,000 is correct?

**Alan Melville:** I think that it is reasonable. When a graduate is earning £25,000, it is obvious that they have benefited from their degree. It is only reasonable for them to repay some of that benefit. As members are no doubt aware, a threshold of £10,000 is not very popular with student bodies. I cannot think of anybody whom I know, apart from me, who earns less than £10,000 a year. Even my income is below the threshold by only £100 or so. Everybody would have to pay back the £2,000. That amounts to a graduate tax rather than a graduate endowment.

The Cubie report also recommended that the graduate endowment scheme be set up as a charitable foundation. That suggestion has been ignored completely by the Scottish Executive. It seems that the money will go straight to the Treasury. I am sure that all members are aware of the Royal Bank of Scotland's recent announcement of charitable help for students from Edinburgh, St Andrews, Glasgow and Dundee. Had the Executive accepted the Cubie report's recommendation, the bank's money could have gone straight into the graduate endowment scheme and all students in Scotland could have benefited from it.

**The Convener:** Thank you very much, Mr Melville.

**Alan Melville:** Thank you for your time.

**The Convener:** I am sorry for the delays and the interruptions.

**Alan Melville:** Pauline McNeill will be able to bring the committee up to speed. I am sure that, as an ex-president of the National Union of Students Scotland, she is very aware of the position.

**The Convener:** I hope so.

As has been mentioned, the previous petition from Napier Students Association was passed to the Enterprise and Lifelong Learning Committee, to be considered as part of its stage 1 consideration of the new Education (Graduate Endowment and Student Support) (Scotland) Bill. It is suggested that the same should happen to this petition.

**Helen Eadie:** I agree.

**John Scott:** I also agree, in the strongest possible terms. The case for the full

implementation of the Cubie report was eloquently made. I would like the Executive to implement the report in full on behalf of the students of Scotland.

**The Convener:** I do not think that any member of the committee would dissent from that.

**John Scott:** It is probably easier for me to say it than it is for you, convener.

## Current Petitions

**The Convener:** The next item on the agenda is current petitions, on which we have separate briefing papers.

The first response that we received relates to petition PE237, which was submitted by Mr David Bryce on behalf of Calton Athletic Recovery Group. The petition was considered at our meeting of 4 July. Members will recall that the committee agreed to write to the then Deputy Minister for Justice, Angus MacKay, asking him to consider granting the petitioner's request for a meeting. We have now received a response from the new Deputy Minister for Justice, Iain Gray, a copy of which is included with the papers that were circulated to members.

Members will see that the minister is not willing to meet the Calton Athletic Recovery Group. He indicates that his predecessor, Angus MacKay, met the group in February to discuss some of its concerns. The minister states that he is unable to give credence to the alleged discrimination outlined by Mr Bryce when he addressed the committee. Executive officials have checked the allegations made by Mr Bryce and have established that the organisations concerned

"not only refute them but provide an alternative history of events."

Members will note that the minister also spells out the criteria that voluntary groups such as the Calton Athletic Recovery Group are required to meet if they are to access Executive funds. They include demonstrating partnership working, accountability and willingness to work to agreed objectives. He states that the Calton Athletic Recovery Group has failed to meet those criteria by refusing to provide proper audited accounts to its funders. Details of the problems encountered by Greater Glasgow Health Board, the main funder of the Calton Athletic Recovery Group, are given in paragraphs 5, 6 and 7 of the letter.

The minister closes by saying:

"I do not deny CARG's work in tackling Scotland's drugs problem in the past, and do not wish them excluded from any bidding process in the future, either national or local."

However, like other voluntary organisations, the group must comply with the conditions of funding.

In the light of the minister's reply, it is suggested that there is little that we can do to facilitate a meeting, as requested by the petitioner. It is recommended that the committee agrees to pass the minister's response to the petitioner for information, with the suggestion that Calton Athletic Recovery Group endeavour to meet the requirements for accessing funds, as explained by

the minister, in an effort to resolve its difficulties.

**Helen Eadie:** The minister's response seems reasonable.

**John Scott:** One must assume that the minister conducted thorough investigations. I do not see that we have any option other than to support his conclusions.

**The Convener:** We will do what has been suggested. We will pass the minister's response to the petitioner for information and suggest to him that the group endeavours to meet the requirements for accessing funds, as explained by the minister, in an effort to resolve its difficulties.

The next response that we have received relates to petition PE244, from Mr Graeme Brown, on behalf of Holyrood View Residents Association. The petition is about the wheel clamping of illegally parked vehicles in Edinburgh. At our meeting of 12 September, we agreed to copy the petition to the City of Edinburgh Council transport committee and to request a response to the issues raised in it. That response has now been received and a copy is attached.

The council's reply makes clear that the areas in which the illegal parking referred to in the petition is taking place

"are 'private' and outwith the existing controlled parking zone."

It indicates that wheel clamping is one of the powers available to the council as a means of enforcement within the controlled zone. Members' attention is drawn to paragraphs 3 and 4 of the council's letter, which indicates that the on-street parking bays referred to by the petitioner are private, and that in the past the residents have rejected proposals to integrate them into the controlled parking zone. Inclusion of the bays in the controlled zone would assist in dealing with the problem of illegal parking, but residents have been reluctant to pay for residents permits to park in what they consider to be their private driveways.

The council suggests that properly controlled wheel clamping could provide an answer to the residents' problems. However, that advice conflicts with information that the Scottish Parliament information centre provided to the committee at our meeting of 12 September, which indicated that the practice of wheel clamping on private land in Scotland was banned by a court case in 1992. SPICe has been unable to trace any proposals to change that situation. The council's advice is that the parking bays in question should be included in the controlled parking zone, although it acknowledges that residents may still be unwilling to pay for passes and that residents from other parts of the zone could, in theory, also use those parking bays.

It is suggested that we write to the Minister for Transport to ask for clarification of the provisions in relation to wheel clamping on private land in Scotland, and for any comments that she may have about illegal parking on private land. A copy of the council's response should also be sent to the petitioner.

**Helen Eadie:** I have been feverishly searching through the *Official Report* of last week's Transport and the Environment Committee meeting, at which this very topic came up and Donald Gorrie raised a point about trying to legislate for private ground. The minister gave a response at the time—I am afraid I cannot find the relevant part of the report at the moment—but perhaps the simple answer is to do what the petitioner suggests.

**The Convener:** To raise the matter with the minister and ask her to respond formally?

**Helen Eadie:** Yes.

**John Scott:** It seems odd that it should be so difficult to get a clear-cut answer to something as simple as this. It is also odd that there is a divergence of views between SPICe and the council.

**The Convener:** The matter certainly must be cleared up. The council has its own legal advisers and one would have thought that they would be aware of whether something is against the law.

**John Scott:** I have not seen clamping signs anywhere for a long time.

**The Convener:** It is important to have the point clarified and we should write to the Minister for Transport to ask for that. In the meantime, we shall copy the council's response to the petitioner. Once we have the minister's reply, we can pursue the matter further. Is that agreed?

**Members indicated agreement.**

**John Scott:** What did the Transport and the Environment Committee conclude? Can you remember, Helen?

**Helen Eadie:** I have now found the section that I was looking for. It is a little more complicated, as we were also talking about commercial parking and about the need to adopt certain bits of roads. The minister said that

"under the Road Traffic Regulation Act 1984, one of the core conditions is whether the owners of an area are in favour of the road being adopted."—[*Official Report, Transport and the Environment Committee*, 17 November 2000; c 1239.]

Donald Gorrie went on to say that he would go away and investigate the minister's point about private parking, because there already seem to be powers about that.

**The Convener:** Perhaps we should write to Donald Gorrie to ask him for the result of his investigation.

**Helen Eadie:** I am sure that Sarah Boyack will give you the answer.

**The Convener:** We shall ask Sarah Boyack to clarify the position.

The next response that we have is to petition PE253, from Sustainable Stewartry, which called on the Parliament to investigate, promote and assist in the production of cars powered by compressed air. We have received comments from the Minister for Transport, and her letter points out that the issues raised about technical standards are reserved matters. However, the reply provides details of the view of the Department of the Environment, Transport and the Regions on the pros and cons of the use of such vehicles.

On the question of manufacturing, information is given on the availability of regional selective assistance, a discretionary grant that is available as an incentive mainly to manufacturing industry to undertake investment in designated assisted areas. The letter also provides details of the European Union regulations that apply in respect of state aid to the motor vehicle industry, including the need to notify the Commission in certain circumstances.

It is suggested that the minister's response should be copied to the petitioner and that no further action should be taken. Is that agreed?

**Members indicated agreement.**

**The Convener:** The next response is to petition PE266, from Mr and Mrs Currie, about the switching off of vehicle engines after two minutes' rest. We agreed to request comments from the UK Minister for Transport about the issues raised in the petition. A copy of his response is attached to today's papers. It gives information on steps that have already been taken in addressing the concerns expressed by the petitioners, including the introduction of a new offence under the Road Vehicles (Construction and Use) Regulations 1986, which apply throughout Britain.

A trial scheme has also been introduced in certain major UK cities, including Glasgow, to allow on-the-spot fixed-penalty notices to be issued to drivers who leave an engine running unnecessarily. The scheme is currently being evaluated and the Department of the Environment, Transport and the Regions expects to make a decision shortly on whether to roll it out to all local authorities in England. It will be for ministers in Scotland and other devolved Administrations to decide whether to implement a similar scheme in their respective countries. It is suggested that we

simply copy the minister's response to the petitioners for their information, and that we take no further action.

**John Scott:** You are right, convener. Gus Macdonald is also right, in that this is a matter of common sense, about which it would be impossible to make hard and fast rules.

Even if one were to try to imagine every situation that might arise, one would still miss some out. The only way in which to enforce legislation in such situations would be to take a commonsense approach.

**The Convener:** It would be interesting to find out how the Scottish ministers will respond to the pilot scheme in Glasgow.

**John Scott:** I agree.

**The Convener:** It would also be interesting to find out whether ministers intend to do something about on-the-spot fines.

**John Scott:** I would be interested to learn what the scale of the problem is. Given the price of fuel, I cannot believe that people leave their cars running unnecessarily for extended periods.

**Helen Eadie:** People should buy liquid petroleum gas, which is half the present cost of fuel.

15:30

**The Convener:** As well as passing a copy of the minister's reply to the petitioners, we should write to the Scottish ministers to ask them to keep us informed of their response to the pilot that is being undertaken. We could inform the petitioners when that response is received.

The final response that we have received is in relation to PE267 from Mr Thomson, which is on solar panels in new buildings. We agreed to request information from the Scottish Executive on its policy on solar panels.

Members will note that the Executive has no immediate plans to amend the building standards regulations for Scotland to require the installation of solar panels in buildings for water heating. The Executive points out that, while the panels have the potential to assist the conservation of fossil fuels,

"at present the technology is too expensive and thus not cost effective. Most solar heating installations would never pay back the initial cost."

The Executive provides details of a consultation that is being carried out on a revision of the building standards regulations that deal with the conservation of fuel and power. Its proposals include measures to raise significantly the standards for thermal insulation and heating



system efficiency for new buildings, which are expected to reduce energy consumption by 25 to 30 per cent. The Executive claims that that will make solar water heating even less cost effective. Technical information on the matter is attached to the Executive's letter at annexe A.

It is suggested that the Executive's response should be passed to the petitioner for information and that no further action be taken.

**Helen Eadie:** I am slightly disappointed by the Executive's response. Only a couple of weeks ago, I discussed solar energy with a professor from Heriot-Watt University. I found what he had to say so compelling that I intend to visit the university in the near future.

That does not change the Scottish Executive's response, to which we must pay attention. However, in the fullness of time, I hope to be able to bring back enough information and evidence to encourage more of my MSP colleagues to hold similar meetings with the professor. I would like to change the climate of opinion to one that is much more supportive of solar energy. We must consider solar energy as part of the bigger equation, and I am sorry that the Executive's view is so negative.

**The Convener:** None of us is qualified to come to a decision on solar energy. Submitting a petition is a process rather than an event—the petitioner will be able to resubmit his petition to the committee if he is not satisfied with the Executive's response.

**John Scott:** I agree with Helen Eadie and I would be happy to accompany her to Heriot-Watt University.

We must encourage those who are in a position to develop more cost-effective ways of using solar energy. I was once a civil engineering student, and I know how they are always scratching about for final year projects. Perhaps people in our universities could consider such projects as a way of developing more cost-effective solar heating.

**The Convener:** Absolutely.

Do members agree to pass the Executive's response to the petitioner and to take no further action on the petition at this stage?

**Helen Eadie:** Perhaps we could include a copy of the *Official Report* of today's meeting, so that the petitioner knows that he is not on his own.

**Members** *indicated agreement.*

## Convener's Report

**The Convener:** That brings us to the convener's report, which is the final agenda item.

I remind members that the next meeting of the committee will be held in Glasgow City Chambers on Monday 4 December at 2 pm.

Our agenda for that meeting is already quite full, as a number of petitions have been submitted from the Glasgow area, with more to come. We hope that we will have a better turnout in Glasgow than we have had in Edinburgh this afternoon.

If members have no other competent business to raise, I thank them for attending.

*Meeting closed at 15:34.*



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