

EDINBURGH AIRPORT RAIL LINK BILL COMMITTEE

Thursday 21 September 2006

Session 2

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EDINBURGH AIRPORT RAIL LINK BILL COMMITTEE

† 8th Meeting 2006, Session 2

CONVENER

*Scott Barrie (Dunfermline West) (Lab)

DEPUTY CONVENER

*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*Mr Charlie Gordon (Glasgow Cathcart) (Lab)

*Christine Grahame (South of Scotland) (SNP)

Iain Smith (North East Fife) (LD)

*attended

CLERK TO THE COMMITTEE

Jane Sutherland

LOCATION

Committee Room 6

† 7th meeting 2006, Session 2—held in private.

Scottish Parliament

Edinburgh Airport Rail Link Committee

Thursday 21 September 2006

[THE CONVENER *opened the meeting at 18:15*]

Edinburgh Airport Rail Link Bill: Consideration Stage

The Convener (Scott Barrie): I welcome everyone to the eighth meeting of the Edinburgh Airport Rail Link Bill Committee. We have received apologies from Iain Smith. Today marks the first meeting of the committee at consideration stage, following this afternoon's decision by the Parliament to agree to the bill's general principles and that it should proceed as a private bill.

There is one paper before the committee today. It provides an overview of the procedures for phase 1 of consideration stage and seeks the committee's decisions on a large number of matters. I do not propose to go over the procedures for phase 1 of consideration stage, as the paper summarises them succinctly. In relation to oral evidence taking, the clerks will meet the promoter and relevant groups to discuss the procedures. They will also advise on the agreed timetable.

Under standing orders, the committee can group objections if they are the same or similar, and it can indicate whether one objector in each group is to act as lead objector. At its meeting on 27 June, the committee agreed indicative groupings and lead objectors, with the proviso that the objectors had a right of reply to the committee's suggestions. The right-of-reply deadline was 21 July. The comments that were received from objectors are reflected in the groupings and lead objectors as shown in annex 1 to the paper. Do we agree to annex 1?

Members indicated agreement.

The Convener: Following this meeting, the clerks will write to all objectors to confirm the committee's groupings and the lead objectors for each group. The first task for the lead objectors will be to submit witness statements for their group, should the group wish to submit written evidence. As members will be aware, we agreed provisional deadlines for the submission of all consideration stage written evidence at our meeting on 27 June. We agreed the dates in advance so that, should the bill proceed to consideration stage, each group would have the

summer to begin preparing their written evidence should they choose to do so.

I now ask members to agree to the following dates for the provision of written evidence: witness statements should be received by the clerks from each lead objector by 5 pm on Monday 2 October; the promoter should respond to each of the relevant witness statements by 5 pm on Monday 16 October; and the relevant lead objectors should provide rebuttals to the promoter's responses by 5 pm on Monday 6 November. Do members agree to those deadlines? Do members further agree that the deadlines should not be extended?

Christine Grahame (South of Scotland) (SNP): In relation to the various deadlines, the witness statements may be submitted by e-mail. Do the deadlines refer to the time received, rather than the time sent? It should be made clear to people who make submissions by e-mail that they must ensure that their e-mails arrive by the deadline—they should not send things off at 10 to 5.

The Convener: Indeed. That is a fair point.

Members are aware that the process at phase 1 of consideration stage is quasi-judicial in nature. Therefore, it is important that clear, enforceable deadlines are put in place. With that in mind, I ask members to discuss and agree that groups who do not provide witness statements by the stated deadline will not be able to take any further part in proceedings or make any further comment on the bill and that, if the promoter does not provide written evidence by the deadlines, it will not be able to provide any further evidence on the issues in question.

Christine Grahame: On the first point, I suggest a caveat: unless there is substantial cause shown why the evidence is not submitted. Somebody's computer might break down, for example, so perhaps the rule should not be expressed in such absolute terms. Someone might miss a deadline for a substantive reason.

The Convener: I suggest that we say something like "unless there are exceptional circumstances".

Christine Grahame: That would be fine. One must always plan for the unexpected in life.

The Convener: Okay. Do we agree that we will include wording on exceptional circumstances and that I will agree to the committee accepting submissions in such circumstances, so that we do not have to hold a further meeting?

Members indicated agreement.

The Convener: Thank you. Christine Grahame made a fair point. Everyone is content with her suggested proviso.

This is an appropriate time to inform members that the Scottish Parliamentary Corporate Body has appointed an independent assessor to assist the committee at consideration stage. The assessor is Professor Hugh Begg, who has considerable experience as an independent reporter.

The paper sets out exactly what the role of the assessor will be. Essentially, the assessor will consider all written and oral evidence that is submitted and will then report to the committee accordingly. Once all the written evidence has been received, we will be in a position to know who should give oral evidence. I am keen to ensure that we do not have several witnesses giving oral evidence on exactly the same or very similar topics. Does the committee agree to delegate to me, on the recommendation of the assessor, the final decision on exactly which witnesses are to be invited to provide oral evidence on behalf of the promoter and of each group?

Members indicated agreement.

The Convener: We should perhaps indicate to the assessor that we expect him to prepare and circulate a detailed timetable for oral evidence-taking meetings to the promoter and objectors in advance of the hearings. Do members think that that would be appropriate?

Members indicated agreement.

The Convener: On the issue of witnesses who will give oral evidence, do members concur with me that, once the oral evidence timetable is agreed, witnesses may be changed only in exceptional circumstances, which must be conveyed to the clerks, and that it will then be a matter for me, as convener, to agree whether any witnesses may be substituted?

Members indicated agreement.

The Convener: Paragraph 32 of the paper sets out the ways in which oral evidence could be restricted—for example, if witnesses repeat written evidence or raise new evidence. Do members agree that, to ensure that meetings run effectively, we should indicate to the assessor that he should, where appropriate, limit oral evidence in the ways suggested?

Members indicated agreement.

Christine Grahame: Could we add that that should be the case unless we see a reason why we might wish to challenge such a restriction? I think that that is unlikely, but we should leave the way open for such a challenge. I do not know how that could be worded.

The Convener: Perhaps we could agree to what is currently in the paper about limiting oral

evidence, with the proviso that, when witnesses come to the committee, we can clarify any points that we need to clarify. Would that cover it?

Christine Grahame: Okay.

The Convener: Members will recall that we have already considered and reported on a number of preliminary stage issues in our preliminary stage report on the general principles of the bill, which the Parliament has just agreed to this evening. Given that the committee has reached a view on those preliminary stage issues, do members agree that we should direct the assessor to take no further evidence on the topics listed in annex 2 to the clerk's paper? Do members also agree that it would be worth while and appropriate for the assessor to be able to question witnesses at any stage of their evidence?

Christine Grahame: I do not think that I can quite agree with the first proposal. I am looking at some of the questions that were raised at the preliminary stage. It is a novel procedure to me, but are those issues that the assessor cannot look at again? Glancing at the clerks, I think that I am getting a negative response from a well-informed source.

The Convener: Given that the preliminary stage functions have been concluded, we cannot take any further evidence on those matters because of the vote that was taken earlier and because Parliament has agreed, under standing orders, that we should move to the next stage.

Christine Grahame: For the sake of clarity, I want to make it plain that, although I voted against the bill going any further, I nevertheless accept the will of Parliament and will continue to work impartially and with rigorous scrutiny on the bill. I put on the record that I will remain open-minded, given Parliament's will, about the further evidence that we shall hear as the bill proceeds.

The Convener: That was a useful declaration to make. I am sure that you will conduct the rest of the proceedings with the utmost scruple, as you have always done in all your parliamentary duties. I hope that that did not sound too crawling.

Christine Grahame: Not enough.

The Convener: Do members agree to the proposal on annex 2?

Members indicated agreement.

The Convener: I note from the guidance on private bills that it is expected that the promoter will present the closing statement in relation to a particular group of objectors immediately prior to that group's closing statement. Having considered the matter further, it is my view that a closing statement should be limited to five minutes, so that such statements are focused on the key issues

remaining in dispute. A consistent approach will ensure that all parties are treated equally and will assist members when they review the transcripts of the oral evidence. Do members agree that the promoter should make the closing statement first and that all closing statements should be limited strictly to five minutes?

Members indicated agreement.

The Convener: In general, we expect the assessor to maintain a relatively informal atmosphere during the oral evidence hearings, particularly given that some objectors may be lay people with limited technical knowledge. However, that must be subject to the need to examine all the evidence openly and fairly. Given that we have not yet received any written evidence at consideration stage, it is difficult to be exact about how many oral evidence meetings will be required. However, I anticipate that oral evidence meetings will begin on 27 November and will last for at least a week. They will be held at the Marriott hotel on Glasgow Road, near Maybury, in Edinburgh.

We all expect the promoter and objectors to make serious efforts to resolve objections and we hope that many objections can be resolved without the need for oral evidence. In that respect, the committee will monitor the progress that the promoter and objectors make in discussions. Do members agree that the assessor should produce a report within three weeks of the date on which the final oral evidence-taking session is held and that the formatting of the report should be consistent with the committee's established report template?

Members indicated agreement.

Christine Grahame: I take it that that is how we will monitor progress.

The Convener: Yes.

I reiterate to the promoter and the objectors that, if the disputed issues are not settled by the time the assessor reports to the committee at the end of the year, the committee will decide. No extensions will be granted to the deadline for the assessor's report, nor will the oral evidence timetable be rearranged to accommodate last-minute discussions between the promoter and objectors. In that light, I recommend strongly that objectors and the promoter should try to resolve any differences at the earliest possible opportunity.

The appointment of an assessor at consideration stage is a relatively new step in the process and we have thought hard about the assessor's role and the duties that we expect him to carry out. However, it would be prudent to inform him that he may take other reasonable actions that he considers to be necessary for the

fair and proper conduct of the hearings and to allow him to consider and report on the evidence. Given that the procedure is relatively new, do members concur with that?

Members indicated agreement.

The Convener: I make it absolutely clear that the committee requires the assessor to act in a manner that is consistent with the Parliament's established procedures and in accordance with the requirements of the Human Rights Act 1998 and the European convention on human rights.

Our final decisions relate to site visits. The assessor should undertake a site visit before the oral evidence hearings, so that he can gain a location-specific understanding of the works that are proposed in the bill. That would involve visiting various properties and areas of land that would be affected by the bill and meeting the relevant objectors. However, I make it absolutely clear that the visit would be purely for fact-finding purposes and that objectors would not be able to provide any evidence to the assessor at the meetings.

If members agree to the assessor undertaking a site visit, I suggest that he should be accompanied by a member of the clerking team, to ensure that objectors do not attempt to lobby him in any way. Further, it would be useful to invite a representative of the promoter on the visit, which may help with access to locations. The promoter's representative would not, however, be able to lobby or provide any evidence to the assessor.

Christine Grahame: That is terribly important. I am pleased to hear that. If we are saying that the objectors must not lobby the assessor, it is good to have it on the record that the promoter will have equal status.

The Convener: We seek to take an even-handed approach to the promoter and the objectors. Do members agree that the visit should be carried out in that manner?

Members indicated agreement.

The Convener: Do members agree that the visit should be undertaken on a date that is convenient to the assessor, which will be circulated to objectors?

Members indicated agreement.

18:30

The Convener: I wish to raise a couple of other matters and seek members' agreement on them. In considering the purpose of phase 1 of consideration stage in relation to outstanding objections, the committee will recognise that the focus is on the changes to the bill that objectors wish to be made to address their concerns and on the explanations that the promoter gives as to why

those changes may not be possible. As a result of that evidence, the committee may recommend that the bill should be amended.

However, some issues have arisen in objections—aside from those detailed in annex 2 to the clerk's paper—and the committee will wish to ensure that evidence on them is focused. One such issue is the planning designation of land. I think that members agree that the debate over the planning designation of land—whether in national, local or development plans—and whether it is designated as green-belt land should be avoided. That is because, should the bill become enacted, whatever route that act authorises will be given planning permission by virtue of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223), and, for the works that the act authorises, that will therefore supersede any existing planning designation of the affected land. Are members clear about that?

Members *indicated agreement.*

Christine Grahame: This is like a tutorial.

The Convener: I never saw myself as a law professor, but there you go.

Amendments are another matter on which the committee may wish to provide the assessor with direction. I am sure that the committee will find it helpful for the text of amendments to be proposed, but members will be only too aware that, at phase 2 of consideration stage, only committee members can lodge, debate and vote on amendments. Given that, it is crucial that the committee understands the intention behind an amendment, rather than its precise wording. As members will also be aware—perhaps from personal experience—the drafting of amendments to Scottish bills follows a prescribed form and it is entirely likely that text suggested by the promoter or an objector could be changed to conform to Scottish Parliament drafting convention. I am sure that we have all fallen foul of that convention in the past few years.

I seek members' agreement to provide direction to the assessor that he should, when appropriate, restrict evidence on the wording of proposed amendments and focus evidence-taking on the intention behind any such amendments. That evidence will greatly assist the committee in considering whether to make recommendations and, if so, which recommendations to make.

I thank members for their participation and confirm that the clerk will write to the promoter and objectors to confirm the committee's main decisions this evening. Of course we cannot be exact about when the committee will next meet, as that depends on its receiving the assessor's report. However, the committee has agreed to

return to several issues in its preliminary stage report, so I expect the committee to be likely to meet in late December to hear oral evidence and to consider any report from the assessor. Any written evidence on the outstanding preliminary stage issues will be circulated to members and posted on the committee's web page as it is received.

Meeting closed at 18:33.

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