

STIRLING-ALLOA-KINCARDINE RAILWAY AND LINKED IMPROVEMENTS BILL COMMITTEE

Thursday 5 February 2004
(*Afternoon*)

Session 2

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STIRLING-ALLOA-KINCARDINE RAILWAY AND LINKED IMPROVEMENTS BILL COMMITTEE

1st Meeting 2004, Session 2

CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

DEPUTY CONVENER

*Rob Gibson (Highlands and Islands) (SNP)

COMMITTEE MEMBERS

*Mr Richard Baker (North East Scotland) (Lab)

*David Mundell (South of Scotland) (Con)

*Nora Radcliffe (Gordon) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Mrs Alison Gorlov (John Kennedy & Co)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Fergus Cochrane

LOCATION

Committee Room 1

Scottish Parliament

Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee

Thursday 5 February 2004

(Afternoon)

[THE CONVENER *opened the meeting at 13:31*]

Stirling-Alloa-Kincardine Railway and Linked Improvements Bill: Consideration Stage

The Convener (Bill Butler): Good afternoon. I welcome everyone to the first meeting in 2004 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee. We have with us Alison Gorlov from John Kennedy & Co, the parliamentary agents for the promoter. She has been invited to speak to the memorandum that is before the committee on the Balfour Street level crossing.

Welcome to the committee, Alison. Committee members have a few questions that they would like to put to you, but perhaps you could first briefly highlight the salient points in your memorandum and update us on the promoter's view on how to address the issue.

Mrs Alison Gorlov (John Kennedy & Co): Certainly. The Balfour Street crossing is one of the many level crossings along the route of the railway. Like a great number of them, it is not in use. It is a pair of broken-down gateposts with no gates. On the south side of it, there is a scrubby field; on the north side, there is a builder's yard with a load of netting and a lot of plant pulled across the former gateway. There is rubble between the tracks, such as one often finds where there was a fixed crossing.

When we looked at the crossing when the bill was being prepared, we saw that it was one of several obvious places where people have, at some point, crossed the railway. The question was whether it was a crossing with established legal rights over it and, if so, what we should do about it. It was not in a position where a modern crossing could be accommodated, so, if there had been a legal crossing there, the bill would have had to provide for its closure. Annoyingly, such a provision was at one point included in the draft bill.

The status of the crossing was not clear. It was clear, from the information that we had, that there

had been a crossing at that point, but it was not clear to us whether there were existing rights over it. In point of fact, there was one shred of information that would have told us that there were such rights, but that was not married up with the much larger body of information that indicated the contrary. As a result, the provision in the draft bill came out and the bill, as introduced, does not provide for the closure of the Balfour Street crossing.

We have now had an approach from the owner of the builder's yard at Gaberston farm and the surrounding part of what seems to be all that is left of Gaberston farm—the land surrounding the builder's yard, to the north of the railway. It would appear that there are extant rights to use the crossing, which need to be got rid of. That is the purpose of the amendment that is proposed in the memorandum that the committee has received today.

The Convener: Thank you, Alison. That is helpful for the committee. We have some further questions to ask, if that is okay.

Rob Gibson (Highlands and Islands) (SNP): Is it fair to say that the promoter's preferred solution would be to deal with the matter contractually if all the affected parties could be identified and were willing to agree a release of rights?

Mrs Gorlov: Yes, the matter could be dealt with contractually. We would be happy to proceed in that way. The problem would be to ensure that we had absolute certainty that we had picked up everyone. I did not deal with the question about the point that we had reached in our investigation. Perhaps I will do so now, as that will partially answer your question.

Having established that there appeared to be some extant rights, the first thing that we had to do was to determine who was entitled to them. We know that there are rights that appear to be vested in Mr Ian Brydie and the co-owner of the land at Gaberston farm. However, it is possible that there are rights vested in other owners, including the owners of the field to the south of the track. Probably the worst-case scenario would be that those rights inured for the benefit of surrounding land that was once benefited by the original agreement to provide a crossing. The only way of finding out whether that was the case would be to investigate the titles of all the houses on the housing estate that now exists to the south of the railway.

We have been able to examine some of the titles. So far there is every indication that the crossing rights may have benefited a very wide area of land, but do not automatically go with the land, and that, when the land was sold off for building plots, the rights did not pass to the people

who were entitled to build houses. We do not yet know that for certain, but every indication that I am getting suggests that that is the position. It appears, therefore, that the strong probability is that the existing rights are vested only in the two owners of Gaberston farm, one of whom is Mr Brydie. However, I cannot say that with absolute certainty.

The answer to your question is that we would very happily settle contractually with Mr Brydie and the co-owner of Gaberston farm. It does not appear that there are many people who would be affected by the closure and ought to be notified individually. We should take the view that the individuals living in the houses are not entitled to be given notice. That is not the same as concluding that the only people with contractual rights are the people at Gaberston farm. We would prefer not to have to rely on a contract with Gaberston farm, simply because of the possibility that later on it will come to light that other people have rights.

Rob Gibson: It appears that you cannot be 100 per cent satisfied that a contract would solve the problem. Will you write to the committee on that basis and notify us of the alternative?

Mrs Gorlov: We will certainly do that. I did not want to do so until we had got further down the road with the title searches. As you will appreciate, those are not altogether straightforward.

David Mundell (South of Scotland) (Con): Is it the promoter's position that the option of an amendment is likely to be pursued only if the number of affected persons cannot be identified definitively?

Mrs Gorlov: No. If we cannot identify everyone, we will have to seek the amendment. However, we will also need the amendment if we identify everyone and they do not agree to the crossing being closed. The crossing exists as a shadow on the ground and has not been used for many years. However, you never know whether someone will have some reason for saying that he does not want his rights to die. It is not possible to have a crossing of the railway at this point.

Richard Baker (North East Scotland) (Lab): The bottom line is why individuals who consider themselves to be adversely affected by the proposal should have less time to object to it, narrow as it may be, than would-be objectors at the time of the bill's introduction had.

Mrs Gorlov: There is no reason why that should be the case. People should have every right to object. We have no quarrel with anyone objecting to the crossing proposal. We accept that, if people can show that they have rights and that they will suffer loss if those rights are taken away, they should be compensated for that loss.

Richard Baker: There is the question of the timescale for objections. Obviously, people will not have as much time to object to the crossing proposal as they would have had if it had been included in the bill as introduced.

Mrs Gorlov: The fact is that the bill has been widely publicised and is widely known about in the area. At the outset, although people knew about the bill, no one knew when it would be introduced in the Parliament. As a result, everyone came to the matter anew.

We are now a considerable way down the road. Everyone in the area now knows about the bill and anyone interested in how it might affect his particular patch has had the opportunity for months to find out what it says. Although I readily accept that parliamentary bills are not the most easily understood of documents, it is fairly clear that no crossing has been proposed at Balfour Street. I would have expected anyone with a real interest in the crossing to get in touch and to ask about it. However, no one has done so until now, when we received the letter from Mr Brydie's solicitor. If we readvertise and give people the opportunity to object, it is also reasonable to tell them, "Well, you've known about this for a while, so if you want to have a shout don't take too long about it."

The Convener: I thank you for appearing before the committee and for answering our questions frankly. The committee will consider your paper and your responses today before reaching a decision, which you will be notified about in due course.

Meeting closed at 13:41.

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