

# **EDINBURGH TRAM (LINE ONE) BILL COMMITTEE**

Wednesday 22 September 2004

Session 2

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## EDINBURGH TRAM (LINE ONE) BILL COMMITTEE 3<sup>rd</sup> Meeting 2004, Session 2

### CONVENER

\*Jackie Baillie (Dumbarton) (Lab)

### DEPUTY CONVENER

\*Phil Gallie (South of Scotland) (Con)

### COMMITTEE MEMBERS

\*Dr Sylvia Jackson (Stirling) (Lab)

\*Michael Matheson (Central Scotland) (SNP)

\*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Alicia McKay (Scottish Parliament Directorate of Legal Services)

### CLERK TO THE COMMITTEE

Jane Sutherland

### LOCATION

Committee Room 1



## Scottish Parliament

### Edinburgh Tram (Line One) Bill Committee

Wednesday 22 September 2004

[THE CONVENER opened the meeting at 10:16]

### Edinburgh Tram (Line One) Bill: Preliminary Stage

**The Convener (Jackie Baillie):** Welcome to this morning's meeting of the Edinburgh Tram (Line One) Bill Committee. We have one item on the agenda. There are more than 200 objections to consider this morning. As members have read through most, if not all, the objections, they will agree that the objectors make cogent arguments and have taken time to consider their objections in detail. The committee commends them for their efforts—I certainly enjoyed reading some of the more elegant objections.

I will explain the process and, I hope, guide this morning's discussion. Under standing orders, the committee is required to give preliminary consideration to all admissible objections. In effect, we are required to satisfy ourselves that each objection is based on a reasonable claim that the bill would adversely affect the objector's interests. If the committee is not satisfied on that point, under standing orders, we must reject the objection. If we cannot decide whether an objection demonstrates a clear adverse effect, we can offer the objector the opportunity to provide further written information or to be heard at a future committee meeting.

Members have been issued with copies of all the admissible objections that have been lodged since June and with copies of the seven late objections that we agreed were admissible last week. I am sure that members will have taken the time between last week and this week to review those seven objections, as well as the ones that we received in June.

Paragraphs 16 to 20 of paper ED1/S2/04/3/1 helpfully describe the meaning of the phrase "clear adverse effect". The "Oxford English Dictionary" states that adverse means unfavourable, hurtful, detrimental and injurious. We must be certain that, given the facts and circumstances that are outlined in an objection, it is reasonable for us to conclude that the objector's interests are likely to be adversely affected by the bill or part of it. Are members comfortable with that?

**Members indicated agreement.**

**The Convener:** There are three points for us to consider at the end of the paper. The first is whether we wish to consider further evidence from any objector before we decide whether to reject their objection. I suggest that we leave that until we have had the substantive discussion on the objections, because I suspect that it would be difficult to decide that matter in advance.

Let us deal with the second point first, which is to decide

"whether those objections (or parts thereof) that relate to specified provisions should be allowed to go forward for substantive consideration at Consideration Stage".

I have reviewed all the admissible objections to the detail of the bill and am happy that they demonstrate a clear adverse effect. It is more than reasonable to claim that properties on the route of the tram may experience, for example, noise, vibration and other potential impacts, such as a reduction in property value. Does anybody have any views on the recommendation?

**Phil Gallie (South of Scotland) (Con):** You summed it up by saying that a lot of thought has gone into many of the objections. Clearly, questions have to be asked on the points that have been raised. I would think that by consideration stage we will have assessed many of the issues that will allow us to reach judgments. I support the recommendation.

**The Convener:** Is anyone of the mind that there are specific objections to the detail of the bill that do not demonstrate the clear adverse effect that I have suggested they all do?

**Members indicated disagreement.**

**The Convener:** That sounds good. I invite members formally to agree that the objections to the specified provisions of the bill are based on reasonable claims that the objectors' interests would be adversely affected and that those objections should therefore proceed to consideration stage. I should say that that is subject to the Parliament agreeing to the general principles of the bill and the bill proceeding as a private bill. Subject to those caveats, do members agree?

**Members indicated agreement.**

**The Convener:** We move on to a discussion about objections to the whole bill. It may be helpful if I refer members to paragraph 27 on page 8 of the paper, which contains a helpful table in which the clerks have identified the issues to which whole-bill objections relate. I remind members that the admissibility of objections is solely a matter for the clerks, not the committee. Our role is to determine whether each objection that we see before us is based on a reasonable claim that the objector's interests would be adversely affected.

Before we make individual comments on those grouped issues, do we accept the groupings?

*Members indicated agreement.*

**The Convener:** We start with project cost, which is the subject of the majority of whole-bill objections. The objectors assert that because the financial case for the tram is in their view flawed, as council tax payers they are likely to have to pay higher council tax in order to subsidise the construction and operation of the tram. I invite comments and views on whether that argument is valid.

Members are very quiet this morning

**Phil Gallie:** Yes, they are very quiet, so I will burst forth. On project costs, I have difficulty dividing up the democratic responsibility of the council and the Government when incurring costs. Somewhere along the line decisions have to be made, but I am not sure that they are decisions for the committee.

A valid objective of the committee is to obtain a detailed analysis of the costs that are submitted to us. Our task in the first place is to analyse those costs and if we decide that all that we have heard is not up to scratch—taking account of many of the issues raised in objections—we may say to the Parliament that the bill is not justified in cost terms. Alternatively, we can accept that there are good arguments that should be investigated further at consideration stage. At that point, perhaps many of the objections will come into play.

**The Convener:** I would think that the committee will examine the whole financial package as part of the consideration of the general principles of the bill. I agree substantively.

**Dr Sylvia Jackson (Stirling) (Lab):** I agree with Phil Gallie. The meeting with the National Audit Office that is planned for tomorrow will give us a lot more information about cost, which is a very important aspect. We will collect evidence and consider cost as we go through the bill process.

**The Convener:** In the absence of any other comments, I take it that the committee's emerging view is that we do not consider the objections relating to project costs and the impact on council tax to have demonstrated a clear adverse effect to the objectors.

*Members indicated agreement.*

**The Convener:** I need to check that members do not believe that any of the individual whole-bill objections relating to project cost and council tax outline special circumstances that go against the general view that the committee has just taken. I take it that there is nothing in those objections that members have any concerns about.

*Members indicated agreement.*

**The Convener:** In that case, I invite members formally to agree that the admissible objections on the issue of project cost do not demonstrate clear adverse effect.

*Members indicated agreement.*

**The Convener:** There were four objections that dealt with the issue of bus services in general terms. For the sake of those objectors, let me make it clear that many people referred to the loss or reduction of specific bus services. Given our earlier decision, those objections will proceed directly to consideration stage; they are not lost. We are now examining the objections that made the general point that an objector's ability to travel in the city using buses will be detrimentally affected because they will be unable to get to the destination of their choice or they might need to change between trams and buses, which it might be inconvenient and more expensive to do. Although there were a load of objections to details, we have picked out the objections to the whole bill. I invite members to say whether they feel that that demonstrates a clear adverse effect.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** Are we not in danger of getting ahead of ourselves if we go down that route? Who can predict what the relationship will be with buses if a tramway is built. There could be single ticketing. The effect might be the opposite and be of benefit to the travelling public. I merely pop the pebble in the pool at this stage, but that is my initial thinking.

**The Convener:** I think that some would say that the link between the bill and the suggested adverse effects is quite tenuous and that, although some of the effects that have been described are a possible outcome, that is by no means certain. As you rightly point out, there are different ways of looking at the issue. We have to decide whether we feel that the claim is reasonable that the bill will have a clear adverse effect.

**Phil Gallie:** During the investigatory stage, our duty is to determine what is in the proposers' minds. It would be stupid of them to propose a service that is going to be much worse than what there is at present. Bus services can change routes or services at any time irrespective of other developments. We have to consider this issue very clearly as we go through the consideration stage, if the Parliament agrees to go ahead with the scheme.

As Jamie Stone said, it is a bit premature to say that we should consider ruling out the whole bill because of a possible effect on a bus service that might not come to anything.

**Mr Stone:** It is also arguable that accepting these objections would set a dangerous precedent. We would not be fulfilling our

responsibilities if we did not take serious objections seriously but, equally, we have to draw a line somewhere. If we were to say that the objections relating to buses are valid, to what else might we be opening the door? If we were to waste time on such objections, we could be misusing the public purse. That is not to say that we should not deal seriously with the hard issues.

10:30

**The Convener:** During our consideration of the general principles of the bill we will examine general points. I reassure members and objectors that at consideration stage we will cover substantively the host of specific points about particular bus services that people have made in their objections to the detail of the bill. I have examined the four objections that concern general bus services. They contain nothing that would cause us to depart from the general view at which we have arrived. Unless members have a different view, I ask that we agree formally that the admissible objections on the issue of bus services are not based on reasonable claims that the objectors' interests would be adversely affected. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** We move to the issue of traffic congestion. Members will see from the committee paper that the issue encompasses not only the effect on drivers of the construction of the tramline but concerns about displacement of parking and the effect of the operation of the tram on road space. Having examined the objections in detail, I do not believe that those are obvious direct consequences of the bill. The link between the bill and its suggested adverse effects is too tenuous and remote.

**Dr Jackson:** My comments are similar to those that have already been made.

**The Convener:** Having examined the four objections in detail, I do not think that they contain anything that would give me cause to depart from my general view. Is that the case for other members? Do we agree that a clear adverse effect has not been demonstrated on the issue of traffic congestion?

**Members** *indicated agreement.*

**The Convener:** We move on to the issue of visual impact. Again, a number of specific objections have been made to the detail of the bill that we have agreed we will pass to consideration stage. Objectors have also made general points stating that their enjoyment of the city will be visually impacted on by the cabling and other support structures that we would expect to be associated with the tramline. Do members have

views on whether the objections demonstrate a clear adverse effect?

**Dr Jackson:** The report that we will consider tomorrow suggests that in certain areas of towns and cities this kind of system can have a positive visual impact. It is not inevitable that the schemes will have a negative visual impact on people's enjoyment of the city. The reverse could be true.

**Phil Gallie:** It is anticipated that we will visit the Nottingham scheme and incur expense under the parliamentary rules. No doubt visual impact is one of the issues that we will examine there. The purpose of the visit is to establish what impact the tramlines in Nottingham have had on the community and what the service is. It would be premature to make a judgment on the issue, but I am sure that we will examine it closely at consideration stage and in Nottingham.

**The Convener:** The tramline will have particular visual impacts on a number of the sites through which it will run. However, I do not believe that there is a clear adverse effect that would cause us to accept an objection to the whole bill. Is there anything in the four specific objections that runs counter to the general view that we have reached?

**Mr Stone:** Some of the objections relating to possible noise, vibration and so on are tangible. The trouble with the visual aspect, as we have all said—and local authorities know—is that it is subjective; one man's view is not another man's view. That applies to the cables that we have hanging above us in this committee room and to the pylons in the Highlands, where I live—some people like them and some do not. All I am saying is that we have to be careful. It is hard to prove the case on visual impairment, which I have always found one of the stickiest categories of objection to define.

**The Convener:** I get the sense from members that we are content to suggest that there is no reasonable claim of a clear adverse effect and that there is nothing in any of the four objections on visual impact that would cause us to depart from that general view.

**Mr Stone:** With the caveat that Phil Gallie raised, which is that we will consider the visual impact carefully when we go to Nottingham.

**The Convener:** Is that okay?

**Members** *indicated agreement.*

**The Convener:** We come to the final objection—objection 181—which I spent quite a lot of time considering, because I thought that it presented an elegant argument. It raises the issue of the European convention on human rights. From the committee paper you will see that there are two aspects to the objection, both of which are complex. If members have any questions about

the complexity of either article 6 of the ECHR or article 1 of protocol 1 of the ECHR, they might want to ask those questions now before we consider the objections substantively.

**Phil Gallie:** The ECHR seems to affect every aspect of legislation going through the Parliament to the extent that, under the Scotland Act 1998, every bill that comes before us should be checked off against European legislation and the ECHR in particular. I presume that the Presiding Officer and the solicitors who advise him have considered the issues carefully and decided that the bill does not breach the ECHR in any way. I seek legal advice and assurance that every aspect of the ECHR was examined prior to the bill being presented to us.

**Alicia McKay (Scottish Parliament Directorate of Legal Services):** I am happy to confirm that the Presiding Officer has signed a statement of legislative competence. I cannot go any further than that as regards the terms of the advice; it would not be appropriate for me to comment on that. Although we have considered the ECHR on the back of the terms of the bill, when we get to consideration stage we will have to consider individual objections, many of which are based on the ECHR. For example, with objections that people are going to be deprived of their homes, ECHR points will have to be considered to see whether the operation of the bill will adversely affect human rights in practice.

**Phil Gallie:** I am not quite happy with that response. I am sure that, like me, other committee members, including the convener, do not want to waste our time or the objectors' time by going through massive amounts of detail and in doing so incurring extra costs for the Parliament if we know at this stage that we are in danger of contravening the ECHR. I would like a much more positive response from the legal side on that point. This objector has set out a number of points. I would have thought that they would have been examined carefully, but I would like an assurance that that is the case.

**The Convener:** All the Presiding Officer is required to do at this stage is provide a certificate of legislative competence, which means that the ECHR has been considered across the board. However, although we have that general assurance, in fairness to objectors who have made specific points about aspects of the bill, we should consider those points in detail, because the ECHR is always a question of balance between competing articles. Therefore, although the bill overall might have the certificate of legislative competence, it is right and proper for us to consider the substantial arguments put before us about two articles of the ECHR and the balance of them. Although I take your point entirely that either the bill is legislatively competent or it is not, there

are nuances. When we consider the effect of the bill on an individual whose land is being compulsorily purchased, the balance is slightly different from that in the context of the bill as a whole.

**Alicia McKay:** I will give an example that might help members to assess what their role will be at the consideration stage. People might have objected because of the noise implications of having trams running next to their house, which might adversely affect their home life. There is nothing in the bill that says that trams can be run at X decibels, but when we consider how the bill will impact on people, we might want to ask the promoter what the noise implications are likely to be and whether they are likely to affect anybody's human rights or give rise to a breach, in practice, of the ECHR. The committee will want to look beyond the black and white terms of the bill.

**The Convener:** Does that help, Phil?

**Phil Gallie:** Yes, to a point. I want to clarify that I understand the point correctly. Objection 181 suggests several elements of contravention of the ECHR, but the legal adviser seems to be saying that those issues can be considered in detail at the consideration stage, as with the other objections that we have discussed. If we can come back to the issue, that is fine. I would like to think that, during the preliminary stage, the solicitors have looked fully at the objection and ensured that the points raised in it will not block the bill in the future and that the issues can be sorted out at the consideration stage.

**Michael Matheson (Central Scotland) (SNP):** My understanding is that the certificate from the Presiding Officer states that it is within the Scottish Parliament's legislative competence to legislate on the matter. Is that correct?

**Alicia McKay:** Yes.

**Michael Matheson:** It is not for the Presiding Officer to determine whether an element that arises from the bill may lead to a contravention of the ECHR. Is that correct?

**Alicia McKay:** That is correct.

**Michael Matheson:** Therefore, I presume that when we consider specific issues, we can take independent legal advice as to whether there is potential for contravention of the ECHR.

**Alicia McKay:** You will have the benefit of the in-house legal advice and the advice of any committee adviser, if you feel that it is appropriate to appoint one.

**Michael Matheson:** I just wanted to be clear about the purpose of the certificate that the Presiding Officer issues—it relates to the



competence of the Parliament to legislate on the matter.

**Alicia McKay:** There is nothing in the bill that raises any competence issues for the Parliament.

**Michael Matheson:** Right. However, if at a later stage when we are considering specific issues it is suggested that there is a contravention of the ECHR, we will be able to take legal advice.

**Alicia McKay:** Yes.

**Michael Matheson:** That is what I wanted to be clear about.

**Alicia McKay:** Objection 181 raises a number of issues to do with construction noise and operational noise from the trams. Those are detailed objections: the objector is making a claim as to how the practical operation of the trams will impact on her human rights. Those objections will go through to the consideration stage and will be subject to detailed scrutiny.

**The Convener:** That was helpful.

**Mr Stone:** Michael Matheson talked about independent legal advice. For the sake of tidiness, can we clarify that the Scottish Parliament solicitors—our legal team—are there to protect the interests of the Parliament and to ensure that the Parliament never does anything that contravenes the law of the land? Therefore, the legal adviser would advise the committee if something was ultra vires or contravened the ECHR. Is that correct?

**Alicia McKay:** Absolutely.

**Mr Stone:** The objectors must understand that your role is absolutely fair. You are here not to push things one way or the other, but to keep us on the right side of the law at all times.

**Alicia McKay:** Absolutely. We give impartial advice, the purpose of which is to ensure that the bill is within the Parliament's legislative competence.

**Dr Jackson:** Objection 181 claims that the bill is unfair because the compulsory purchase procedures contravene article 6 of the ECHR. Can you comment on that, or are you saying that it is better to leave that until later?

10:45

**The Convener:** I suspect that that must be dealt with in the substantive discussion that we need to have now on objection 181.

We have had helpful clarification of what the Parliament's responsibilities are and where we will get advice. Obviously, when we consider the general principles of the bill, we will be able to question the promoter at length about the bill. Equally, we have agreed that all objections to the

bill's detail, including objection 181, will go forward to the consideration stage. It might be helpful to seek further legal advice about whether there are breaches of the ECHR in the bill.

**Phil Gallie:** Sorry to come back on this, convener, but you mentioned the promoter and I think that the promoter has a part to play in the process. I also think that the Parliament and the Government have parts to play, particularly with respect to compulsory purchase issues. Objection 181 goes into detail on arrangements for appealing against potential compulsory purchase and other aspects. Can we be assured that our solicitors can judge the validity of objection 181's claim and that, from a governmental viewpoint, compulsory purchase arrangements are as they should be at present?

**The Convener:** I will take us through the substantive discussion on objection 181 and we can come back to the compulsory purchase aspect at the end if members are still unclear about it. I will kick us off. I understand objection 181's arguments, but I think that they are based on a misunderstanding.

First, I do not believe that there is a reasonable claim that the bill has a clear adverse effect in terms of article 6. I think that we are confusing the bill process with the bill itself. The bill process delivers a fair public hearing, so there is no need for the bill itself to express a provision that encompasses that aspect—we are actually doing that.

Secondly, the objection requires that notice be given to those whose property rights would be affected so that they can invoke the right to object. However, the bill process expressly provides for objectors to be heard. Therefore, the bill process covers one of the objection's substantive points.

Finally, the bill process ensures that the onus of proving the need for the bill generally, as well as for its specific provisions, falls very much on the promoter. There is no need for the bill to provide expressly for that, because it is already the case.

The bill process already covers the points in the objection that I broadly agree with, so they do not need to be written into the bill. I do not know whether members share that view. Objection 181's arguments are well presented, but confusion arises because what the objection wants is already part of the bill process and so does not need to be in the bill.

**Dr Jackson:** I feel that we need a detailed discussion about your interpretation and a considerable debate about objection 181. However, I am willing to take on board what you said and I generally agree with you about the bill process. However, objection 181's argument about compulsory purchase concerns me. When

we consider that issue, I want reassurance that the procedures are as they should be.

**The Convener:** That issue is to do with article 1 of protocol 1, which we will come on to. However, the points that you made are right. There are persuasive arguments in objection 181, but I do not think that it has demonstrated at this stage a reasonable claim about the bill having a clear adverse effect. Do members agree?

**Members** *indicated agreement.*

**The Convener:** That deals with article 6. We move on to the issue of article 1 of protocol 1. The objector's point is to do with the complexity of the compulsory purchase provisions. The claim is that they breach the objector's human rights because they are difficult to understand. I have considerable sympathy with that view because the provisions are indeed complicated. However, compulsory purchase provisions are by their very nature complicated and the bill is not unusual in how it sets them out, so the fact that the provisions are complex does not in itself give rise to an ECHR breach. Do members have a view on that?

**Mr Stone:** I endorse that view. To disagree with what you said is to say that everything must be written in incredibly simple language, but one cannot do that in this world. With respect to the solicitors who are present, I say that that is why they exist—to guide us through the complicated things. Many good things in this world, including many good pieces of legislation, are complicated and we must work hard to understand them. However, that does not mean that they breach the ECHR. I agree with your view—it would be dangerous to disagree with it.

**The Convener:** Are there any other views?

**Phil Gallie:** In the past, I have found that many things that get tied up with the ECHR are weird and wonderful, and difficult to sort out. However, I would be most annoyed if we recommended to the Parliament that it should proceed with the bill, only for us to find out later that there are contradictions in the bill that should have been dealt with initially. Therefore, we have a duty to pursue objection 181's points during the preliminary stage. I will keep an eye on that matter.

**The Convener:** I get the sense from members that they recognise that objection 181 does not demonstrate that the whole bill has a clear adverse effect on ECHR issues. Nevertheless, we will take some time to examine those issues at the next stage, which will be helpful.

That concludes consideration of objections to the whole bill. I recognise that some decisions will be disappointing to objectors, but let me offer reassurance. In the thread of our discussion today we have emphasised that many of the issues that

have been raised will be examined in considerable detail as part of the committee's scrutiny of the bill's general principles. If the principles are agreed to, we will pick up on many of the points at the consideration stage as well.

I thank members for attending. I remind you that the next meeting of the Edinburgh Tram (Line One) Bill Committee will be at 10.30 am on Tuesday 28 September. Some of you—regrettably, I will not be among you—will meet tomorrow at 12.45 for a formal briefing meeting with the Edinburgh Tram (Line Two) Bill Committee on the National Audit Office report.

*Meeting closed at 10:53.*

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