

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

Tuesday 21 June 2005

Session 2

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## EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

### † 9<sup>th</sup> Meeting 2005, Session 2

#### CONVENER

\*Jackie Baillie (Dumbarton) (Lab)

#### DEPUTY CONVENER

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

#### COMMITTEE MEMBERS

\*Helen Eadie (Dunfermline East) (Lab)

\*Rob Gibson (Highlands and Islands) (SNP)

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

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Michael Greig (Counsel for Network Rail Infrastructure Ltd)

David Henderson

Dr Martin Sales (Counsel for First ScotRail, BRB (Residuary) Ltd and British Transport Police)

Malcolm Thomson QC (Counsel for the Promoter)

#### THE FOLLOWING GAVE EVIDENCE:

Neil Amner (Biggart Baillie)

Mark Bain (Mott MacDonald)

Stephen Bennett (Strategic Rail Authority)

Rahul Bijlani (Bircham Dyson Bell)

Tom Blackhall (Transport Initiatives Edinburgh Ltd)

Geoff Duke (Transport Initiatives Edinburgh Ltd)

Scott McIntosh (Mott MacDonald)

Steve Mitchell (Environmental Resources Management)

Andrew Oldfield (Mott MacDonald)

Euan Pearson (Atisreal Ltd)

Archibald Rintoul (Scotland South East Valuation Office)

Stuart Turnbull (Jacobs Babbie)

#### CLERK TO THE COMMITTEE

Jane Sutherland

#### LOCATION

Committee Room 5

† 8<sup>th</sup> meeting 2005, Session 2—joint meeting with Edinburgh Tram (Line Two) Bill Committee



## Scottish Parliament

### Edinburgh Tram (Line One) Bill Committee

*Tuesday 21 June 2005*

[THE CONVENER *opened the meeting at 10:03*]

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

**The Convener (Jackie Baillie):** Good morning and welcome to the ninth meeting in 2005 of the Edinburgh Tram (Line One) Bill Committee.

We are at the consideration stage, during which the committee considers the detail of the bill. Our job is to consider the arguments of both the promoter and the objectors and, ultimately, to decide between any competing claims. First, let me put on record the committee's thanks to the objectors, the promoter and all the witnesses for their written evidence, which will be invaluable today as we hear oral evidence.

Today, the committee will take evidence, and complete evidence taking, on eight groups of objections. All the groups attended a timetabling meeting in May during which the procedure for oral evidence taking was explained and the order of evidence taking was agreed.

For each objection, the committee will hear first from all the witnesses for the promoter and then from all the witnesses for the objector. The promoter and lead objectors have also brought representatives, who will ask questions of their respective witnesses and cross-examine the other side.

Following the completion of evidence taking from each group, the committee will give the promoter's representative a maximum of five minutes in which to make any closing comments that he may have. The committee will then give the objector's representative five minutes in which to make any closing remarks that he may have. The closing statements should not introduce any new issues or evidence.

We have the written evidence before us—both witness statements and rebuttals—as well as a copy of the background documents that are referred to in the written evidence. Therefore, I remind all witnesses and representatives that there is absolutely no need to repeat points that are made in the written evidence unless they require to do so in order to answer directly questions that have been posed. The committee has all the written evidence, all of which will be taken into consideration when we are reaching a decision. If the focus of witnesses and

representatives is on the areas of difference, the committee will make progress.

The committee will, of course, be fair to both the promoter and the objectors. We expect all parties to act respectfully to one another and, indeed, to the committee.

There are some matters that I would like to touch on before we move to the oral evidence taking. As members are aware, Jamie Stone was, exceptionally, unable to attend last week's joint meeting of the Edinburgh Tram (Line One) Bill Committee and Edinburgh Tram (Line Two) Bill Committee because he had to attend a funeral.

Under rule 9A.5.6 of the standing orders, a number of approaches are open to the committee to enable Jamie Stone to participate in the committee's deliberations in respect of the three groups of objections on which evidence taking was completed last week. I remind members that the three groups were: Haymarket Yards Ltd; CGM (Edinburgh) Ltd; and the Institute of Chartered Accountants of Scotland. I seek the committee's agreement for the clerk to write to all those who gave evidence last week and to the promoter to seek their agreement to the approach that would involve his reading the *Official Report* of the meeting. If that is agreed, he will be able to participate in our deliberations in respect of that evidence when we come to draft our report at the end of phase 1 of the consideration stage. Are we agreed?

**Members indicated agreement.**

**The Convener:** Thank you.

Following on from last week's joint meeting of the tram bill committees, I want to take this opportunity to clarify a number of issues for all those who are to give evidence today. First—I am sure that everyone will appreciate this—as the tram project progresses, a number of documents will become available as a result of negotiations between objectors and the promoter or requests from the committee. Whatever the reason, I want to avoid the situation in which the committee hears oral evidence on documents that it has not had an opportunity to consider. Likewise, it would not be courteous to an opposing party to expect it to conduct a cross-examination based on information that is contained in documents that it has not had an opportunity to consider.

I propose to make it clear to all parties that the submission of written material of any kind at committee meetings will not be accepted. Similarly, any documents that may be referred to in oral evidence and which were published by the promoter or objectors immediately prior to committee meetings may be ruled out if the committee and the opposing party have not had sufficient opportunity to consider them.

The committee is very aware that negotiations will continue to progress after the submission dates for witness statements and rebuttals. I strongly recommend that, should objectors or the promoter wish to update the committee during oral evidence taking on the current state of negotiations, the information should be provided in response to questions as part of the evidence-in-chief of the appropriate witness.

I ask everyone to ensure that all mobile phones and pagers are switched off. We move to consideration of evidence on group 1, Network Rail Infrastructure Ltd.

The first five witnesses for the promoter for group 1 are Malcolm Anderson, David Ramsay, Andrew Oldfield, Archibald Rintoul and Richard Mansfield. Before we commence the evidence taking, am I correct in understanding that the only issue in dispute is that of protective provisions? I understand that the only witness for the promoter that Mr Greig proposes to cross-examine is David Ramsay. Is that correct Mr Greig?

**Michael Greig (Counsel for Network Rail Infrastructure Ltd):** The situation is slightly more complicated than that. As things stand at present, I am not sure whether anything is in dispute.

**Rob Gibson (Highlands and Islands) (SNP):** Excellent.

**The Convener:** I concur with the member's comment. Will you lead any evidence, Mr Greig?

**Michael Greig:** I would like to hear what Mr Thomson has to say. Perhaps he will advise the committee on his position before I say anything further.

**Malcolm Thomson QC (Counsel for the Promoter):** I am happy to go first. My understanding is that the only dispute between the promoter and the group 1 objector is the execution of the protective provisions agreement. The instructions that I was given yesterday evening were that the agreement would be executed by the time we met this morning. This morning, I am told that it has been executed by Network Rail and Transport Initiatives Edinburgh, but not by the City of Edinburgh Council.

I can only apologise for the deplorable state that we are in this morning, given that the agreement has not been executed by the council. I do not know precisely why that has not happened—I understand that, despite being dispatched to the council at the end of last week, the agreement did not arrive on the desk of the person who was to consider it until 5.50 pm yesterday. Not unnaturally, he is not prepared to instruct the council's solicitor to sign the agreement until he has read it. I am afraid that that is the unsatisfactory state of affairs.

However, the position is that, were the agreement to be signed by the council, there would be no differences at all between the parties. In the current state of affairs, I cannot put my hand on my heart and guarantee that the agreement will be signed because that has not happened yet. Given that state of affairs, if the convener, my learned friend Mr Greig or anyone else would like to ask any questions of Mr Ramsay while he is before the committee, I would be only too happy. I do not intend to lead any evidence-in-chief from anybody. All the people are before the committee, however, and members of the committee or my learned friend could deal with any nagging doubts now.

**The Convener:** Thank you. Mr Greig, having heard what Mr Thomson had to say, do you wish to ask any questions of Mr Ramsay?

**Michael Greig:** If the position is that the promoter accepts the requirement for a protective provisions agreement and that it is necessary to enable the bill to proceed, there is nothing in dispute. It remains for the agreement to be concluded, however that may be done. If that commitment is given, my view is that there is no need for any cross-examination.

**Malcolm Thomson:** I think that I can give that undertaking; it is accepted that a protective provisions agreement is required. At worst, only the precise terms of it may be in dispute. I do not want to suggest that anything is in dispute because I simply do not know whether there is. However, I have no reason to believe that there is any such dispute.

**The Convener:** Mr Greig, are you satisfied with that?

**Michael Greig:** I am satisfied.

**The Convener:** I should, of course, ask my committee colleagues whether they wish to ask any questions.

**Rob Gibson:** I suggest that we should get a report on the City of Edinburgh Council's actions as soon as the council knows what has happened, to confirm the discussion that has taken place at committee today.

**The Convener:** Okay. Therefore, the position is subject to the committee receiving such confirmation, which would be helpful to our deliberations. I thank Mr Greig, Mr Thomson and, indeed, all the witnesses who were spared from giving evidence this morning. That concludes evidence taking on group 1.

We move straight to group 2, First ScotRail. I invite Geoff Duke, David Ramsay, Richard Mansfield and Jim Harries to take their place at the table.

As members may have noted, the original objector to the bill was ScotRail. However, following the change of franchise, the objection is now in the name of First ScotRail. I am content that it is perfectly legitimate for First ScotRail to take forward the objection. Before we commence our evidence taking, Geoff Duke, Richard Mansfield, Jim Harries and David Ramsay will take the oath or make a solemn affirmation.

GEOFF DUKE, RICHARD MANSFIELD, JIM HARRIES and DAVID RAMSAY *made a solemn affirmation.*

10:15

**The Convener:** First ScotRail has rebutted only the statements by Geoff Duke and Richard Mansfield. Therefore Dr Sales may cross-examine only those two witnesses. Of course, members of the committee may decide that they want to question any of the witnesses.

The first witness is Geoff Duke, who will deal with the issue of a lack of due regard for heavy rail issues. Questions should be directed only to Mr Duke at this stage.

**Malcolm Thomson:** Should I say something about the areas that I consider to be in dispute or should I go straight to the witness?

**The Convener:** You should go straight to the witness, as we are clear about what the areas of dispute are.

**Malcolm Thomson:** There is one issue that I was thinking about in particular. I am not exactly out of the woods yet because of the problem that arose with Network Rail. The promoter's position is that most of First ScotRail's concerns are dealt with by an agreement that does not yet exist, and there is the same impending issue about whether any of the witnesses needs to be questioned on that matter.

There is also the separate issue of parking spaces, which I understand are covered by the Network Rail agreement—again, therefore, there might not be a separate issue as far as First ScotRail is concerned. As a general approach, the promoter believes that all First ScotRail's interests and objections are dealt with by the Network Rail agreement, but if anything is not covered, the promoter would be happy to consider any further agreement that may be necessary with First ScotRail in order to plug any gaps that may emerge.

There is a further practical difficulty. The Network Rail protective provisions agreement is subject to a confidentiality clause, and I have no reason to believe that First ScotRail has yet seen it. The promoter cannot unilaterally waive that confidentiality, but will request that Network Rail waive it so that First ScotRail can see the

agreement and can decide for itself whether there are any unplugged gaps—if I may put it that way—that would leave it with continuing concerns.

I have the advantage of having had a preliminary word with my learned friend Dr Martin Sales this morning, and we agreed that the depot issue is properly an issue for the Edinburgh Tram (Line Two) Bill Committee and is not really a matter for this committee at this stage.

I hope that what I have said helps to clarify what it might be necessary to ask the witnesses about.

**The Convener:** I think that the meeting will be swift this morning.

**Dr Martin Sales (Counsel for First ScotRail, BRB (Residuary) Ltd and British Transport Police):** I wish that I could concur with you.

First, I will deal with the final and simplest point that my learned friend Mr Thomson made. We are content to leave consideration of matters that pertain to the depot at Haymarket to the Edinburgh Tram (Line Two) Bill Committee at its consideration stage.

As to the first issue that was addressed by my learned friend, Mr Thomson, I am not so sure that the matter is so simple. My information is that the draft Network Rail agreement has been seen by my business partner Mr Neil Amner, who is sitting to my right, but if it has been seen by my clients it has certainly not been considered by them. In any event, from what we have seen of the latest draft of that agreement, we on this side are not convinced that it fully addresses the concerns of First ScotRail. In the evidence of Mr Duke, I will wish to explore the extent to which that may or may not be the case.

**The Convener:** Having heard from both Mr Thomson and Dr Sales, we will proceed with Mr Duke's evidence. I take it that there will be no requirement to take evidence from Mr Mansfield, so he is let off the hook.

**Malcolm Thomson:** I ask Mr Duke to update us on events since the last rebuttal statement.

**Geoff Duke (Transport Initiatives Edinburgh Ltd):** Since the last rebuttal statement, we have had a meeting with First ScotRail. In that meeting, we were able to inform First ScotRail that we had reached agreement with Network Rail regarding the protective provisions, which we believe will give First ScotRail all the comfort that it requires. Those provisions will protect First ScotRail in relation to the issues that were raised in its objection.

**Dr Sales:** Paragraph 3.1 of your witness statement of 20 May states:

"**tie** recognises that ... it must consider the impact on existing ... transport schemes."

May we take it that that will include consideration of First ScotRail's responsibilities at Haymarket station?

**Geoff Duke:** Yes.

**Dr Sales:** I think that the point is acknowledged in paragraph 3.3 of your statement. Further on, paragraph 3.5 of your statement says:

"tie has liaised with rail industry partners ... to ensure that interface issues are identified and addressed."

Is it your evidence that such issues have been identified and addressed?

**Geoff Duke:** That is my understanding. In our meetings with your clients, we addressed issues at Haymarket station. We also addressed issues concerning the depot, but that is not for consideration today. We now believe that those issues can be covered by the protective provisions that are afforded to Network Rail.

**Dr Sales:** I understand that the most recent of those meetings took place last Friday, but I will come back to that, if I may.

Section 4 of your witness statement refers to the Network Rail situation but it makes no reference to First ScotRail, does it?

**Geoff Duke:** No.

**Dr Sales:** Will you enlighten us as to why, in your view, agreement with First ScotRail has not yet been reached?

**Geoff Duke:** As I said, we met and were developing an agreement with First ScotRail separately. Events were then overtaken by the agreement with Network Rail. There is no point in having two agreements when one is an umbrella agreement that will offer all the comfort that we believe First ScotRail requires.

**Dr Sales:** As we just mentioned, the last of those meetings took place on Friday 17 June.

**Geoff Duke:** Yes.

**Dr Sales:** You were in attendance at that meeting. Do you agree that it was a rather short and—perhaps from First ScotRail's point of view—not constructive meeting to try to resolve outstanding objections to a parliamentary bill?

**Geoff Duke:** I agree that the meeting was short, but I do not agree that it was not constructive. We were able to inform First ScotRail that the protective provisions that we had agreed with Network Rail would give First ScotRail comfort.

**Dr Sales:** Was it fair for Mr Amner, who is sitting to my right—as you will recall, he was First ScotRail's representative at that meeting—to conclude from what was said at that meeting that TIE did not want to negotiate with First ScotRail and that it said as much at the meeting?

**Geoff Duke:** I believe that those words were said.

**Dr Sales:** Was the meeting fronted by Mr Ian Kendall of the promoter's agent TIE?

**Geoff Duke:** Yes.

**Dr Sales:** Mr Kendall's position at that meeting was that the agreement with Network Rail adequately covers all the issues for the rail industry parties, including First ScotRail.

**Geoff Duke:** That is TIE's view, given the legal advice that we have received.

**Dr Sales:** Mr Kendall's position was that TIE did not think it necessary to have an agreement with First ScotRail because approval would in effect be secured by the industry processes pursuant to the Network Rail agreement. Is that correct?

**Geoff Duke:** That is correct.

**Dr Sales:** Is my information correct that Mr Kendall also said at that meeting, in relation to the car parking issues at Haymarket, that the Scottish Parliament is not really interested in compensation matters?

**Geoff Duke:** He may have said that. We understand that, at this stage, the Parliament is considering not compensation issues but objections.

**Dr Sales:** Do you recall Mr Amner pointing out at that meeting that First ScotRail was not a party to the agreement that it was hoped would be reached with Network Rail and that its interests and obligations differed from those of Network Rail?

**Geoff Duke:** I recall that.

**Dr Sales:** Do you recall Mr Amner asking at that meeting what comfort, if any, TIE was willing to offer First ScotRail?

**Geoff Duke:** Yes.

**Dr Sales:** Mr Kendall's response was that the Network Rail agreement was to the effect that no works to Haymarket would be undertaken before 19 November 2007 and that TIE was not prepared to give anything separately to First ScotRail. Is that correct?

**Geoff Duke:** That is correct.

**Dr Sales:** Do you recall Mr Amner saying at that meeting that if TIE was willing to give undertakings to the committee today so as to give First ScotRail comfort, the objection could have been withdrawn or at least limited in its scope?

**Geoff Duke:** Yes.

**Dr Sales:** Even that olive branch was in effect rejected out of hand by Mr Kendall. He was simply not interested.

**The Convener:** I am sorry; I hate to interrupt the natural flow, but the committee is interested not necessarily in the detail of the negotiations, but in the substance of the objection. With that guidance, I ask Dr Sales to proceed.

**Dr Sales:** I will do so. I will move swiftly to where that leaves First ScotRail. Does Mr Duke agree that it is in a rather difficult position?

**Geoff Duke:** If you consider the position to be difficult, it clearly is. It is the position of TIE and the City of Edinburgh Council that we recognise ScotRail as an industry partner with which we will have to work not only to resolve this issue, but to progress towards integrated transport in the next few years. We therefore want to reach an agreement that is acceptable to all. In that regard, at that meeting, Mr Kendall also offered Mr Amner the opportunity to identify any gaps in the Network Rail agreement if—as Mr Thomson said—we could reach agreement to share it, given the confidentiality considerations. Were such gaps or any deficiencies in the industry process to be identified, we would consider them and consider giving ScotRail comfort to close those gaps.

**Dr Sales:** Thinking of those gaps, do you agree that the Network Rail agreement—if and when it is fully executed—would not give First ScotRail sufficient comfort for the following reasons? First, First ScotRail will not be a party to the Network Rail agreement, so it can offer First ScotRail no direct redress on its concerns.

**Geoff Duke:** I recognise that.

**Dr Sales:** Secondly, any indemnity funding in favour of Network Rail under the agreement will cover only direct claims under the access agreement with Network Rail and not any claims that are made against First ScotRail under the station lease, for example.

**Geoff Duke:** I have not been a party to the detail of the protective provisions. If ScotRail wished to identify that gap, TIE would be willing to consider it.

**Dr Sales:** Is it the case that the Network Rail agreement would not protect First ScotRail from claims against it by beneficiaries of the station arrangements, such as Great North Eastern Railway or either of the Virgin train operating companies that use the station?

10:30

**Geoff Duke:** I cannot comment on that.

**Dr Sales:** In the light of that, the practical impact and revenue leakage concerns that First ScotRail expressed in its objection remain.

**Geoff Duke:** If that is the case.

**Dr Sales:** Issues to do with what we lawyers call vires, or the powers of authorities and those to whom they give powers, and how such powers would mesh with other considerations, would also remain. I am thinking of potential clashes with the requirements of the Railways Act 1993 in relation to closure procedures, change procedures and the Office of Rail Regulation.

**Geoff Duke:** Sorry, but what is your question?

**Dr Sales:** Would issues about the degree of mesh with United Kingdom statute remain if the Network Rail agreement were signed?

**Geoff Duke:** As I said, if a deficiency in the industry process is identified in that regard, TIE will be willing to consider how to address the matter.

**Dr Sales:** For example, is it the case that Network Rail, which might have the benefit of the agreement, is not obliged to procure closure certificates or change certificates under the 1993 act?

**Geoff Duke:** I understand that that is the case. However, I find it hard to believe that Network Rail, as a close industry partner, would refuse to initiate those procedures if it were asked to do so, particularly given that under the Railways Act 2005 it will be in direct liaison with the Scottish Executive, which has an interest in this and other schemes in the Haymarket area.

**Dr Sales:** Is it the case that the interests of First ScotRail to secure compliance with the Disability Discrimination Act 1995 will not be met through the Network Rail agreement?

**Geoff Duke:** I do not know.

**Dr Sales:** Finally, will the agreement with Network Rail have the effect of qualifying the powers that are sought under the bill?

**Geoff Duke:** As I said, I am not familiar with the detail of the matter. My colleague Mr Ramsay might be better placed to answer your question.

**Dr Sales:** None of the matters that I raise is covered in sections 5 or 6 of your witness statement, as far as I can see.

**Geoff Duke:** I doubt that they are, given that the provisions were not drafted at that stage, so I would not have known what was in or missing from them.

**Dr Sales:** However, in paragraph 2.2 of your witness statement of 20 May, you say:

“My evidence will demonstrate that the promoter has ... considered the concerns raised in the Scotrail objection.”

Does your written evidence do that?

**Geoff Duke:** My evidence demonstrates that the promoter considered the objections that First ScotRail raised.

**Dr Sales:** Which parts of your evidence demonstrate that the promoter considered my client's concerns?

**Geoff Duke:** The promoter liaised with and held meetings with First ScotRail to consider the issues that it raised, and met Network Rail, which is the asset holder at Haymarket station, to consider its concerns.

**Dr Sales:** In paragraph 2.3(iv), you say that your evidence will cover

"The interface with other existing and proposed heavy rail schemes".

You expand on the subject in section 6, but you do not mention First ScotRail's concerns in that section.

**Geoff Duke:** I do not refer to First ScotRail in section 6, but I refer to the infrastructure that is required to deliver the services that the Scottish Executive and the City of Edinburgh Council want to deliver.

**Dr Sales:** Was the section intended to comprehend First ScotRail's position?

**Geoff Duke:** That was the intention. Once the infrastructure is in place, it will last for 50 to 100 years. There will be a number of franchisees during that period.

**Dr Sales:** Is the promoter's agent taking a longer-term view—one that covers the century rather than the duration of the current franchise?

**Geoff Duke:** We have to take both views. It is clear that one does not spend a few hundred million pounds without taking a long-term view, but we acknowledge that the company that will deliver services today and tomorrow must be given the comfort of knowing that it will be able to continue to do so, to receive the revenue that it thought that it would receive at the outset of the franchise and to be compensated appropriately for any loss in revenue that arises from circumstances of which it was not aware when it made its bid.

**Dr Sales:** It is apparent from the evidence for the promoter that is before the committee on my client's objection in group 2 that TIE believes that the concerns of First ScotRail are overstated. Is that a view to which you subscribe?

**Geoff Duke:** That would seem to be a fairly subjective view. Whatever an organisation includes in its objection has meaning for that organisation. I would not like to comment on whether the concerns of First ScotRail are overstated.

**Dr Sales:** Do you agree or disagree with that view as stated in the written evidence from TIE that is before the committee?

**Geoff Duke:** I am not sure. Without reviewing everything again, I cannot honestly say whether I

believe that First ScotRail's concerns are overstated.

**Dr Sales:** If that view is held by the promoter or the promoter's agent, do you agree—standing your reference to its being a subjective view—that it involves making a value judgment?

**Geoff Duke:** Yes.

**Dr Sales:** Do you agree that, before making such a value judgment, one would have to have a very full understanding of the operation of Haymarket station and its integral areas?

**Geoff Duke:** That is a reasonable assumption.

**Dr Sales:** Do you consider yourself to have that requisite degree of knowledge?

**Geoff Duke:** I personally may not, but the team of advisers that we have used in getting the project this far would be able to input to that.

**The Convener:** I hate to interrupt again, but I am finding the relevance of your line of questioning to the witness statements and the nature of your objection slightly difficult to comprehend. It might be useful if you were to use the present opportunity to tell the committee what the deficiencies are.

**Dr Sales:** I will endeavour to do that through the evidence of Geoff Duke.

**The Convener:** I ask you to make your questioning relevant both to the witness statements that are before us and to your objection. I feel that I have given you some leeway, but we are straying considerably.

**Dr Sales:** I will seek to address that instantly.

Mr Duke, you have said that TIE's intention today is to identify any gaps between what is to be covered by the Network Rail agreement and the concerns of First ScotRail. Is that correct?

**Geoff Duke:** I am not sure that we said that TIE would identify the gaps. We said that, if First ScotRail identified the gaps, TIE would identify how to address them.

**Dr Sales:** Do you have a detailed knowledge of the station access agreement for Haymarket?

**Geoff Duke:** No.

**Dr Sales:** So you are not in a position to help the committee with how a breach of that agreement may arise by virtue of the proposed works and operation of the tramway and yet not be covered by the agreement that has yet to be reached with Network Rail.

**Geoff Duke:** No.

**Dr Sales:** I take it that your answer would be the same in relation to the national access

conditions—or NACs—on which such agreements are based, which, in effect, come down from the Railways Act 1993.

**Geoff Duke:** Yes.

**Dr Sales:** Are you aware that there is a regulatory component and an existing statutory component to those NACs as operated by the Office of Rail Regulation?

**Geoff Duke:** I believe that that is the case.

**Dr Sales:** May we take it that you do not have a detailed knowledge of the licences that are obtained from the Office of Rail Regulation to operate Haymarket station under the Railways Act 1993?

**Geoff Duke:** That is correct.

**Dr Sales:** Do you also lack knowledge of the role of the Health and Safety Executive in relation to a breach of certain licence conditions?

**Geoff Duke:** I do not know what the detail of the role of the HSE would be there.

**Dr Sales:** Do you know, for example, that the HSE can close a franchise station such as Haymarket where there are breaches of certain licence conditions?

**Geoff Duke:** Yes. I believe that that is its power with respect to any part of the network.

**Dr Sales:** You may be familiar with the penalties levied through the revenue support mechanism if First ScotRail fails to achieve specified outputs under its franchise agreement with the Scottish Executive and its public service requirement.

**Geoff Duke:** I am aware that there are incentives in the contracts.

**The Convener:** Dr Sales, can we focus on what First ScotRail wants? I am having difficulty tying this down to the four objections set out in your letter to the committee of 29 March 2004 and the subsequent information that we have received from you.

**Dr Sales:** Yes, madam. I will turn to the evidence of Mr Duke, since I believe that that is the only way of conveying the information to the committee. An example will perhaps help to illustrate the concerns.

You know, Mr Duke, that there is a concern about timing: the upgrade of Haymarket station will be followed by the upgrade of Waverley station, which will be followed by the commencement of works on tramline 1 at Haymarket.

**Geoff Duke:** Yes.

**Dr Sales:** Suppose that there is some slippage in the Waverley upgrade project, as a result of which the tram project starts off site—perhaps away from railway land. Are you with me so far?

**Geoff Duke:** Sorry, which project starts off site?

**Dr Sales:** The Waverley upgrade project—the second one. Suppose that there is some slippage. Suppose that as a result of those off-site works there is an interruption to the power supply to Haymarket station and as a result the lighting, the telecommunications, the fire alarms, sprinklers and the like all go down. In those circumstances, Haymarket could not operate as a station, could it? Do you agree that it could not even operate as a temporary substitute, as it will be, for Waverley station?

**Geoff Duke:** I do not know, without having the detail of those circumstances.

**Dr Sales:** In such a scenario, is it your belief that the agreement reached with Network Rail would manage all those knock-on effects?

**Geoff Duke:** I do not know whether it would or not.

**Dr Sales:** I will address the concerns of First ScotRail about the disruption to the car parking facility at Haymarket that will be brought about if tramline 1 proceeds. Network Rail is the landlord of that station is it not?

**Geoff Duke:** Yes.

**Dr Sales:** As such, it is removed from First ScotRail's customers: the fare-paying passengers. It does not have a direct interest in those passengers in the same way as First ScotRail. Do you agree with that?

**Geoff Duke:** Network Rail's long-term view is that if it interrupts the rail services that are intended to be delivered through its back-to-back contracts with the Scottish Executive it is in its interest to act immediately upon any event, whether or not that interest is directly incentivised.

**Dr Sales:** But there is not a direct impact on Network Rail, is there?

**Geoff Duke:** No.

**Dr Sales:** But in such circumstances there would be a direct impact on the train companies using Haymarket station car park.

**Geoff Duke:** Yes.

**Dr Sales:** Do you know what the annual revenue from each car parking space is at Haymarket?

**Geoff Duke:** No. I am sure that that information is commercially confidential.

**Dr Sales:** Would it surprise you to learn that it is of the order of £3,000 per annum for each space?

**Geoff Duke:** No, that would not surprise me. One of your client's directors informed us of that.

**Dr Sales:** On the gaps between the position of Network Rail and that of First ScotRail, may we look at the example of passenger flow, which is not in Network Rail's interest. That would suffer severance during a construction period, would it not?

10:45

**Geoff Duke:** Yes.

**Dr Sales:** It would not matter a jot to Network Rail how many customers went through Haymarket station.

**Geoff Duke:** It might not matter to the payments that it receives for operating the station, but it may matter for public relations and on-going relationships with the Scottish Executive.

**The Convener:** I will make a helpful suggestion, Dr Sales. You are to question Mr Duke on his statement and any rebuttal that he has made, but passenger flows do not form any part of his statement that we can identify. Perhaps some of the questions about what you would like would be best put to your witness. That might flow better.

**Dr Sales:** Yes. I am close to the end of my time with Mr Duke. I ask you to indulge me for a further minute or two to explore with Mr Duke a further example of the gaps, as I think we are calling them.

Mr Duke, do you believe that Network Rail can deliver all the rail industry consents that would be required to regulate matters at Haymarket station if it was minded to do so?

**Geoff Duke:** I do not know.

**Dr Sales:** Is it not the case that all stakeholders in Haymarket station have to agree to any changes in the station's operation and, failing that, would go to the Office of Rail Regulation for adjudication?

**Geoff Duke:** Yes, that is my understanding of the industry process.

**Dr Sales:** Do you know whether the level of disruption to the car park during the construction phase, let alone the long-term loss of spaces, will require a full closure certificate under ORR auspices?

**Geoff Duke:** I do not know whether it would require such a certificate. I have heard your client say that it would do so.

**Dr Sales:** That was the problem with the new council offices that were to be built on the Waverley car park, was it not? As I understand it, Network Rail had agreed to make that car park available, but the problem that arose was that one of the train operating companies—GNER—just said no, which led to a delay of some two years.

**The Convener:** I make a final interruption, Dr Sales. I struggle to find any reference to car parking in Mr Duke's statement, so perhaps you should address those points to your own witness.

**Dr Sales:** I will happily let matters rest there and address my questions to Mr Amner.

**The Convener:** Thank you very much, Dr Sales.

**Helen Eadie (Dunfermline East) (Lab):** I would like to pursue the point about the requirements of the Disability Discrimination Act 1995. In response to a question, Mr Duke said that he did not know whether compliance would be achieved. That causes me some concern, so I ask him to elaborate on that point.

**Geoff Duke:** I cannot remember the exact terms of that question, but I assure you that TIE and the City of Edinburgh Council would wish to comply with any legislation that is currently in force.

**Phil Gallie (South of Scotland) (Con):** I detect a slight reluctance for open negotiation with First ScotRail. Is that simply because of the on-going contact with Network Rail?

**Geoff Duke:** I hope you did not get the impression that there is reluctance on our part. We understand that the provisions afforded to Network Rail will protect First ScotRail's interests. Dr Sales has attempted to identify through me some of the gaps, which is exactly what we have asked them to do. We have said that, if they identify the gaps or any deficiencies in the industry process, TIE will consider how to address them. As I said at the start, we recognise an on-going relationship with not only First ScotRail, but any other franchisee in the area, and want to be able to work smoothly to provide an integrated transport system in future.

**The Convener:** I will ask a simple question: why did you not do that from the beginning? Why is there an impression that you must take a convoluted route through Network Rail before you engage with First ScotRail?

**Geoff Duke:** That is not the case. At the outset we started to negotiate with First ScotRail and had got quite far with an agreement with it. We did not know how matters would progress with Network Rail, so we addressed all issues with all objectors. It is just that events with Network Rail overtook the negotiations with First ScotRail and, having arrived at a set of protected provisions, we informed First ScotRail of that position.

**The Convener:** Thank you, Mr Duke. Mr Thomson, do you have any follow-up questions for Mr Duke?

**Malcolm Thomson:** Yes, I do. I will attempt to be brief.

Mr Duke, I want to ask about your understanding of the relationship between First ScotRail and

Network Rail. We know from the objections that were lodged by First ScotRail and Network Rail that there are two contractual components to the relationship between them. One is a lease of the station and the other is a track access agreement to enable First ScotRail to operate trains on the track belonging to Network Rail. Does that accord with your understanding of the position?

**Geoff Duke:** That is my understanding.

**Malcolm Thomson:** I want to read to you two sentences from paragraph 3.7.3 of the rebuttal lodged by Mr Geoff Cook as an objector on behalf of Network Rail to see whether it accords with your understanding of the relationship:

"If Network Rail cannot meet its obligations under such Leases and Track Access Agreements then it is required to compensate operators. Network Rail could also face enforcement action from the Office of Rail Regulation whose powers include revoking Network Rail's licence."

Does that reflect your understanding of the remedies that are open to First ScotRail in the event of a failure by Network Rail to provide either station or track access under the track access agreement?

**Geoff Duke:** It is my understanding that there are those back-to-back contractual obligations.

**Malcolm Thomson:** Is that why you believed that if a suitable protective agreement could be reached with Network Rail, it would provide at least prima facie adequate and proper protection for First ScotRail?

**Geoff Duke:** That was our understanding, yes.

**Malcolm Thomson:** Thank you.

**The Convener:** There being no further questions for Mr Duke on the lack of due regard to heavy rail issues, I thank him for his evidence.

The next witness is David Ramsay, who will address agreement to protective provisions. I point out that although Mr Ramsay indicates in his statement at paragraph 2.1 that he is concerned with objections raised by the Strategic Rail Authority, he is in fact addressing concerns raised by First ScotRail's objection. The SRA is an objector to the Edinburgh Tram (Line Two) Bill only. Mr Thomson?

**Malcolm Thomson:** I have no initial questions.

**The Convener:** Does the committee have any questions for Mr Ramsay? If not, you are spared providing any information to us, Mr Ramsay. I remind the committee that Dr Sales is unable to question Mr Ramsay on the basis that there was no rebuttal to Mr Ramsay's statement.

Jim Harries's evidence relates to operational issues at Haymarket depot. Given that that will be dealt with at the Edinburgh Tram (Line Two) Bill

Committee, I do not think that we require the services of Mr Harries either. Is that correct?

**Malcolm Thomson and Dr Sales indicated agreement.**

**The Convener:** I move on to take evidence from Neil Amner, who is already at the witness table, so we do not require a break to bring him here. Members will note that this is a change of witness to that originally agreed by the committee. Mr Andrew Mellors has been unavoidably recalled to London, so is unable to give evidence today. I am advised, though, that Mr Amner can answer any questions raised by Mr Mellors's witness statement and rebuttals.

NEIL AMNER *took the oath.*

**Dr Sales:** I will introduce Mr Amner—who will give evidence in place of Mr Mellors for the reasons that the convener mentioned—simply by referring to what he says about himself in the introductory paragraphs of his witness statements for BRB (Residuary) Ltd in group 3 and for British Transport Police in group 4. He details his position and his experience in those witness statements.

I introduce Mr Amner briefly in that way to crave the convener's indulgence from the outset as I might take a little longer than the committee would wish to explore with Mr Amner the gaps that were evident in Mr Duke's knowledge of certain matters and to examine the difference between the positions of Network Rail and First ScotRail. However, any time that I spend going over those issues with Mr Amner will have the benefit of foreshortening any questions that I might have for Mr Bennett in the following group, which is group 3.

**The Convener:** Thank you, Dr Sales, but brevity is always appreciated by the committee.

**Dr Sales:** I will do my best, madam.

Mr Amner heard the question that Mr Thomson put to Mr Duke, during re-examination a few moments ago, on paragraph 3.7.3 of Mr Cook's evidence for Network Rail. With reference to the reply that Mr Duke gave in evidence, will Mr Amner explain as shortly and as simply as possible why any agreement that is reached between Network Rail and the promoter will not necessarily meet the concerns that are expressed in the objection for First ScotRail, which is the train operating company that has responsibilities for Haymarket station?

**Neil Amner (Biggart Baillie):** The agreement covers the core contractual payments under the lease with Network Rail, but it does not cover matters outwith those core contractual arrangements or the core payments made under the lease. Particular examples would be the station's qualitative elements, such as its

ambience, the quality of experience for passengers who are passing through and the impact that that has on the quality of services. Under the franchise agreement under which First ScotRail provides its services, failure to comply with the service quality incentive regime—SQUIRE—can result in severe financial penalties for First ScotRail.

Additionally, the compensation that would be payable under the station lease—and, for that matter, for station change through the access conditions that are incorporated into the station lease—would not pick up loss of ticket revenue through the station. Those matters would not adequately compensate First ScotRail for the loss of car parking spaces.

**Dr Sales:** In the overview section of Mr Mellors's written evidence, he refers to several arrangements that First ScotRail has in place for Haymarket station. With an eye to identifying the gaps between the position of Network Rail and First ScotRail, will you explain why First ScotRail's lease of the station and associated areas from Network Rail will not be adequately protected, as far as First ScotRail is concerned, if any difficulties should arise under that leasing arrangement?

**Neil Amner:** Sorry, I am unclear about the question.

**Dr Sales:** Why will the protective provisions that may be afforded to Network Rail not cover the lease of Haymarket station?

**Neil Amner:** Obviously, we have not seen the final text of the protective agreement between the council and Network Rail. However, from the earlier drafts that I have seen, I understand that the agreement's compensation provisions are limited to access agreements. As the definition of access agreement does not include station leases, any claim by First ScotRail against Network Rail under the lease would not be covered by the funding that Network Rail would be able to derive from the protective provisions agreement. My understanding is that any compensation payments would be limited to those that arise directly through access agreements. However, "access agreement" is a legal term of art, which the Railways Act 1993 defines as the contractual arrangements under which a train operator either gains access to the track by paying what is akin to a toll charge on a toll road, or arranges to be allowed to call at a station under a station access agreement, which is akin to the situation of an airline paying a landing charge at an airport. Therefore, First ScotRail's station lease would simply not be covered by the protective provisions agreement.

11:00

**Dr Sales:** Your written evidence also refers to the licence that is in place in respect of First ScotRail's interests at Haymarket station. Again, with an eye on what we seek to achieve as a result of your evidence, will you tell us the differences between Network Rail's position and First ScotRail's position on licences?

**Neil Amner:** Network Rail has a licence to operate the network, but First ScotRail holds the licence to operate the station. Accordingly, First ScotRail is directly responsible for compliance with the safety case requirements under the licence and for the application of the provisions of the Disability Discrimination Act 1995 that apply to the station—there are also obligations in the franchise agreement to comply with that act. My understanding is that the Network Rail agreement covers only access agreements, which is another head of claim, if you like, that is not adequately covered. I should also point out that a licence breach would affect not only Haymarket station, but potentially First ScotRail's capacity to operate any of its services throughout Scotland.

**Dr Sales:** On the station's access contracts, your written evidence refers to the detailed change procedure rules that will have to be gone through if changes are required at Haymarket as a result of the construction or operation of tramline 1. Will you please explain how such a procedure might be required as a result of what is proposed?

**Neil Amner:** I will use car parking at the station as an example. The station's contractual set-up is such that, to allow the other train operators to know what is available to them and their passengers or customers at stations, there are documents that are referred to in England as the station annexes and in Scotland as the supplementary station access conditions, which set out in detail the facilities that are available at each station. If people wish to change any aspect of what is available at a station, they require to go through what is, in effect, a stakeholder consultation exercise. The exercise is contractual in that the change procedures are set out in the fairly hefty document that contains the national station access conditions, which applies to all stations throughout the network.

The procedure would be that First ScotRail as the operator of the station or Network Rail as the landlord and operator of the network would initiate a consultation process and would propose that, for example, a certain number of car parking spaces or the whole car parking provision at the station would be taken out of operation permanently or temporarily. Taking those spaces out of operation would require an amendment to the access conditions—to the annexes that detail what is available at the station.

As I said, that is a contractual process that involves the other train companies, so proposals are, in essence, subject to veto by the other train operators. Such a situation arose at Waverley a couple of years ago. The process is regulated. Disputes are resolved by the Office of Rail Regulation—any agreement that is reached on the implementation of a station change procedure requires the ORR's consent. There are general approvals so that there can be a quicker, streamlined process for improvements to a station's environment, but what we are discussing would require specific approval from the Office of Rail Regulation before proceeding. I think that such approval is required under section 22 of the Railways Act 1993, which is a Westminster statute.

**Dr Sales:** Page 5 of your written evidence gives details of the anticipated loss of car parking spaces. It states:

"We do not believe it is unreasonable for us to have requested that alternative car parking spaces be provided".

Will you enlighten the committee on the promoter's position on the provision of alternative car parking spaces?

**Neil Amner:** No offer from the promoter is currently on the table.

**Dr Sales:** Why is it so important that replacement car parking spaces should be made available?

**Neil Amner:** It is important for commercial and, in essence, regulatory reasons. I will deal with the regulatory issues first. A number of disabled car parking spaces are currently available. If we are to enable customers who have mobility problems to access the station, we need those spaces or a workable alternative. The commercial aspect for First ScotRail and other train operators is to do with the fact that the revenue derived from season tickets is substantial and is directly linked to the availability of parking spaces. Passengers who use the parking spaces at the station invariably buy season tickets on the back of the availability of a parking space. If spaces at the station were not available and there were no spaces of suitable quality at a reasonable distance from the station, passenger numbers and ticket revenue would decline, which would have an incremental effect on congestion and the environment.

**Dr Sales:** In your written evidence, you suggest that the Morrison Street car park could meet the requirement for alternative provision. Do you want to add any comments about, for example, how an arrangement with the owners of the car park might be achieved?

**Neil Amner:** I am speculating, but it would be for the promoter to arrange the matter or for First

ScotRail to seek to negotiate an arrangement. In the absence of any funding or offer of indemnity from the promoter, First ScotRail has not been involved in such negotiations. However, I would have thought that the promoter could reach a commercial agreement or seek powers in the bill in relation to the temporary use of a proportion of the Morrison Street car park as a substitute for the spaces that are currently available at the station.

**Dr Sales:** One might assume that, barring temporary occupation, the equivalent of compulsory purchase acquisition powers would also be available.

**Neil Amner:** Yes, if there was a mind to grant such powers.

**Dr Sales:** Finally, in your submission you say:

"First ScotRail endorse Network Rail's concern with the potential adverse impact on the rail industry of the unfettered grant of compulsory powers to the Authorised Undertaker of the tram works."

You also refer to the

"Transport and Works Act Order saving provisions",

which operate in another place. How would such provisions be required in relation to the tramline 1 proposals?

**Neil Amner:** As I said, the heavy rail network is a pre-existing network that has operational services in relation to which a fairly complex web of contractual and regulatory provisions is in place. Those provisions are by and large driven by the terms of the Railways Act 1993 and include the Office of Rail Regulation and the station closure procedures, as well as other contractual obligations under the franchise agreement. There are also regulatory obligations in relation to the role of the HSE and Her Majesty's railway inspectorate, the railways safety case regulations and the Disability Discrimination Act 1995.

The saving provision that I had in mind would qualify the exercise of powers under the bill, if it is enacted, in situations in which pre-existing statute required certain procedures of a regulatory or compensation-related nature to be followed before the steps that were envisaged in the bill could be taken. For example, a power to take all or part of the car parking at Haymarket station would be subject to a requirement that the industry processes, in relation to the closure procedure under the Railways Act 1993 or station change procedures, were gone through and completed before the power under the bill could be exercised. In fact, I understand that such saving provisions have been used previously in Transport and Works Act 1992 orders.

**Dr Sales:** As a rider to that and having regard to what I think our American cousins often refer to as a mother-and-apple-pie proposition, do you agree

that it is desirable that there should be no room for conflict between the provisions of the Scottish bill as it may be enacted and the UK regulatory framework, principally under the 1993 act?

**Neil Amner:** Yes, that ought to be the case.

**Dr Sales:** I have no further questions for Mr Amner.

**The Convener:** Thank you.

**Malcolm Thomson:** I think that the committee has to hand a copy of the original objection: four bullet points are set out in it, but parking is not one of them. I understand that some sort of e-mail or other correspondence specifically mentioning parking for the first time followed on after the objection period. Let me clarify my client's position, which is that there is not a timeous objection about parking. *[Interruption.]*

**The Convener:** Please carry on, Mr Thomson. We will get back to you on the subject.

**Malcolm Thomson:** Mr Amner, I think that you have to hand the paragraph of Mr Geoff Cook's statement, which I put to Mr Geoff Duke. If I may, I will read it to you again, in case it is not fresh in your memory:

"If Network Rail cannot meet its obligations under such Leases and Track Access Agreements then it is required to compensate operators."

Do you accept the proposition?

**Neil Amner:** Yes.

**Malcolm Thomson:** So if, for example, Network Rail was unable to provide access to a number of car parking spaces, it would be liable to compensate your client, the objector, in respect of that deficiency?

**Neil Amner:** It would in terms of the agreements to which you refer, although they are limited in scope.

**Malcolm Thomson:** I am asking about the contract between your client and Network Rail.

**Neil Amner:** Yes, and I am saying that, although the contract contains a compensation provision, the scope of the compensation that is available under the contract does not cover all the potential losses that First ScotRail could suffer.

**Malcolm Thomson:** We will come on to that in a moment. However, you accept so far that your client has contractual rights against Network Rail under both the lease and the access agreements.

**Neil Amner:** Yes, in the event of a breach by Network Rail.

**Malcolm Thomson:** You also accept that, to a certain extent, it is for Network Rail to take the steps that it regards as appropriate to protect itself from claims by your client.

**Neil Amner:** Yes, that is correct.

**Malcolm Thomson:** You described in some detail the change procedure. You said that, if a change were to be made to either the lease or the access agreement, that would require the agreement of all the stakeholders.

**Neil Amner:** Yes.

**Malcolm Thomson:** And that anyone could veto it.

**Neil Amner:** They could, but that is subject to the event of the veto being maintained, in which case the matter would be referred to the Office of Rail Regulation for determination.

**Malcolm Thomson:** However, without any such variation of those agreements, the contractual remedies that we have just been looking at would stand.

**Neil Amner:** Yes, although I should qualify that. Obviously, under the terms of the agreements, there would be an effect on the station if, for example, car parking were to be removed. The operational impact of that change is covered by the objection and would require the consent of First ScotRail.

**Malcolm Thomson:** So you, among others, would have to agree to the number of car parking spaces being varied, for example.

**Neil Amner:** Yes.

**Malcolm Thomson:** You explained that, in addition to the direct loss of a car parking space, indirect losses might flow from a loss of revenue from people who use the car park then travel on a train.

11:15

**Neil Amner:** That is correct.

**Malcolm Thomson:** You also drew attention to SQUIRE, the quality standards that your client must meet and the adverse effect that might follow on turnstile revenue if your client failed to achieve those standards.

**Neil Amner:** That is right.

**Malcolm Thomson:** Are those compensation matters for potential claims against the promoter in due course?

**Neil Amner:** Yes.

**Malcolm Thomson:** You referred to possible alternative car parking at Morrison Street. Is that on the site that has recently been the subject of a public inquiry?

**Neil Amner:** I am afraid that I do not have direct information on the site's availability.

**Malcolm Thomson:** Thank you, Mr Amner.

**The Convener:** I will clarify our position on a point that Mr Thomson raised earlier, which I suspect from his last question on car parking that he has accepted. The committee is happy to consider car parking under point 2 of the company's objection to the bill, which says:

"the Bill does not provide adequate protective provisions for the benefit of"

First ScotRail's

"operations."

We consider car parking to form part of the company's operations. Mr Thomson raised that as one of the outstanding issues when we started this morning. It is also mentioned in a rebuttal statement from one of the promoter's witnesses, so we consider car parking to be appropriate for the committee to consider.

**Malcolm Thomson:** I accept that ruling fully, but I should explain, because my witnesses have been criticised, that nothing about car parking was in the principal witness statements. That is why the promoter did not regard it as the subject of an objection. Once the matter was raised in the objector statement, we had to cover it in rebuttal.

**The Convener:** In fairness, I tried to contain Dr Sales's questioning of the chief witness.

**Helen Eadie:** We have heard considerable discussion of compensation as a result of regulatory and commercial interests. My concern is about who will compensate the public for the loss of amenity and how they will be compensated. I guess that the question is for Mr Thomson and the promoter.

**The Convener:** We are questioning Mr Amner, who is the witness.

**Helen Eadie:** He might wish to amplify how he thinks that the promoter will compensate the public for loss of service and loss of amenity, because not just First ScotRail or Network Rail should have compensation.

**Neil Amner:** The simple answer is that the public will not be compensated unless alternative car parking provision is made available to maintain the current service provision. First ScotRail wishes to have the alternative car parking provision. It wishes to maintain a suitable number of car parking spaces to serve the station and the passengers who use it.

**Helen Eadie:** Have options other than Morrison Street been considered? Was that simply your suggestion to the promoter? What discussion of alternative sites has taken place?

**Neil Amner:** I ask permission to confer with a gentleman who is behind me. I speak for First

ScotRail, but I am fortunate to have one of its directors with me.

First ScotRail suggested Morrison Street car park by way of illustration. The request was for the promoter to find suitable alternative spaces in reasonable proximity to the station. The view is that, because the promoter seeks powers to remove existing spaces, the promoter ought to find alternative provision.

**Helen Eadie:** Have any suggestions been forthcoming?

**Neil Amner:** Not as far as I am aware.

**Helen Eadie:** May I ask one more question?

**The Convener:** You are straying outwith the scope of the objection.

**Helen Eadie:** My question is to do with the impact on services. Mr Mellors says in his statement that Haymarket is the busiest rail depot in Scotland because of the fuelling of diesel trains that come to the station.

**The Convener:** I stop you there, because that matter is being considered by the Edinburgh Tram (Line Two) Bill Committee.

**Phil Gallie:** First ScotRail suggests that the lack of car parking spaces is relevant to operations in the short and longer terms. Is that correct?

**Neil Amner:** Yes, that is correct.

**Phil Gallie:** You talk about the loss of spaces in the long term and say that the number of spaces would go down from, I think, 150 to 90.

**Neil Amner:** Yes.

**Phil Gallie:** Have you considered what impact the tramline will have in reducing car use among people within its area travelling to Haymarket for continuing journeys?

**Neil Amner:** The best thing that can be said on car parking and the impact that the tramlines will have when they are operational is that there is a connection and interoperability between the two public transport modes. However, the loss of car parking is a definite event—we know that the car parking will be lost and that customers will be lost, at least during the construction phase. Whether those customers will transfer to the tram is currently unknown. One would hope that some would, but probably not all of them will. Once the tram is operational, it might open up areas of Edinburgh for travelling by train for longer journeys and make commuting journeys to the west, for example, more attractive to Edinburgh citizens who currently find it difficult to get to the station. However, all that is supposition and subjective judgment; the one hard and fast thing that we know is that, during the construction phase, which

is during a core element of the current franchise, there will be a loss of car parking.

**The Convener:** Dr Sales, do you have any follow-up questions?

**Dr Sales:** Yes, I have two.

Mr Amner, you were asked questions by Mr Thomson on the contracts between First ScotRail and Network Rail—I refer not to the recently achieved or nearly achieved agreement, but the existing contracts—and it was suggested to you that compensation would be forthcoming in the event of a breach of those contracts by Network Rail. Do you consider that the powers that will be made available to the authorised undertakers under the bill, if it is enacted, would constitute a breach of Network Rail's obligations under its existing contracts with First ScotRail?

**Neil Amner:** No, I do not, because the powers would be granted to the promoter and, thereafter, to the authorised undertaker. It is not necessarily the case that that will result in Network Rail breaching its obligations. Network Rail might be forced into doing so, but it would not be controlling the sequence of events. At the moment, the powers are unqualified.

**Dr Sales:** Mr Gallie asked you a question on what I might characterise as the short-term and longer-term benefits of the modal change—if I may introduce that term—that the introduction of the trams on tramline 1 might bring about. Do you regard customer loss as the only consequence of that, or is there a need to take into account customer convenience or inconvenience during the construction period?

**Neil Amner:** There is a need to take into account customer inconvenience. We must bear it in mind that, if we lose a customer on day one, we will not automatically get him back on day two.

**The Convener:** There are no further questions for Mr Amner on the protection of operations, so I thank him for giving evidence. I say to both parties that we hope that they will keep the committee apprised of what I assume will be continuing negotiations.

Mr Thomson now has up to five minutes to make any closing remarks that he might have on the evidence from the objector.

**Malcolm Thomson:** In my submission, we have seen the tip of the iceberg of rather obscure contractual and legislative arrangements that regulate the operation of heavy rail. However, the bare bones are pretty simple. The contractual framework between the objector and Network Rail has two separate parts: the leasing of the station and the access arrangements to the other assets of Network Rail, primarily the lines on which the objector operates its trains.

In terms of those basic contractual arrangements, the objector has conceded that it has a remedy in respect of any failure to comply with the provision of the station and the lines. The protective provisions agreement involving Network Rail, TIE and—ultimately, we hope—the council will provide most if not all of the protection that the objector requires. Any protection that it does not receive under that agreement will, in my submission, form a compensation claim.

It is in the promoter's interests to attempt to reach agreement with the objector in relation to any matters that it perceives are not covered adequately by the protective provisions agreement with Network Rail. That will be an on-going process and, of course, members of the committee will be kept informed. The first thing that requires to be done in the context of that dialogue is to hear—as we have heard today, to some extent—what the perceived gaps are and what can be done about them. However, some of the issues that have been raised plainly relate to compensation.

For the purposes of the committee, adequate comfort should have been given by the protective provisions agreement, so far as the principal activities of the objector are concerned. I hope that I will be able to give the committee good news about that in the short term, rather than the long term.

**The Convener:** We look forward to that.

Dr Sales, do you have any closing remarks? You have up to five minutes.

**Dr Sales:** Four key issues are outstanding for First ScotRail in relation to tramline 1. The first is a concern about timing following the upgrade of Haymarket and Waverley stations, both of which must be completed, in the submission of First ScotRail, before the authorised undertaker is permitted to exercise any acquisition powers in relation to Haymarket station.

Secondly, there is the need to co-ordinate the Scottish legislation—as it may become—with the Westminster legislation that we have referred to. Thirdly, there is the outstanding issue of compensation and claims and the ability of First ScotRail to reclaim its losses directly. Fourthly, there is the car parking issue at Haymarket station. We recognise that, to some extent, the last two issues—compensation and claims and car parking—are illustrative in relation to objections 1 and 2.

On the first issue—timing—we note that the promoter has renewed its offer to provide contractual assurances that the trams will go last, after the Waverley upgrade. However, if no contractual assurances are in place, First ScotRail says that the powers of the authorised undertaker

should be qualified or restricted to disallow any works that could adversely affect Haymarket station during the Waverley station upgrade.

11:30

The second key issue is the potential clash between Scottish and UK legislation. Any operational facility that requires temporarily to be taken out of use by tramline 1—for example, part of the station car park—will need either a full closure or a minor closure procedure under the 1993 act. Consequently, First ScotRail says that there will be at least a need for a minor closure certificate and most probably a need for a full closure certificate. Again, the powers that are to be given to the authorised undertaker to take land that forms part of an existing operational facility should be subject to the prior grant of requirements under other UK statutes.

The car park at Haymarket station is part of the station and, under the 1993 act, if the car park is to be altered, there would have to be change procedures as well as closure procedures. Such change procedures are required to alter the contractual arrangements that are regulated by the ORR under the 1993 act. For example, there may be a notice to require First ScotRail to promote a conditions change proposal in respect of the car park. That would constitute an amendment of the terms of the station access agreement, which in turn would require a change to the lease. All that demonstrates that car parking is a most important issue for First ScotRail, as it is for all rail operators today.

The third issue is compensation for third-party claims against First ScotRail. The fact that such claims arise through a regime that is regulated or imposed by parties that operate under the UK legislation means that there could be a domino effect that ripples through a web of contractual relationships and a matrix of fines and penalties. Any claims that First ScotRail could not reclaim from Network Rail under the proposed agreement would have to be borne by First ScotRail, so if no contractual indemnities for such claims are put in place, First ScotRail will require enhanced rights to compensation. It is First ScotRail's position that it must be held whole and harmless against all such claims, subject to the need to mitigate loss.

In conclusion, First ScotRail says that the Edinburgh Tram (Line One) Bill should not be enacted unless adequate safeguards are put in place, either in the bill's provisions or contractually through a signed agreement between the promoter and First ScotRail, to ensure that there will be no breach of the existing regulatory framework under the 1993 act and subsequent amendments by reason of the construction and operation of tramline 1 at Haymarket, nor any

uncompensated losses from claims that are made by heavy rail third parties against First ScotRail.

I thank the committee and its convener for their time.

**The Convener:** Thank you very much, Dr Sales. That concludes the evidence on group 2. After taking a short break, we will move on to group 3 and BRB (Residuary) Ltd. I thank all the witnesses. Mr Duke will stay with us and Rahul Bijlani will take his place at the witness table.

11:33

*Meeting suspended.*

11:38

*On resuming—*

**The Convener:** Okay, I intend to recommence the meeting. If those people who are elsewhere join us during the course of the evidence, that is excellent, but five members are present and that is enough for me, so we will just start.

RAHUL BIJLANI *made a solemn affirmation.*

**The Convener:** Mr Duke has already made a solemn affirmation.

I note that BRB (Residuary) Ltd has rebutted only Geoff Duke's witness statement, which means that Dr Sales may cross-examine only Mr Duke, although the committee may of course ask questions of any witness, if it wishes to do so. I note also that, in his rebuttal, Stephen Bennett refers to David Ramsay's witness statement. As David Ramsay is not a witness for this group, Dr Sales cannot cross-examine him. Mr Duke will address the issue of lack of regard for heavy rail issues.

**Malcolm Thomson:** Our position with regard to Mr Duke is almost identical to our position on the previous group's objection. Our position is that the protective provisions agreement, once finally executed, will provide the due regard and comfort that are required to answer that aspect of the objection. I do not propose to lead Mr Duke any further on that issue today.

The three other matters are Mr Bijlani's areas of expertise. I propose to lead him on an updating of where discussions have reached between him and Mr Amner on those rather technical matters.

**The Convener:** We will consider those matters after we have dealt with Mr Duke.

It is over to you, Dr Sales, but I say to you that we understand the problems that First ScotRail has with the Network Rail agreement; the committee gets that point entirely, so you do not require to repeat it.

**Dr Sales:** I am obliged. I have that point firmly in mind and will approach my cross-examination of Mr Duke accordingly.

Mr Duke, as far as I can see, the witness statement that you lodged in relation to the objection of BRBR is almost identical to your statement for TIE in respect of First ScotRail in group 2, the only difference being the reference in paragraph 3.1 to the BRBR position. Is that a correct assumption?

**Geoff Duke:** That is correct.

**Dr Sales:** On that basis, all that I need to put to you is the following: is it your understanding that the position of BRBR is that it wishes specifically that the requirements of both Network Rail and First ScotRail are satisfactorily addressed, either by amendments to the bill or by way of separate commercial agreements with the promoter?

**Geoff Duke:** Yes.

**Dr Sales:** So BRBR also seeks separate agreements unless it can be persuaded that there are no gaps and that everything that it wishes to see covered in respect of First ScotRail has in fact been covered by a separate agreement between the promoter and First ScotRail?

**Geoff Duke:** Yes.

**Dr Sales:** Is it BRBR's position that such amendments or commercial agreements must be mutually consistent and properly allow the protection of all industry stakeholders?

**Geoff Duke:** Yes.

**Dr Sales:** I have no further questions for Mr Duke.

**The Convener:** Excellent. Does the committee have any questions?

**Members:** No.

**The Convener:** Does Mr Thomson have any follow-up questions?

**Malcolm Thomson:** No, thank you.

**The Convener:** There being no further questions for Mr Duke on the lack of regard for heavy rail issues, I thank him for giving evidence.

The next witness for the promoter is Mr Bijlani, who will address the issue of acquisition of title rights over BRBR land. My understanding is that the other issues of pre-existing statutory obligations on BRBR and the adequacy of section 13 have now been agreed on between the promoter and the objector. Is that the case?

**Malcolm Thomson:** Unfortunately, I do not think that it is. I understand that the section 13 issue has been agreed but, on the issue of pre-existing statutory obligations, I understand that Mr

Bijlani is about to make a recommendation to the promoter but that he has not yet done so. That proposal flows from an agreement that Mr Bijlani has reached with Mr Amner.

Mr Bijlani, would you update the committee on the point about the pre-existing statutory obligations?

11:45

**Rahul Bijlani (Bircham Dyson Bell):** I am now in a position to recommend that the promoter accept an amendment in very similar terms to the one proposed in Mr Amner's evidence. I will come to a couple of minor changes to it in due course.

The promoter is not yet in a position to accept that recommendation. To explain the background, the promoter's concern was really about taking on an unknown and unquantified liability. It is difficult to quantify the potential liability, because that involves going back to local and private legislation, primarily from the 19<sup>th</sup> century, for railways in the area that are affected by the tram bills. It also involves understanding the extent to which those acts incorporate the Railway Clauses Consolidation (Scotland) Act 1845. Those are the ways in which the on-going statutory obligations can arise. That exercise has been undertaken and a report has been prepared, but the promoter has not had a chance to digest it or go through its risk analysis procedures.

Subject to that and subject to two minor changes, I am in a position to recommend that the promoter accept Neil Amner's proposed amendment. The first is that, for consistency with the terminology in the bill, the amendment should refer to a "disused railway", rather than a "former railway". The second is that the provision should cover statutory obligations only, so the words "or otherwise" should come out. Although the promoter accepts that even though BRBR has lost control of the land it may be in a difficult position as regards on-going statutory obligations that may bite, we do not see why the measure should carry over into contractual arrangements that it may have with individual landowners.

I will turn to the extent to which title conditions are at issue in due course.

**Malcolm Thomson:** Just for completeness, can we consider the acquisition of title rights over BRBR land?

**Rahul Bijlani:** To update the committee, we have now received from BRBR a demarcation agreement. Neil Amner's evidence explains what that is but, in essence, it is an agreement that governs the terms between Network Rail in respect of its operational land and, in this case, BRBR where the lands abut. We accept that, in

circumstances in which the promoter is taking BRBR land, those terms need to be taken into consideration. The demarcation agreement is complex—it is being analysed and its implications are being digested, but that process has not yet been completed, although we hope that it will be soon and that we will reach agreement on the matter. The promoter's view is that the issue is best dealt with outwith the bill, as it involves potentially complex title conditions.

The other issue that we are trying to resolve is that we think that the matter applies only to one area, and possibly even only to one or two parcels of land in the bill, which are at Ratho Station. Mr Amner may be able to enlighten us further on the issue. Again, that suggests that the matter ought to be dealt with outwith the bill.

**Malcolm Thomson:** Finally, will you explain what has happened about section 13?

**Rahul Bijlani:** I hope that section 13 is agreed to. Mr Amner has proposed some minor amendments with which I concur.

**Malcolm Thomson:** That one is looking good.

**The Convener:** As there are no questions from the committee, I thank Mr Bijlani for giving evidence on the issue. We will now take oral evidence from the objector's witnesses. I invite Stephen Bennett to join Neil Amner at the table.

STEPHEN BENNETT *took the oath.*

**The Convener:** Mr Bennett will address the issue of due regard for heavy rail issues. The promoter has chosen not to rebut Mr Amner's witness statement, so its cross-examination will be limited to Mr Bennett.

**Dr Sales:** At the risk of incurring further comment, I wonder whether, for the sake of consistency, the order of witnesses at this stage may be reversed. To relieve Mr Amner of his position beside me, may we take his evidence immediately after the points that Mr Bijlani made?

**The Convener:** That would be absolutely fine.

**Dr Sales:** Mr Amner, you have heard the update that Mr Bijlani gave this morning. What is your position, on behalf of BRBR, on the first point that he made—that an amendment very similar to the one that you have proposed, with two minor changes, is to be recommended to the promoter? Do you wish to comment on the proposed change of “former railway” to “disused railway”?

**Neil Amner:** Obviously, given that the proposal was made only this morning, I have not had a chance to obtain instructions on it. Personally, I can see no objection to the change.

**Dr Sales:** The other minor change to the amendment that you proposed involved the

deletion of “or otherwise” after “statutory”. Do you wish to comment on that?

**Neil Amner:** It is a potentially material change, but I am confident that we will be instructed to accept it.

**Dr Sales:** Are you content with the position that Mr Bijlani set out this morning on the demarcation agreement?

**Neil Amner:** Yes. I think that he recorded the current position accurately. However, the base element of the BRBR objection will stand unless and until we reach agreement with the promoter. I confirm that we are talking about one parcel of land and the title conditions that relate to it. I add for the benefit of the committee that, although we accept that the demarcation agreement is a chunky, fairly complex document, there is precedent for provisions of this type to be inserted in a statutory provision or an order under the Transport and Works Act 1992. In particular, I refer the committee to the City of Edinburgh (Guided Busways) Order Confirmation Act 1998.

**Dr Sales:** I have no further questions for Mr Amner.

**The Convener:** Thank you, Dr Sales. That is almost a full house, gentlemen. As members have no questions for Mr Amner, I thank him for his evidence. We now turn to Mr Bennett.

**Dr Sales:** I am obliged to you, convener, for changing the order of witnesses. Mr Bennett, can you set the scene for us by explaining why you are here as a member of the Strategic Rail Authority to speak to the objection from BRB (Residuary) Ltd?

**Stephen Bennett (Strategic Rail Authority):** Good morning. The SRA holds the contracts with all train operating companies in the UK. It also holds the budget for rail, including payments that are made to Network Rail, so it must have in mind the interests of the industry as a whole. That remains the case until the changes that were recently brought about by the Railways Act 2005 take effect. That has not happened yet, so I am still here. The concerns that I have come to express today will have been adequately addressed if all the concerns that the committee has heard from First ScotRail, BRB (Residuary) Ltd and Network Rail are met, which we understand is likely to be the case. In those circumstances, we will be well satisfied and will withdraw our objections. That is a summary of our position.

**Dr Sales:** We can rest with that summary provided that we are absolutely clear that what you, on behalf of BRB (Residuary) Ltd, are looking for is satisfaction with respect to both Network Rail and First ScotRail, which comes back to the point about the identification of gaps.

**Stephen Bennett:** That is correct. Our concerns are the operational and economic integrity of the heavy rail industry. All those matters have been raised one way or another this morning.

**Dr Sales:** In relation to paragraph 4.2 of your written statement, on compensation provisions, do the propositions that Mr Thomson put to Mr Amner during his cross-examination of Mr Amner about the First ScotRail position satisfy BRBR?

**Stephen Bennett:** The proposition that it is adequate to have compensation arrangements with Network Rail alone on behalf of the whole industry had good intent but does not meet all the concerns of the whole industry. I believe strongly that the promoter should address adequately the legitimate concerns of the whole industry.

**Dr Sales:** With respect to those legitimate concerns, to be blunt, are we talking merely about the protection of First ScotRail's financial position or is BRBR concerned with the qualitative side of the delivery of train services?

**Stephen Bennett:** One of the reasons why I prefaced my rebuttal statement with the words "operational" and "economic" was to stress that the operational integrity is at least as important as the economic integrity.

**Malcolm Thomson:** As far as the alleged lack of due regard to heavy rail issues on the part of the promoter is concerned, are you here simply to support First ScotRail's position?

**Stephen Bennett:** Obviously, we have to take a longer-term view and consider the interests of all the other operators, because it is not just First ScotRail that uses the railway network. As we heard earlier, there are other franchises and there are also freight operators, so my concern is for the entire industry. However, from what I have heard so far and from the discussions that I have had with First ScotRail, I believe that what it proposes is entirely consistent with the interests of the industry as a whole.

**Malcolm Thomson:** If Network Rail's position is satisfied, you are not here to support that organisation.

**Stephen Bennett:** I see no need to do anything further for Network Rail, provided that the council is prepared to sign the agreement.

**Malcolm Thomson:** Thank you, Mr Bennett. I repeat the remark that I made at the beginning of my questions last week that when I do not cross-examine a witness, it should not be taken for a moment that I agree with everything that the witness is saying. My position is set out in the promoter's witness statement and rebuttal and I will try to confine my questions to achieving clarification and illumination of factual difficulties outside the areas of controversy that we all know about.

**The Convener:** Thank you for that very helpful clarification. We would not assume that simply because you did not question somebody you necessarily agreed with them. Indeed the committee will consider all the written evidence alongside the oral evidence when coming to a conclusion. Committee members have questions for Mr Bennett.

**Helen Eadie:** Is BRBR satisfied by the promoter's response to the concerns that were expressed about the timing of the construction at Waverley and Haymarket stations?

12:00

**Stephen Bennett:** That is a good question and I thank you for giving me the opportunity to say something about the matter. If I had not attended this meeting, I would have been chairing a meeting of the Waverley development group, which includes all industry parties and the City of Edinburgh Council. The group requires Haymarket to play a large role in the Waverley project. We told the promoter that we hope that the project will be complete by the end of 2007 and we asked for assurances that the tram works will not start until after that date. I was encouraged by what I heard today, which was constructive and demonstrates that people are working together.

**Phil Gallie:** Your response concerns me a little, because projects such as the Waverley development tend to run late. If the Waverley project were to run late, the knock-on effect could be added costs for the tramline project. What consideration has been given to the matter?

**Stephen Bennett:** You identify a reason why we take such large projects very seriously and put a lot of effort into them. I will not be telling tales out of court if I say that the Waverley project is currently slightly ahead of schedule. We are confident that there should not be a problem.

**Phil Gallie:** If the Waverley project were to run late, would you regard yourself as under an obligation to reverse compensate?

**Stephen Bennett:** One of the reasons why the industry is so complex and has such high costs is that it involves complicated regimes and relationships. I would not recommend such a complicated approach to light rail, if that was your suggestion.

**Phil Gallie:** I will ask the question that I had intended to ask. You referred to Mr Thomson's comments, which appeared to me to represent an acceptance that Network Rail would compensate for or recognise operational losses that First ScotRail incurred as a consequence of developments in the Haymarket area. Are you satisfied that Mr Thomson's comments would have legal basis, if compensation were sought in future?

**Stephen Bennett:** We were very pleased to hear those comments, but the crucial point that the objector's representatives made was that although such compensation would address some of the losses, it would be inadequate to cover the totality of losses. Such compensation would be intended to address only a particular contract, but the railway industry operates on a matrix of contracts. For example, Mr Amner referred to SQUIRE, which is a contract that is quite outside the contracts that were being discussed. If we rely on a single remedy, we will have only a partial solution. What we heard this morning represents an encouraging development but does not address the whole issue.

**Helen Eadie:** BRBR had concerns about access and fuelling at Roseburn. The promoter indicated that it would plan with Network Rail and First ScotRail to minimise disruption. Are you satisfied with the promoter's response?

**Stephen Bennett:** I suspect that that is a depot issue. Am I right in thinking that the convener wants such issues to be considered elsewhere?

**Helen Eadie:** I think that the matter affects tramline 1.

**The Convener:** We suspect that depot issues, including that one, will be considered by the Edinburgh Tram (Line Two) Bill Committee.

**Helen Eadie:** Our notes say line 1, but—

**The Convener:** That just shows that members are interested in pursuing every aspect of the proposals.

Dr Sales, do you have any follow-up questions for Mr Bennett?

**Dr Sales:** I have just one question. In response to Mr Gallie's question, Mr Bennett referred to what he described as the "crucial point" on compensation in relation to the Network Rail agreement, if it is fully executed.

Mr Bennett, you said that the compensation would not cover the totality of losses. May we take it that those losses would be both financial and qualitative?

**Stephen Bennett:** Yes.

**Dr Sales:** Is it your belief that those interested in the SQUIRE matters—principally First ScotRail—would be able to reclaim their financial losses from Network Rail?

**Stephen Bennett:** No. I believe that there is an impediment to that. The compensation on the table this morning, as I understand it, relates specifically to the track access contract and the station lease. It does not relate to other contractual matters.

**Dr Sales:** Do you believe that it will be possible for Network Rail in some way to compensate for the qualitative factors not having been met, in terms of SQUIRE?

**Stephen Bennett:** No. Network Rail is limited in what it can do because it is a regulated utility and it has to operate strictly under the arrangements that are set out by the Office of Rail Regulation.

**Dr Sales:** Thank you, Mr Bennett.

**The Convener:** There being no further questions for Mr Bennett on due regard for heavy rail issues, I thank him for giving evidence today.

Mr Thomson, you have up to five minutes to make any closing remarks about the evidence relating to this objector.

**Malcolm Thomson:** In a way, BRBR's position simply reflects the position of, first, Network Rail and, secondly, First ScotRail. With the greatest respect, I think that it does not add much to the sum total of our knowledge. There was a reference to freight interests, but there is no freight operator objector. In effect, BRBR's position is moral support for Network Rail and First ScotRail. In my submission, most of the issues that it flagged up today are purely compensation issues.

If I have in any way given a false impression, I take it back now. I am not suggesting that First ScotRail's only remedy is under its contractual relationship with Network Rail. As Mr Amner accepted, First ScotRail will, of course, be able to make its own compensation claim against the promoter if it can qualify a relevant claim. However, it has a contractual relationship with Network Rail and its interests are directly protected by Network Rail. Network Rail is bound to provide stations and other operating facilities and if it fails to do so, First ScotRail will have a remedy against it. Therefore, the question is not where the ultimate liability will fall but where the duties of care lie at the moment.

If, under the terms of the contractual arrangement, Network Rail compensates First ScotRail, the amount that it pays will doubtless form part of Network Rail's claim against the promoter, because the loss will fall on Network Rail. There is no question of potential claims drifting through some sort of drainage network. Claims will be dealt with as and when appropriate. I submit that the real issue is the protection that is afforded by the protective provisions agreement. At the end of the day, we come back to that.

Again, BRBR's interest on behalf of First ScotRail relates to any statutory duties that may fall on an operator rather than on Network Rail, which may cause direct operating inconvenience to First ScotRail rather than to Network Rail. Those are the sorts of gaps to which I referred in my remarks on the First ScotRail position.

So far as BRBR is concerned, I invite the committee to apply the closing remarks that I made to the earlier objectors and otherwise to be confident that the detailed statutory and title issues that were dealt with by Mr Bijlani appear to be capable of being resolved.

**The Convener:** Thank you. Dr Sales, you have up to five minutes to make your closing remarks.

**Dr Sales:** BRB (Residuary) Ltd's locus in objecting is as an honest broker that is looking to the position of both Network Rail and First ScotRail. In effect, BRBR is appearing as agent for the SRA to say that the SRA responsibilities under the UK requirements may be breached unless the bill recognises the wider rail interests of both Network Rail and First ScotRail. The committee should address all the interests of both Network Rail and First ScotRail and not just those of one of them, as will be the case if the promoter is not obliged to address the outstanding concerns of First ScotRail in a contractual fashion.

As the committee will be aware, the BRBR objection has two parts to it. In effect, if the Network Rail and First ScotRail objections are fully resolved, part 1 of the objection falls away. The second part relates to the drafting and the extinction of UK statutory obligations and is consistent with the point about the title conditions. If the authorised undertaker takes title to the land that is to be acquired through the compulsory purchase order powers, safety issues will have to be considered along with all other issues. Even if the authorised undertaker takes title by CPO powers, only the title conditions and not the pre-existing statutory obligations will be affected.

Our submission is therefore that, if the bill fails to take account of those two points—withstanding the position that Mr Bijlani mentioned this morning—operational land may become exposed through a lack of necessary safeguards, which are presently in the title. There is also the potential for conflict between the pre-existing statutory obligations and rights to which BRBR is currently subject and the statutory obligations and rights that the bill creates.

**The Convener:** Thank you. Before I conclude the evidence for group 3, I remind everyone that, when the committee considers amendments at the next stage, only the committee can amend the bill. I look forward to those amendments coming forward in due course. That said, I conclude our evidence taking for group 3.

We move to group 4, which is the British Transport Police. As Mr Bijlani is already at the table, we do not need to take a break.

In terms of the promoter and objector witness statements and rebuttals, it would appear that agreement has been reached between the British

Transport Police and the promoter. I welcome the agreement that has been reached on a form of words for section 60 and the recommendation that the bill be amended accordingly. Mr Thomson and Dr Sales, will you confirm that that is the case?

**Malcolm Thomson:** I am happy to give that confirmation.

**The Convener:** I am happy to hear it.

**Dr Sales:** I am happy to accept the confirmation.

**The Convener:** That is excellent. I hope that we can keep going in this way for the rest of the afternoon. Dr Sales, do you want to take the opportunity briefly to explain the agreement?

**Dr Sales:** I think that there would be no benefit in doing so.

**The Convener:** Excellent—not that I want to curtail the debate. However, as both sides appear to be in agreement, I see no reason for the committee to take oral evidence from anyone. That concludes the evidence taking from group 4.

Before we move to group 11, which is Transco plc, we will take a short break to allow Tom Blackhall to take his place at the table.

12:14

*Meeting suspended.*

12:16

*On resuming—*

**The Convener:** For the *Official Report*, I will repeat a comment that I think that I made earlier. I am aware that Transco has had two name changes as a result of company restructuring and that it became Blackwater SCA Ltd and then Scotland Gas Networks Ltd. However, I am content that it is appropriate for the objection to proceed. For convenience, we will simply refer to "Transco" during the meeting.

Late last night, we received notification from Transco that it had reached agreement in principle with the promoter; we await the written legal undertaking. Transco cannot withdraw its objection, but as a result of that agreement it did not wish to present oral evidence today, so Mr Ross will not appear before the committee. Given that agreement, and before Mr Blackhall takes the oath or makes a solemn affirmation, I would like confirmation from the promoter that it has questions to ask Mr Blackhall.

**Malcolm Thomson:** I was simply going to invite Mr Blackhall to update the committee on what has happened, but I am happy not to do so if you are happy to proceed on the basis of the information that has been received from Transco.

**The Convener:** For the sake of form, we will allow Mr Blackhall to give the committee an update.

TOM BLACKHALL *took the oath*.

**Malcolm Thomson:** I would like to mention one thing before I question the witness. The promoter does not accept that the objector has simply had a change of name. I am not raising an issue about how we should proceed, but lest it be suggested later that I have accepted that there has simply been a change of name, I say that I do not accept that. My submission notes that there is a different consideration when assets are transferred from one body to another, which is what I understand happened. However, I am not objecting to how we are proceeding.

**The Convener:** Your comments have been noted, Mr Thomson. Please proceed.

**Malcolm Thomson:** Will Mr Blackhall please simply give us an update on the negotiations and the agreement that has been reached with Transco?

**Tom Blackhall (Transport Initiatives Edinburgh Ltd):** With regard to tramline 1, as in our previous submission, we fully agree that all parties and all provisional commercial protection and fundamental protection to the apparatus are in place. The only objection, which was mentioned in the e-mail that the committee received late last night, relates to the side letter, which obtains only to tramline 2. There is a particularly sensitive trunk-main gas pipe by Gogar roundabout and we have agreed in principle that Transco should carry out works in order fully to comply with any provisional protection that is required. As things stand, there is no objection to line 1 from Transco, which has agreed that all provisional protection is in place. At the 11<sup>th</sup> hour, it changed its mind about the format for proceeding on agreement.

Transco wished us to submit our signed copy to it, so that it could send its copy off and send it back. Unfortunately, as you have learned today, we simply have not submitted the agreement to City of Edinburgh Council, because we are under a different guise. We were looking to submit a suite of documents in a oner once everyone had agreed, but Transco has changed its mind about that.

**Malcolm Thomson:** As far as tramline 1 is concerned, do you envisage any difficulty in securing execution by both parties to the agreement?

**Tom Blackhall:** I would say that there will be agreement within the next 10 to 14 days. At the moment it is—although I do not like to use this phrase—a done deal, subject to City of Edinburgh Council's approval.

**The Convener:** Are there any questions from committee members?

**Members indicated disagreement.**

**The Convener:** We like done deals, too. There is nothing further to hear from Mr Thomson, so I thank Mr Blackhall for his evidence.

We proceed to group 9, which concerns BAE Systems. I welcome Andrew Oldfield and Rahul Bijlani. I have considered the witness statement from Mr Bijlani. It appears that you are to address the issue of notification, but that is a subject that the committee has explored in detail during the preliminary stage, so I do not propose to revisit that topic today. I note that the objector appears to indicate that it is uncertain as to why Mr Bijlani has been called. That being the case, I invite the promoter and the objector to confirm that they have no questions for Mr Bijlani. Mr Thomson, do you have any questions?

**Malcolm Thomson:** I have none.

**The Convener:** Mr Henderson?

**David Henderson:** I have none.

**The Convener:** Excellent. You are spared any further ordeal, Mr Bijlani. We move on to your colleague, Andrew Oldfield.

ANDREW OLDFIELD *took the oath*.

**The Convener:** Mr Oldfield is here to address temporary requirement of land.

**Malcolm Thomson:** I need only to ask Mr Oldfield to update us on developments since the date of his witness statement.

**Andrew Oldfield (Mott MacDonald):** At the time of the witness statement, I had been asked to focus, for the purposes of reprovision of parking, on areas of land that are owned by the City of Edinburgh Council. I understand that, since then, the promoter has, with the aid of its planning adviser, investigated one or two other sites that are privately owned. The responses from those private landowners are not positive, and we await further information.

**Malcolm Thomson:** Thank you, Mr Oldfield. That is my only question at this stage.

**The Convener:** Mr Henderson?

**Euan Pearson (Atisreal Ltd):** I will ask the questions.

**The Convener:** My script is wrong, but not to worry. Carry on, Mr Pearson.

**Euan Pearson:** Mr Henderson will ask questions of me when I am a witness.

Mr Oldfield, could you tell us what the other sites are that you claim you have uncovered and with whose owners you are holding discussions?

**Andrew Oldfield:** I am not in discussion with those owners—those discussions are being undertaken by TIE's planning advisers. I understand that the sites are at the former Christian Salvesen headquarters, Edinburgh's Telford College, the Morrisons superstore and Fettes College.

**Euan Pearson:** Are those the four sites that appear in Mr Pearson's evidence and which were put to the promoter in October last year?

**Andrew Oldfield:** That is correct.

**Euan Pearson:** To confirm, at the moment you have not identified an alternative car parking site, you have not secured a lease on a site, and you have not entered into an agreement with BAE Systems to deliver a site.

**Andrew Oldfield:** At the moment, we have identified two sites at which it would in my view be practical to have car parking; both are owned by CEC. One is adjacent to the western perimeter of the BAE development adjacent to Ferry Road, and the other is at the west Pilton depot site that is currently occupied by the building services department of the City of Edinburgh Council.

**Euan Pearson:** The first site that you mentioned is a new site—it is certainly new to me. Could you tell us a bit more about it?

**Andrew Oldfield:** It was one of the six sites that I was asked to examine last December for their practicality for parking purposes.

**Euan Pearson:** It would be helpful for everybody if you could tell us where that site is. Perhaps you could point it out on the badly photocopied Ordnance Survey map that is attached to Mr Pearson's statement.

**Andrew Oldfield:** On your statement?

**Euan Pearson:** At the back of my statement there is a badly photocopied OS extract that shows the proposed route of tramline 1.

**The Convener:** Hold on a minute. I will say two things. First, the map that I am holding up is the map that we are talking about. Secondly, we are talking about a new site that has not been mentioned anywhere in any of the statements or rebuttals. We will take two seconds to identify where the site is on the map. It would be helpful if someone could draw circles for us. I suspend the meeting for two minutes to enable that discussion to take place.

12:28

*Meeting suspended.*

12:31

*On resuming—*

**The Convener:** I confirm for members and for the record that we are considering the triangular area of land next to the area marked "phase 2 office building" on the location plan.

**Euan Pearson:** I will focus on the new site, because it does not appear in the evidence. How big is the site?

**Andrew Oldfield:** It is only about 176m<sup>2</sup>.

**Euan Pearson:** Can you say which portfolio within the City of Edinburgh Council owns the site?

**Andrew Oldfield:** No. The site is one of the CEC-owned sites in relation to which I was asked to consider the engineering practicalities in respect of parking.

**Euan Pearson:** How many parking spaces would fit into that triangle of land?

**Andrew Oldfield:** About 25.

**Euan Pearson:** Where would access to the site be?

**Andrew Oldfield:** It would be from Ferry Road.

**Euan Pearson:** Would it be directly from Ferry Road?

**Andrew Oldfield:** Yes.

**Euan Pearson:** Did you produce for your own purposes a drawing that shows the 25 parking spaces and the access from Ferry Road?

**Andrew Oldfield:** A draft layout of parking spaces was prepared.

**Euan Pearson:** Did you show the draft to, or discuss it with, the objector?

**Andrew Oldfield:** I understand that the drawing was not issued, but the site is plot 3 to which the promoter referred in a letter to the objector, which I think was sent on 25 March.

**Euan Pearson:** Is the letter in the evidence that is before the committee?

**Andrew Oldfield:** I do not think that it is.

**Euan Pearson:** Is it the letter of 24 March, which is before the committee?

**Andrew Oldfield:** Will you indicate which letter you are referring to?

**Euan Pearson:** The letter is attached to your statement.

**The Convener:** I do not think that the statements contain anything on this matter, so you might want to consider the issue offline away from the committee. Please move on, Mr Pearson.

**Euan Pearson:** We will leave the matter until we come to my evidence, if that is acceptable.

Just out of curiosity, who is the planning consultant?

**Andrew Oldfield:** Dundas and Wilson.

**Euan Pearson:** That is a firm of planning consultants, is it?

I want to ask about your background and experience. Do you live in Edinburgh?

**Andrew Oldfield:** No.

**Euan Pearson:** In the 20 years during which you have been involved with projects, have you spent any time in Edinburgh?

**The Convener:** Mr Oldfield, I must prevent you from answering that question, which is not relevant. Summaries of people's backgrounds and experience are included in the witness statements, but a witness's place of residence is irrelevant.

**Euan Pearson:** With respect, I was just trying to decipher the extent of Mr Oldfield's knowledge of north-west Edinburgh. I was trying to ascertain whether he uses the road network frequently in that part of the city.

**The Convener:** In that case, do you intend to ask every member of the committee about their home address and experience of north-west Edinburgh?

**Euan Pearson:** No. Mr Oldfield makes statements in his evidence about traffic and other matters and I am trying to ascertain whether he is familiar with the network in north-west Edinburgh. Perhaps he could answer that directly and put me out of my misery.

**The Convener:** If you have problems with the evidence that Mr Oldfield has provided in his statement, by all means take issue with the evidence. Aside from doing that, you might want to ask how he arrived at the evidence. However, it is inappropriate to ask where he lives, so I ask you not to do so and to continue your questioning.

**Euan Pearson:** Mr Oldfield, I ask you to clarify part of your statement. The number of existing parking spaces seems to be in dispute. You suggest in paragraph 3.2 of your statement a limit of 757 spaces. Where did that figure come from?

**Andrew Oldfield:** The advice from our planning advisers is that the provision is based on gross floor area and allowance for the metrage of gross floor area. That is the standard provision in that area of Edinburgh.

**Euan Pearson:** I am sorry; I do not understand. Are you telling us that the 757 spaces are legally constrained, or has an arbitrary ratio been calculated?

**Andrew Oldfield:** I understand that a planning standard has been used.

**Euan Pearson:** What is the source of that standard?

**Andrew Oldfield:** Again, that was advice from TIE's planning advisers.

**Euan Pearson:** You have identified the site at Crewe Road Gardens as an alternative and your evidence is that it can take 150 parking spaces.

**Andrew Oldfield:** That is correct.

**Euan Pearson:** You have provided a digitised drawing of that to the objector. Was your drawing discussed with the transport section of the council's city development department?

**Andrew Oldfield:** I am not aware of whether the drawing was discussed with that section. It was passed to the promoter, which may or may not have taken that action.

**Euan Pearson:** So you do not know.

**Andrew Oldfield:** I understand that the city development department has examined the site and that its initial reaction is that the site could be used for parking.

**Euan Pearson:** That was not what I asked about; my question was about the transport section.

**Andrew Oldfield:** I have not liaised with the transport section. The city development department may well have done that.

**Euan Pearson:** Do you have confirmation in writing from the council that the design for 150 parking spaces that you have provided complies with the handbook on design?

**Andrew Oldfield:** Are you asking about the design of the parking layout?

**Euan Pearson:** Yes.

**Andrew Oldfield:** I do not have such confirmation, but the design is in accordance with the council's standards.

**Euan Pearson:** But you do not have confirmation in writing.

**Andrew Oldfield:** That is correct.

**Euan Pearson:** Has that scheme been discussed with the development control section of the council's planning department?

**Andrew Oldfield:** No.

**Euan Pearson:** Has a planning application been made?

**Andrew Oldfield:** No. We would not make a planning application until it was agreed that we intended to use the site for parking.

**Euan Pearson:** You are telling us that the site may not receive planning permission or that you do not know whether it will receive planning permission.

**Andrew Oldfield:** That will not be known until an application is made.

**Euan Pearson:** So it has not been ascertained whether the site is available for lease.

**Andrew Oldfield:** I understand that the City of Edinburgh Council owns the land. I received a request from the promoter to ascertain the practicalities of using the site for parking. On that basis, my expectation is that the City of Edinburgh Council would make the land available, although its use for parking would be subject to planning permission. However, we would not seek planning permission until we had reached agreement that the objector wanted to use the location for parking.

**Euan Pearson:** I have one more question on that site. Have you or the promoter had direct discussions with BAE Systems to try to agree heads of terms for a lease of the site?

**Andrew Oldfield:** I have not.

**Euan Pearson:** Has the promoter had such discussions?

**Andrew Oldfield:** No. As yet, we are unclear whether the objector would accept the site as alternative parking provision.

**Helen Eadie:** Will you outline the capacity and access provisions that are required for a construction compound?

**Andrew Oldfield:** There is a general shortage of space within the city for construction compounds, but we have tried to identify conveniently located sites in order to allow the most efficient progress in execution of the works. In an ideal world, we would take a lot of space for construction compounds, but clearly we are constrained. We have identified a site at the location that we are talking about that is limited simply by land-ownership boundaries.

**Helen Eadie:** A range of sites have been suggested to us, but it is not clear to me which are being suggested for construction compounds and which are being suggested for alternative parking. Will you clarify that?

**Andrew Oldfield:** Six sites were originally examined for alternative provision of parking. At the objector's suggestion, an examination was also carried out of the possibility of using the Easter Drylaw recreational ground as an alternative construction compound. As I have said, the promoter is examining the potential to use private land for re-provision of parking.

**Helen Eadie:** What discussions have you had with the Morrisons supermarket on the possible use of its car parking facilities?

**Andrew Oldfield:** My understanding is that the promoter has had initial discussions about that car park with Morrisons. Morrisons may have a problem with the proposal because of a general company guideline or policy that it does not provide parking for external use.

**The Convener:** Mr Thomson, do you have any follow-up questions for Mr Oldfield?

**Malcolm Thomson:** No.

**The Convener:** As there are no further questions for Mr Oldfield on the temporary requirement for land, I thank him for his evidence. *[Interruption.]* The interference in sound is because somebody has a mobile phone or a pager on. Even if it is on silent, it will be most helpful if whoever it is could switch it off, to aid our hearing.

I ask our next witness, Euan Pearson, to take the oath or make an affirmation.

**EUAN PEARSON** *took the oath.*

**The Convener:** Mr Pearson will address the loss of operation space and alternative sites. Let me get this right: will Mr Henderson ask the questions?

**David Henderson:** Yes.

**The Convener:** Excellent. I had visions of Mr Pearson attempting to question himself.

**David Henderson:** Good morning. I ask Mr Pearson to confirm that the objection with which we are dealing concerns replacement provision during the construction period for the temporary loss of a car park that is currently used by the employees of BAE Systems.

**Euan Pearson:** That is correct.

12:45

**David Henderson:** Will you also confirm the number of spaces that are currently available in the temporary car park?

**Euan Pearson:** The car park in question, which is on the aerial site, is not temporary; it has existed since the 1960s and contains 172 spaces.

**David Henderson:** So BAE is simply trying to be satisfied that, during the construction process, its staff will have parking space that is safe, of similar size and reasonably nearby?

**Euan Pearson:** Yes. BAE is looking for a compensatory measure.

**David Henderson:** Is the case that you are making that no proposal from the promoter has been satisfactory?

**Euan Pearson:** As BAE's agent, during the past year I have had only one meeting with TIE, since which it has failed to carry out the actions that it agreed to undertake at that meeting. As we heard earlier, there is no paperwork or agreement in place to deliver an alternative car parking site.

**David Henderson:** One of the proposed sites—albeit that the various permissions for it have not been obtained and it is owned by the City of Edinburgh Council—is the Pilton works depot. Is that correct?

**Euan Pearson:** That is correct. The depot is at Crewe Road Gardens.

**David Henderson:** What is the approximate distance of that site from the offices of BAE Systems?

**Euan Pearson:** BAE Systems staff work in two buildings. The nearest of those buildings to the site is the phase 2 building, which is probably about 300m away.

**David Henderson:** By comparison, what is the approximate distance between the site that will be temporarily lost and that BAE Systems building?

**Euan Pearson:** The current site is immediately across the road. It is accessed by a pedestrian crossing.

**David Henderson:** For the benefit of the committee, will you describe the approximate profile of the walk from the BAE Systems offices to the proposed depot site? You said that it was 300m away. Is it a safe, well-lit, promenade-type walk?

**Euan Pearson:** I am not a health and safety expert, but the BAE Systems health and safety manager, Mr O'Connell, who walked the route with me, expressed grave concerns about individuals' safety, especially in the dark winter hours. In case you are not familiar with it—stop me if you are—I will describe the physical route. Coming out of the closest building to the proposed site, you would turn left and head north. The path then narrows to a thin bit of pavement with protective railings where it crosses a railway bridge, but it then opens out again. You would then need to turn left into a residential area, then turn right, then turn left again and—finally—turn right to reach the depot. Obviously, as the route goes through residential streets, there are no crossing facilities. As far as I am aware, the roads are not traffic-calmed at that point.

**David Henderson:** You have suggested to the promoter several alternatives, all of which—or, at least, a substantial number of which—are either adjacent to BAE's site or opposite it. I presume that those alternatives would alleviate the safety concerns.

**Euan Pearson:** Yes. We have proposed four alternatives. The most obvious site is the car park at Morrisons. In our discussions with Morrisons, the store manager told us—with some irony, I suppose—that some BAE staff already use the car park and that he has great difficulty in enforcing how the spaces are used. He explained that most shoppers at the store, which Morrisons inherited when it took over Safeway, come on foot or by taxi, so there is no great demand for parking spaces. When the supermarket was constructed, planning policy specified a minimum number of parking spaces for such developments, so the reason for the perceived oversupply is that that amount was required by the council at that time. Of course, the Executive is now moving to a policy of having a maximum number of parking spaces for such developments.

**David Henderson:** So it is conceivable that the new temporary car park could be immediately adjacent to BAE's existing facility.

**Euan Pearson:** Morrisons has said that it is willing to lease the two banks of car parking that are nearest the perimeter fence. The health and safety manager at BAE has no problem with putting a turnstile in the perimeter fence, which is what is used at the other exits from the facility. A viable solution exists.

**David Henderson:** I think that I am right in saying that there is a vacant office building immediately opposite BAE's site—it used to be World Markets House—which has an extensive car park. That is another potential alternative.

**Euan Pearson:** I think that you are referring to Helix House, which has about 400 parking spaces. The building is available to rent and the agent, King Sturge, has told us that the landlord is open to negotiation on the leasing of those spaces. That site does not appear in the paperwork.

**David Henderson:** In summary, there are two car parks—albeit that they are privately owned—immediately adjacent to or opposite the existing facility that could be superior alternatives to having to walk 300m up a road, under a railway bridge and through an unfamiliar area, and the people at BAE who are responsible for health and safety would find their use satisfactory.

**Euan Pearson:** Yes. Would you like me to point out where Helix House is?

**The Convener:** No—it is fine.

**David Henderson:** In the present process, is there any reason why a privately owned and leased site cannot be considered instead of a publicly owned and leased site?

**Euan Pearson:** Land ownership is not an issue. It is clear that alternative sites are available; it is just that they have not been investigated

thoroughly. However, we are leaving aside the fundamental point, which is that my client considers that an alternative temporary works site is available.

**David Henderson:** I was just coming to that.

Am I allowed to refer briefly to the triangular site on which we have agreed to stall?

**The Convener:** Yes.

**David Henderson:** I am aware that you have investigated a number of sites, but have you had a look at the little triangular site to which Mr Oldfield referred earlier?

**Euan Pearson:** I have. We have written to the council's property department—I forget the chap's name, but it is in my day book—and it has confirmed orally that the triangular site to which you refer is in the transport department's portfolio. The property department made inquiries, but was told that the site would not be sold because it might be required for the tramline if there was a realignment. In the longer term—after the tramline has been constructed—the council might be prepared to lease the site. The health and safety manager and I went to the site to consider the possibility of extending the car park into it. We reckon that we could get a maximum of 15 spaces in the area that is available.

**David Henderson:** You would be replacing 140 spaces with 15 spaces—or 25, if Mr Oldfield is correct.

**Euan Pearson:** Given that we will lose 172 spaces if we disregard the council's site for the tram halt, 15 or even 25 new spaces will not be sufficient compensation.

**David Henderson:** I will move on to a slightly different subject. BAE subscribes to the idea of being a responsible employer. It has various transport plans, including a green transport plan. You might want to expand on the parking and transport initiatives that it employs for its staff.

**Euan Pearson:** In his rebuttal statement, Mr Oldfield suggested that BAE Systems should be seeking to reduce its number of car parking spaces to meet a commitment in a green transport plan. The company has a company travel plan—which is not a green transport plan—based on a survey that Blyth & Blyth Consulting Engineers did on the travel needs and patterns of the staff. That survey sought to split the staff into two categories, the first of which was staff who cannot get to work without a car, perhaps because of where they live. Forty five per cent of the workforce lives outside the urban area of Edinburgh and has no alternative to driving, so the company decided that it would have to make car parking provision for those who have no choice but to drive, which is the basis for the provision that it has on the main and aerial sites.

The company travel plan committed the company to promoting measures to encourage the balance of the staff not to use their cars unnecessarily but to walk or cycle. That is what the company travel plan is; the document contains no commitment that the company will actively seek to reduce the number of parking spaces.

**David Henderson:** I will move on to a third area. So far, we have been debating the site that is marked PPC3 on the map that is attached to your statement and whether, if that site is to be used as the depot, there is suitable replacement parking nearby. We have established that there is car parking adjacent and opposite that might be an option and that, if that could be explored, it would be welcomed. However, there is another alternative, which is not to have the works depot on PPC3—I did not devise the terminology, I am afraid—but on an alternative construction compound that is identified just to the south. I would be grateful if you could talk the committee through whether you think that that site is suitable for a depot.

**Euan Pearson:** I do not want to repeat everything that I have said in my statement, but I will summarise it. The committee members who were on the site visit could see clearly that the amount of land that is available on that alternative site is probably three times the land that the works depot requires. It is immediately adjacent to the proposed route, so there would be no difficulty in importing plant, machinery and building materials on to the route. Moreover, there is a variety of vehicle accesses into the park. There is an immediate access from Telford Road, but it is not the pedestrian walkway that is in the photographs in Mr Oldfield's rebuttal statement—I think that he has picked up wrongly on that. There is a road from Telford Road that is fronted by some flats and goes directly north into the site, so there is an immediate access.

I think that it is an entirely appropriate site and more appropriate than the inconvenience and confusion that my client would otherwise be caused.

**David Henderson:** To concentrate on the road network, there have been two fairly substantial developments in and around that area. I know that Miller Homes constructed a bunch of flats and I think that a new school has also been built, so there has clearly been some heavy lorry transport down the supporting road network recently. Is that correct?

**Euan Pearson:** The council knows that there is a construction period for a new primary school and 35 houses, so I would imagine that, in granting planning permission, it took the view that, although the construction traffic would be an inconvenience, the road network was capable of handling it. If the

impact on the road network had been significant, that would have been a justifiable reason not to grant planning permission.

**David Henderson:** That ends my questions.

**The Convener:** Thank you, Mr Henderson.

**Malcolm Thomson:** Mr Pearson, I will start by looking at your rebuttal statement. You refer to the Easter Drylaw recreation park site as a possible alternative for the construction compound. What is the present use of the Easter Drylaw recreation park?

13:00

**Euan Pearson:** On my last visit, which was probably the committee's visit, we saw an area of flat, open space that had recently had installed on it some children's play equipment, which I understand is a requirement of the Miller Homes development. Other than that, there are no formal pitch markings and the footpath network goes round the site; it really does not have any function at all as far as I am concerned.

**Malcolm Thomson:** Do children habitually play there?

**Euan Pearson:** I did not see any children on the play equipment when I last visited the site. Not being a child, I would not know.

**Malcolm Thomson:** How often have you visited the site?

**Euan Pearson:** Over what time period?

**Malcolm Thomson:** Ever.

**Euan Pearson:** Ever? Thousands of times—I grew up in the area.

**Malcolm Thomson:** Have you ever seen children playing there?

**Euan Pearson:** Oh yes. I probably played there at one time when I was a child.

**Malcolm Thomson:** Can you understand the view that some people might hold that putting a construction compound full of enticing-looking vehicles on what had been a play area—albeit a partly informal play area—might not be a good idea? Children might be enticed to go where they have habitually gone before.

**Euan Pearson:** There is a wide variety of views throughout society on all aspects of many matters. I have certainly had no evidence presented to me in this arena that suggests that any of the residents are up in arms about the proposal, which has been on display publicly for some time.

**Malcolm Thomson:** But no one had proposed to put a construction site there before your client's proposal.

**Euan Pearson:** But my client's proposal was made over a year ago. The proposal clearly documented the objections and it was put on display in all the public libraries. As far as I know, the newspapers have not even picked up on it. I am not unduly concerned.

**Malcolm Thomson:** Can we be clear about which plot is which? I am thinking of plots 174 and 173. Am I right to understand that plot 174 is a linear plot, which is adjacent to the proposed tramway and is leased by your client from the council, in respect of which your client made no objection, although it is proposed to acquire the plot compulsorily and permanently for the line?

**Euan Pearson:** Plot 174 is currently leased on an annual basis from the transportation portfolio of the council. The council has intimated that it will not renew that lease when it expires. The council did not object to the tram order, so my client took the practical view that, if it is not objecting to the tram order and we will not be able to use the plot, we will just have to accept its loss and try to find an alternative site, which is what we have done. We have put in a planning application for the southern part of the aerial site.

**Malcolm Thomson:** That is plot 173, to which your objection relates.

**Euan Pearson:** No. The southern part of the aerial site is not included in the order.

**Malcolm Thomson:** But plot 173 is the proposed site of the construction compound and that is the subject of your client's complaint.

**Euan Pearson:** Yes. Plot 173 is the proposed site. That is the existing car park, which has 172 spaces on it.

**Malcolm Thomson:** What is proposed is to acquire the plot temporarily for the duration of the construction work on that part of the line.

**Euan Pearson:** That is correct, but the length of the temporary acquisition is unknown: it might be five, 10 or 15 years.

**Malcolm Thomson:** Do you not think that two or three years might be more realistic, having regard to the expected completion date of the tram project?

**Euan Pearson:** My client's view is that this is a medium-term project, not a short-term project.

**Malcolm Thomson:** So you have not advised your client that the expected completion date of the tram is 2009 and that the likely duration of the construction period is two to three years?

**Euan Pearson:** The completion date is 2009. That is correct and my client is aware of that, but that timeframe has slipped now because we are here today, a year down the line from when the orders were drafted.

My client knows from building two elements of his own facility that there are inevitable delays during construction, whether that is the fault of the contractor, the occupier or legal delays. Taking a practical view, he has decided that it is a medium-term loss.

**Malcolm Thomson:** Do you have your rebuttal statement in front of you?

**Euan Pearson:** Yes.

**Malcolm Thomson:** Could you please look at the last sentence of the penultimate paragraph on page 3, where you refer to plots 174 and, in brackets, plot 173. Have you got them the wrong way round?

**Euan Pearson:** No, I do not think that I have.

**Malcolm Thomson:** Are you saying that plot 173 is leased from the council?

**Euan Pearson:** Sorry, yes, the penultimate paragraph should say that plot 174 is leased from the council.

**Malcolm Thomson:** So you are saying that the applications do not relate to plot 173, but that that should correctly say 174?

**Euan Pearson:** There is a grammatical error here.

**Malcolm Thomson:** Would you like to correct it, please?

**Euan Pearson:** No, it is correct. The planning applications that are referred to in the statement are for the two new office and industrial complexes on phase 1 and phase 2, which are on the other side of Ferry Road. The plot that is being compulsorily acquired was not part of those planning applications.

**Malcolm Thomson:** So if we simply transposed 174 and 173 we would have the correct sense.

**Euan Pearson:** No. The planning permissions for phase 1 and phase 2, which are the two buildings on the north side of Crewe Toll, did not include plots 174, 173 or the remainder of the aerial site. That is what is being explained in the submission.

**Malcolm Thomson:** But if you correct the figure in brackets from 173 to 174, you are then referring to 174 both within and without the brackets, which seems unlikely, because you are trying to refer to both of them, are you not?

**Euan Pearson:** The submission is saying, as I have just said to you, that the planning applications have nothing to do with the council's site or the aerial site in its entirety or in part. I do not think that there is any confusion.

**Malcolm Thomson:** We have just agreed that plot 173 is not the aerial site.

**Euan Pearson:** Plot 173 is part of the aerial site.

**Malcolm Thomson:** In the next paragraph, you talk about plot 174, which is leased from the council.

**Euan Pearson:** Yes.

**Malcolm Thomson:** At the top of the next page, you state that the lease

"was last renewed on 1 April 1999."

However, in your evidence-in-chief a moment ago you said that the let was annual.

**Euan Pearson:** Yes. The lease has expired, but there is an annual licence.

**Malcolm Thomson:** The planning permission that your client enjoys for their existing premises has a parking limit of 718. Is that correct?

**Euan Pearson:** Planning permission was granted for phase 1 and phase 2. Each proposal had a set number of parking spaces attached to it. The levels of parking, as you put it, were approved. Since then, there has been an extension to one of the buildings, which required a loss of some parking spaces to facilitate the building work, which reduced the overall total for the two sites to—

**Malcolm Thomson:** 718.

**Euan Pearson:** Yes.

**Malcolm Thomson:** And that was approved by the council planning department.

**Euan Pearson:** The three applications were approved, but an application is pending that seeks to replace those lost parking spaces.

**Malcolm Thomson:** At the moment, can we agree that it must have been implicit in the granting of planning permission for the logistics building—the third part of the site—that, at the time, the planners were content that the overall parking number should be reduced to 718?

**Euan Pearson:** I cannot speak for the planning officer who processed the application but I would imagine that, at the time, national planning policy guideline 17 would have required a maximum number of parking spaces. I cannot speak for the architect and say whether they came under pressure to get rid of parking or whether they volunteered to do it.

**Malcolm Thomson:** Had the change from a minimum standard in relation to car parking and to a maximum standard occurred by that time?

**Euan Pearson:** I would have to think about that. If you want to give me a few minutes, I will have a think.

**Malcolm Thomson:** No, do not trouble yourself.

We will move on to the final paragraph on page 3 of your rebuttal statement, where you say that parking on plot 174 has become

“immune from enforcement action”.

**Euan Pearson:** That is correct.

**Malcolm Thomson:** Can we be quite clear that section 124 of the Town and Country Planning (Scotland) Act 1997 provides not for the granting of planning permission but simply that enforcement action may no longer be taken for a breach of planning control?

**Euan Pearson:** That is correct.

**Malcolm Thomson:** So, if your client had had planning permission for the site, they might have been able to go to the planners to try to trade it for a temporary transfer to another site.

**Euan Pearson:** Which site are we talking about?

**Malcolm Thomson:** I am talking about plot 174. You say that you currently have 140 spaces that are immune from enforcement procedure.

**Euan Pearson:** The use of that land is immune from enforcement.

**Malcolm Thomson:** But you have agreed with me that your client does not have planning permission for car parking on that site.

**Euan Pearson:** They do not need planning permission because they are immune from enforcement.

**Malcolm Thomson:** But if they had had planning permission for it, they might have been able to trade that planning permission temporarily for parking on another site that did not enjoy planning permission for car parking.

**Euan Pearson:** I am not aware that there is any provision in town planning legislation that allows local authorities to trade sites or anything with anyone.

**Malcolm Thomson:** You have never attempted such a negotiation.

**Euan Pearson:** I have certainly never traded or swapped consents for sites.

**Malcolm Thomson:** We will move on to consider the green travel plan.

**Euan Pearson:** That document is not part of the papers that have been laid before the committee.

**Malcolm Thomson:** I stand to be corrected, but I rather thought that it was.

**Euan Pearson:** Well, it is not.

**Malcolm Thomson:** It has been produced as a document by the promoter.

**The Convener:** Mr Pearson, you raised the document in oral evidence, so it is appropriate for Mr Thomson to seek to rebut it.

**Malcolm Thomson:** Thank you, madam.

**Euan Pearson:** The fact remains that the document is not before everyone.

**The Convener:** Mr Pearson, Mr Thomson can rebut on the basis of your oral evidence. The committee has arrived at a view and I would be grateful if you did not interrupt Mr Thomson.

**Malcolm Thomson:** Do you have a copy of the document, Mr Pearson?

**Euan Pearson:** Do you mean the company travel plan?

**Malcolm Thomson:** I mean the green travel plan.

**Euan Pearson:** No, I do not have a green travel plan; there is a company travel plan that was produced by Blyth & Blyth.

**Malcolm Thomson:** Are you aware that the green travel plan was also prepared by Blyth & Blyth?

**Euan Pearson:** I have never seen a green travel plan. Perhaps you could show me the document; it might be one and the same.

**Malcolm Thomson:** Given your involvement in your client's planning affairs, is it not rather surprising that you have never seen their green travel plan for the premises with which we are concerned?

**Euan Pearson:** I have seen a company travel plan—I have a copy of that—which is referred to in my evidence, but I have not seen a green travel plan.

**Malcolm Thomson:** Did you know that one existed?

**Euan Pearson:** I do not know that one exists.

**Malcolm Thomson:** However, you saw it referred to in Mr Oldfield's statement.

**Euan Pearson:** Yes, Mr Oldfield referred to it.

**Malcolm Thomson:** Did that make you wonder whether you should perhaps have a look at it and ask your client for a copy before coming here to give evidence?

**Euan Pearson:** I asked my client for a copy of the green travel plan and I was given a copy of the company travel plan.

**The Convener:** So that we can clarify which travel plan we are talking about, I suggest that we suspend the committee meeting for three quarters of an hour for lunch and we can get the travel plans in the intervening period.

13:15

*Meeting suspended.*

14:02

*On resuming—*

**The Convener:** Welcome back, ladies and gentlemen. When I suspended the meeting, Mr Thomson was quizzing Mr Pearson on a green travel plan, which is the same as the company travel plan. Phil Gallie pointed out to me that the author of the plan is Alistair Green, so perhaps that is why the confusion arose. As the promoter and objector both referred to the plan, it is before the committee and I confirm that the green travel plan and the company travel plan are the same document.

**Malcolm Thomson:** Mr Pearson, were you involved in obtaining planning permission for your client's premises?

**Euan Pearson:** Are you referring to phases 1 and 2?

**Malcolm Thomson:** Yes.

**Euan Pearson:** No, I was not involved in that.

**Malcolm Thomson:** Were you involved in obtaining planning permission for the logistics building?

**Euan Pearson:** No.

**Malcolm Thomson:** Were you aware that a section 75 agreement affected the development?

**Euan Pearson:** No.

**Malcolm Thomson:** In that case, you would not be aware that the production of a green travel plan was a requirement of the section 75 agreement.

**Euan Pearson:** I knew that the production of a company travel plan—to give it its proper name—was a requirement and that there is a requirement to review the plan. I understand that the City of Edinburgh Council recently approached my client to seek to review the plan in the light of the tramline proposals.

**Malcolm Thomson:** The document refers to monitoring and an annual update.

**Euan Pearson:** I would expect a company travel plan to contain such references.

**Malcolm Thomson:** I take it that there has not yet been an update.

**Euan Pearson:** Work has been undertaken by Blyth & Blyth since the company travel plan was endorsed by the council.

**Malcolm Thomson:** To what effect?

**Euan Pearson:** The travel survey that I mentioned earlier, which considered modes of

transport and the geographical locations of employees, was carried out.

**Malcolm Thomson:** Has there been formal amendment or replacement of the document?

**Euan Pearson:** Not that I am aware of.

**Malcolm Thomson:** Does paragraph 1.1 of the company travel plan state:

“this report has been commissioned by BAE SYSTEMS to assist with their future commitment to sustainable travel”?

**Euan Pearson:** Yes, that is what the paragraph says.

**Malcolm Thomson:** In paragraph 1.2, do we find that

“The company wishes to improve the environmental effects of their operations by developing a package of measures, in conjunction with staff representation, to encourage employees to use public transport, cycling, walking and pool cars, for commuting for work related journeys”?

**Euan Pearson:** Absolutely. I would expect that to be the objective of a company travel plan. I return to what I said previously about the later survey. Some 45 per cent of staff come from outwith the urban area and the objective can be applied only to parts of the workforce. It must be remembered that the document that you are looking at relates to the position back in January 2004.

**Malcolm Thomson:** The survey work that you have described has not caused the company travel plan to be revisited.

**Euan Pearson:** It is being revisited at the moment.

**Malcolm Thomson:** But that has not happened yet.

**Euan Pearson:** The plan is being revisited now. I had an internal meeting last Wednesday afternoon about the document.

**Malcolm Thomson:** But the document has not yet been replaced.

**Euan Pearson:** It has not been replaced—it is being reviewed.

**Malcolm Thomson:** Has a travel plan co-ordinator been appointed under the travel plan that we are considering?

**Euan Pearson:** I would have to read the whole document to find that out.

**Malcolm Thomson:** You could read the next paragraph.

**The Convener:** I suggest that the committee has that information and that we are capable of reading the document. We know about what is being asked, so you should proceed to the nub of your questioning.

**Euan Pearson:** For clarification, I can tell the committee that the Mr O'Connell to whom I referred earlier is the travel plan co-ordinator.

**Malcolm Thomson:** Did you know that before you spoke to him about, for example, the possible Pilton Road car park site?

**Euan Pearson:** Yes.

**Malcolm Thomson:** Did you speak to Mr O'Connell about the relevance of new off-site car parking to the travel plan?

**Euan Pearson:** The context of the site visit was the potential loss of existing car parking, which is not included in the company travel plan. We are discussing something that relates only to phases 1 and 2 and has nothing to do with the aerial site, which is the subject of the draft orders.

**Malcolm Thomson:** When you spoke to him, did you know that he was the travel plan co-ordinator for your client?

**Euan Pearson:** Yes.

**Malcolm Thomson:** Did you speak to him about a possible search for further off-site car parking?

**Euan Pearson:** He has been involved with that since day one, when he called me in and instructed me to advise him.

**Malcolm Thomson:** Did you speak to him about the relevance of your search to the travel plan?

**Euan Pearson:** Yes.

**Malcolm Thomson:** To what effect?

**Euan Pearson:** To the effect that I have just described. The matter relates to phases 1 and 2 and has nothing to do with the operations on the aerial site.

**Malcolm Thomson:** Is it the intention that the aerial site should provide additional car parking for phases 1 and 2?

**Euan Pearson:** No. The intention is that the southern part of the aerial site, which is the subject of a planning application, should replace the car parking on the council-owned site. The lease will not be renewed.

**Malcolm Thomson:** Is it your position that phases 1 and 2 and the logistics building require no additional car parking? Currently, the maximum car parking provision is 718.

**Euan Pearson:** That is a tricky question—I cannot say. All that I can say is that the staff survey showed that more than 1,000 car parking spaces are required for the company to operate at its landholding as a result of where the people come from.

**Malcolm Thomson:** That seemed to me to be the effect of your written statement, but I

wondered whether you would like to reconsider the matter.

**Euan Pearson:** That is still the requirement and what the questionnaire survey, which was carried out by Blyth & Blyth, revealed. BAE always works to the target of ensuring that there are enough spaces to meet need.

**Malcolm Thomson:** Do you agree that the provision of more than 718 car parking spaces in phase 1 and phase 2 appears not to accord with the terms of the travel plan?

**Euan Pearson:** No, I do not agree at all. The car parking spaces in council plot 174 and aerial site 173 have been there since the 1960s. They have nothing to do with phase 1, phase 2 or the planning applications; the council recognises that. Without having seen the section 75 agreement, I imagine that it relates only to the application site and not to the aerial site.

**Malcolm Thomson:** Can we agree that the travel plan recognises the provision of 718 car parking spaces for phase 1, phase 2 and the logistics building? I am referring to paragraph 6.1 on page 4.

**Euan Pearson:** I do not dispute that. The logistics building is in phases 1 and 2; it does not relate in any way to the aerial site or to the land that is under the draft order.

**Malcolm Thomson:** Is it your evidence that, notwithstanding the terms of the travel plan, your client requires substantially more car parking to service phases 1 and 2 and the logistics building?

**Euan Pearson:** I am sorry. Will you repeat the question?

**Malcolm Thomson:** Is it your evidence that, notwithstanding the terms of the travel plan, your client's car parking requirement is for more than 718 spaces to service phases 1, 2 and the logistics building?

**Euan Pearson:** I will repeat what I said earlier: the questionnaire survey shows that my client's requirement is for about 1,124 parking spaces. That is the number that the company aims to provide for smooth running of its business. It just so happens that one third or one quarter of those spaces happen to be on a site that is unrelated to the planning applications.

**Malcolm Thomson:** So, is it your position that you envisage that your client will shortly sign up to a new travel plan that will show a figure of over 1,000 spaces, which is well in excess of the 718 spaces that are shown in paragraph 6.1?

**Euan Pearson:** We are deviating from the purpose of being at committee today. The company travel plan will be reviewed once the Scottish Parliament has decided what will happen

to tramline one; the decision is important in respect of the availability of travel options. The travel plan will be reviewed once that is determined.

**Malcolm Thomson:** Can we agree that the travel plan has wider objectives than merely to satisfy the terms of a section 75 agreement under which a green travel plan is required?

**Euan Pearson:** I did not write the plan—I cannot answer the question.

**Malcolm Thomson:** But you have read it.

**Euan Pearson:** Yes.

**Malcolm Thomson:** Does it seem to have wider objectives than merely to meet the requirement for a green travel plan?

**Euan Pearson:** As I said earlier, I take the company's objective to be—as it has always been—to meet its employees' travel needs. In terms of the proportion of employees who do not necessarily require the use of a car, the company's objective is to put in place initiatives to discourage them from bringing their car to work.

**Malcolm Thomson:** I take it that you have read the list of bullet-point benefits in paragraph 1.2.

**Euan Pearson:** Yes.

**Malcolm Thomson:** If we look at the second last one, do we see that one of the objectives is

"The improvement of the environmental image/credentials of the company within the wider community"?

**Euan Pearson:** Yes. An example of that would be an employee who lives in Stockbridge, which is about a mile away from the office, and who drives to work, thereby aggravating a resident by parking outside their front window. Clearly, there is no need for that person to drive such a short distance; they could take the bus or walk. The gist of the travel plan is to get people such as that off the road—they do not need to be there.

**Malcolm Thomson:** Another of the bullet-point objectives is:

"The reduction in the need for car parking spaces for staff and the release of land and buildings for more productive uses."

In other words, the objective seems to be to release some of the present 718 car parking spaces for more productive use.

**Euan Pearson:** We have heard evidence that the company has done that. It has sacrificed parking spaces to build the logistics building. Again, parking spaces may be taken by people who do not need to use their car in the first place.

**Malcolm Thomson:** After the logistics building was constructed, there were 718 parking spaces. The objective appears to be an aspiration to reduce that number further.

14:15

**Euan Pearson:** I gave only an example of that aspiration. You are right to say that there were 718 spaces after the logistics building was constructed and that, if BAE requires to expand the facility again, it will probably have to consider losing more parking spaces.

**Malcolm Thomson:** Are the 172 car parking spaces on plot 173 currently used by employees who work in phases 1 and 2 and the logistics building?

**Euan Pearson:** I have no idea.

**Malcolm Thomson:** Why not?

**Euan Pearson:** Because the questionnaire survey did not ask that question. I imagine that a proportion of those employees work there, but I cannot imagine that all 172 people do. Things would be a bit tight in the lift.

**Malcolm Thomson:** Perhaps we should go back to your statement, which sets out the arithmetic for us. At the bottom of page 2, in the section entitled "Existing Car Parking Arrangements", you refer to the reduction to 718 spaces that we have just discussed and then say:

"This is supplemented by 172 spaces on the north Aerial site".

That site is the plot 173 that you are complaining about.

**Euan Pearson:** As I have said, those spaces are supplementary. They are not tied to the site.

**Malcolm Thomson:** In your statement, you say that that gives

"a grand total of 1,030"

spaces, which you then compare with the total of 2,200 staff. Are those 2,200 employees working in phases 1 and 2 or somewhere else?

**Euan Pearson:** Those 2,200 staff represent the current employment roll for phases 1 and 2 and the radar site which is on the aerial site. I also imagine that that figure includes people who might normally work there but not necessarily all the time.

**Malcolm Thomson:** So the figure for the principal buildings for which planning permission was granted seems to be 718.

**Euan Pearson:** Yes, that is what is left for phases 1 and 2.

**Malcolm Thomson:** As I understand it, you are saying that your client needs more than 718 spaces. In particular, your client needs the 172 spaces on the north aerial site, which would bring the number of spaces up to 1,030. You also point out that BAE has leased from Telford College 150 spaces on a temporary site.

**Euan Pearson:** BAE no longer has those spaces.

**Malcolm Thomson:** I should point out that you say that those spaces brought the figure up to 1,280; however, I think that the arithmetic works out at 1,180. As you have said, you have lost 150 spaces, which means that you are back down to 1,030. You then relate that figure to the parking requirements for people who work in phases 1 and 2 and the logistics building. That means that you are talking about providing substantially more than the maximum car parking requirement of 718 spaces.

**Euan Pearson:** I think that you are missing the point. Before BAE Systems bought GEC-Marconi, which was previously Marconi Ferranti and, to begin with, Ferranti, a lease had been agreed that allowed the aerial site and the council-owned site to be used for car parking. It is an historical arrangement and has nothing to do with the planning applications for phases 1 and 2.

**Malcolm Thomson:** But your client currently uses those areas to provide additional staff car parking provision for the buildings that have recently been given planning consent.

**Euan Pearson:** In legal and planning terms, those sites are not connected to phases 1 and 2. If my client chose to do so, it could decide to rent those car parking spaces to someone else. They are really nothing to do with those buildings.

**Malcolm Thomson:** Given that employees are parking there at the moment, is there not a practical linkage?

**Euan Pearson:** They have been given the right to park there at the moment.

**Malcolm Thomson:** The beginning of the summary on page 5 of the travel plan states:

"BAE SYSTEMS is fully committed to providing a sustainable environment with its new development. This commitment runs through the management core, and through all of the workforces."

That undertaking has been given in the context of the attempt to reduce the number of car parking spaces to below 718.

**Euan Pearson:** The key words are "new development". The travel plan clearly reiterates that it relates to phases 1 and 2, and does not have anything to do with the aerial site.

**Malcolm Thomson:** Is the aerial site the logistics site?

**Euan Pearson:** No, the aerial site is the radar site.

**Malcolm Thomson:** Are you saying that none of the 172 car parking spaces is used by employees in phases 1 and 2 and the logistics building?

**Euan Pearson:** I imagine that some of them are.

**Malcolm Thomson:** On planning permission, at the top of page 11 of your written statement you refer to the difficulties in getting planning permission for car parking on what you call the "HD site". Is that the Pilton depot site?

**Euan Pearson:** Yes. It is the council site on Crewe Road Gardens.

**Malcolm Thomson:** Do you mean the one that you walked to with whomever it was?

**Euan Pearson:** Yes—with Mr O'Connell.

**Malcolm Thomson:** At the top of page 11 you point to various planning policies that suggest to you that it is unlikely that planning permission would be granted for parking on that site.

**Euan Pearson:** Yes. Parking on that site would contravene development plan policies.

**Malcolm Thomson:** Do you have in mind somebody seeking planning permission for car parking that is ancillary to your client's business activities?

**Euan Pearson:** Yes, absolutely. Unfortunately, the wording of the policy does not differentiate between car parks for housing developments, factories or football grounds. It simply treats a car park as a car park.

**Malcolm Thomson:** Is the important policy TRAN3, in the fairly new structure plan, which requires local plans to provide for maximum parking standards?

**Euan Pearson:** That is a material consideration, yes.

**Malcolm Thomson:** It is more than a material consideration in planning terms, is it not?

**Euan Pearson:** No. The policy is a material consideration, just like any of the other policies.

**Malcolm Thomson:** Does not it carry the additional weight of section 25, as part of the development plan?

**Euan Pearson:** No. The policies of the development plan all have equal weight. It is up to the person who makes the decision to decide what weight to attach to them.

**Malcolm Thomson:** Can we agree that the structure plan was approved by Scottish ministers last year?

**Euan Pearson:** Yes—the structure plan was modified and approved by the minister.

**Malcolm Thomson:** So that plan is up to date and is more recent than the policies of the existing local plan.

**Euan Pearson:** You are right that the adopted local plan probably does not accord with the structure plan, but there is an emerging local plan as well.

**Malcolm Thomson:** That local plan will be required as a matter of law to conform to the current structure plan.

**Euan Pearson:** The local plan has to conform broadly to the structure plan, but it is not subject to approval by Scottish ministers.

**Malcolm Thomson:** The local plan has to conform absolutely by the time it is adopted.

**Euan Pearson:** The local plan has to conform broadly, but not absolutely.

**Malcolm Thomson:** I refer you to section 17(3) of the Town and Country Planning (Scotland) Act 1997. You are quite right that the local plan has to conform generally when it is first published, but by the time it is adopted it has to conform absolutely, has it not?

**Euan Pearson:** We can have a tutorial on local plan adoption if you want. With local plans, when a public inquiry happens and objections are heard, a reporter is appointed by the Scottish ministers to consider all the objections, write a report and make recommendations. There is no requirement for a local authority to accept all the recommendations. In that respect, the local plan does not have to conform absolutely.

**Malcolm Thomson:** The policies, in particular TRAN3 and the requirement for maximum parking standards, apply to any application in respect of any piece of land in this part of the world.

**Euan Pearson:** I think I know where you are going with this.

**Malcolm Thomson:** However, your client might choose to follow a new course for the purpose of providing additional car parking to service the client's existing premises.

**Euan Pearson:** On the maximum car parking standards, which are imposed by directive by the Executive, you are quite right that if the council proposes to approve an application in which the standards are exceeded, that application has to be referred to ministers and could be the subject of an inquiry.

If we are talking about a planning application for car parking on a piece of ground on which there are no buildings and no industrial activity, my reading of Scottish planning policy 17 is that there are no maximum or minimum standards because car parking is the only activity on the site.

**Malcolm Thomson:** Do you agree that, in that part of the city—where, as we saw from the aspiration in the travel plan, there is pressure for

developable land—it is undesirable that land be taken up with car parking when it might be used for more productive developments, such as housing?

**Euan Pearson:** I do not agree that there is particular development pressure in west Pilton, Pilton and Crewe, where most of the land is owned by the council. There is no significant development pressure from housing associations in that area.

**Malcolm Thomson:** Is there strong development plan pressure to encourage redevelopment of brownfield land?

**Euan Pearson:** It is certainly the case that Scottish ministers prefer to use brownfield land to greenfield land in urban areas.

**Malcolm Thomson:** We are talking about an urban area.

**Euan Pearson:** Yes.

**Malcolm Thomson:** Would a housing application for any of the car park sites be supported?

**Euan Pearson:** We are moving on to a different subject. The site in question is not completely developed; only a small part of it has been developed with a yard. In effect, the vast majority of the council's depot is on greenfield land. In my statement, I commented that the land is home to a fox's den and vegetation. Until someone does a survey of that piece of ground, I would not like to say that an application to put housing on it would be supported.

**Malcolm Thomson:** But the first policies that you are founding on are the transport policies.

**Euan Pearson:** In the structure plan, yes—and the environment policy.

**Malcolm Thomson:** I am simply trying to understand why you think that planning permission would not be granted for parking on the site and whether there is any reason why the same considerations would not apply to a planning application on any other undeveloped piece of brownfield or greenfield land in the vicinity, the purpose of which was to provide additional parking for your client's operations.

**Euan Pearson:** My statement sets out the policies that would be contravened by the car parking proposal.

**Malcolm Thomson:** We have already discussed the fact that plot 173 would be required only temporarily for the construction site. We differ on the length of time for which it will be required; I suggest that it will be needed for two to three years, but you suggest that it might be needed for five or 10 years, or even longer.

**Euan Pearson:** My client is concerned that the plot could be needed for five or 10 years, or even longer.

**Malcolm Thomson:** Is it correct that, regardless of the duration of the period, your client will receive compensation annually for being deprived of the site?

**Euan Pearson:** Yes. I imagine that my client will probably go to the Lands Tribunal for Scotland to seek compensation, but that will not help it to resolve its parking situation in the short or medium term.

**Malcolm Thomson:** No—but the one thing that the promoter can do is look for land holdings that it has that might be suitable for the purpose. In fact, it has done that, but your client does not like the look of the land holdings that the promoter has identified. Do you agree?

**Euan Pearson:** It is correct that the promoter has trawled through its portfolio and brought to my client's attention one piece of ground.

**Malcolm Thomson:** But you do not like the look of it.

**Euan Pearson:** It is not a question of whether we like the look of it; the health and safety manager has concerns about it. The other point is that it has been brought to our attention far too late in the process. The fact that that site was available should have been brought to our attention when the draft orders were served.

**Malcolm Thomson:** Have you been instructed by your client to carry out a search of your own with a view to your client's being able to make alternative parking arrangements?

**Euan Pearson:** My company looked for possible sites without going into too much detail. Those sites are the ones that we flagged up to the project manager back in October.

**Malcolm Thomson:** Have you advised your client to make a planning application for any of those sites?

**Euan Pearson:** No—it is not my client's responsibility to find an alternative site.

**Malcolm Thomson:** Is it not?

**Euan Pearson:** No—it is the responsibility of the acquiring authority.

**Malcolm Thomson:** It is your view that that is the case, even if compensation is being paid.

14:30

**Euan Pearson:** Compensation is one way of resolving the situation, but we were trying to be proactive and positive and say, "There are all these other sites. Have you thought about them?"

The promoter could have tried to get us a lease at Helix House or parking at Morrisons.

**Malcolm Thomson:** Thank you.

**The Convener:** Thank you. Does the committee have any questions?

**Helen Eadie:** The convener had one eye on the clock when she said that, but I will ask my question anyway. On page 11 of the statement that you submitted in May, you say that, in the spirit of co-operation, you identified several other sites. You go on to say:

"t.i.e. has made no attempt to contact the owners of any of these sites to find out either: their status or the possibility of leasing some land from them."

Have you on behalf of your client made any attempt to contact any of those companies at director level? I know that you approached the Morrisons store manager, Mr Callaghan, but have you formally approached the management of the companies involved?

**Euan Pearson:** In the example that you cite, there was no need for us to go to director level because decisions about each supermarket are taken by the manager. If that had not been the case, Mr Callaghan would have told us that he could not deal with the request and that I would have to speak to his boss.

**Helen Eadie:** What about the other companies that you suggest might be approached to provide car parking for BAE?

**Euan Pearson:** You are talking about the list on page 11 of our original statement.

**Helen Eadie:** Yes.

**Euan Pearson:** Some time ago, we spoke to Edinburgh's Telford College, but we did not really have a dialogue with its representatives because they were too busy with their new college building at the waterfront. I understand that the college has sold the main campus site—not the north campus—to a housing developer. Although the college is relocating, it is a large site and if the developer were building it up with houses in a phased manner, the final phase could be used for car parking.

**Helen Eadie:** Will you pick up on the other companies that you have cited in evidence?

**Euan Pearson:** We have not been able to speak to Fettes College.

**Helen Eadie:** Have you made a formal or informal approach to either of those organisations?

**Euan Pearson:** We tried to speak to the principal of the college, but it was just by telephone. Letters never seem to get replied to

these days. It is far better to try to speak to someone and get their view. Also, at the time, Christian Salvesen's agent told us that the land was under offer. However, it is not our responsibility to contact those organisations. The promoter should have done it.

**Helen Eadie:** Your statement says:

"Other sites have been put to t.i.e. in the spirit of co-operation."

Taking up the idea of a spirit of co-operation, have you discussed with your client the possibility of using the compensation that it receives to build multistorey car parks on the BAE site? That would not increase the footprint, but it would expand the car parking capacity.

**Euan Pearson:** We should put aside the question whether the compensation would pay for the build cost. As I explained to my client, because of the maximum car parking standards, it would not be allowed to build a multistorey car park and increase the amount of car parking. As we have heard, for a planning application, the amount of car parking is directly related to the floor space. BAE is probably at the maximum already and if it put in a planning application for another deck of car parking, the application would probably be refused. Even if it were not refused, the application would end up with ministers because granting it would contravene the directive.

**Helen Eadie:** Did you explore that possibility with the council planning officials in light of the fact that it might have resolved a particular problem and the City of Edinburgh Council and TIE might have welcomed the proposal? Every planning application ultimately comes down to what the councillors on the planning committee say. They have to take into account the balance of opinion about the greater good and what is in the greater interests of the community of Edinburgh. Have you had such a discussion with planning officials?

**Euan Pearson:** With respect, I think that such a discussion is not required because, as I have explained, even if the elected members of the council were minded to approve a planning application for so many spaces above the maximum standard in SPP17, they could not issue the permission; it would have to be sent to the ministers and it would be a matter for Victoria Quay to deal with. I suspect that it would result in a public inquiry or further exchanges, thus delaying the procedure.

**Phil Gallie:** When Mr Thomson questioned you, he referred to the fact that more productive use of land could perhaps be made of the sites around BAE. The company has 2,200 employees; are they in the higher or lower economic brackets? I am thinking of the economic development of Edinburgh.

**Euan Pearson:** I do not think that the company has ever done a survey of that outside its personnel department. However, because of the nature of the company's businesses, there is a broad range of socioeconomic profiles and job titles. There are janitors and catering staff, just as there are managing directors. I am told that probably half the staff are graduates—chartered engineers and other professionals—who produce the product for the company and the rest are support workers.

**Phil Gallie:** You said that many of the staff live outside the urban area of Edinburgh, which suggests that they are in the higher socioeconomic brackets. The work that BAE undertakes on aircraft design, for example, suggests that the staff are specialist workers who are a great asset to Edinburgh and Scotland.

**Euan Pearson:** BAE is a great asset to the UK. When the company recruits graduates, they get a choice: they can go to America, go somewhere else in the world to develop their skills and give their ideas or come to BAE Systems.

**Phil Gallie:** If we were to condone the reduction of car parking for a period, less expertise might remain in Scotland than at present.

**Euan Pearson:** That certainly is—

**Phil Gallie:** I will pursue another line of questioning, which is slightly sympathetic to the points that you have made. I am sorry that we are not in a position to recall Mr Oldfield; I should have asked my questions when he was giving evidence. It appears to me that the promoter has not been terribly seriously involved in the issue or, at the very least, has not maintained the level of contact with BAE that I would have expected. Do you think that that is the fault of BAE or of the promoter?

**Euan Pearson:** The answer lies in my statement. We have had one meeting with the promoter, which was in October. Although we have had some e-mail correspondence and telephone calls with consultants who were appointed by the promoter, there has been little willingness to resolve the matter.

**Phil Gallie:** We have spent a lot of time on the issue today. Do you agree that it is of such importance to BAE and to the promoter that some coming together at a very early date would be very much welcomed?

**Euan Pearson:** It is very regrettable that we have had to resort to being at committee today to try to sort out the situation. The bottom line is that the promoter did not want to discuss the matter with us. When it did so, it was at a very late date. I think that it was last month before we saw a flurry of activity in which we were told, "Here is a site. What do you think?"

**Phil Gallie:** Your statement includes the suggestion for an alternative construction site. I believe that it is better for the committee to concentrate on the car parking issues. You say that easier access could be made to the site from Telford Road. I looked at the suggested access point during our site visit. My impression is that construction traffic would travel right under the windows of the flats that are on land that I suspect the route would have to cross over. On that basis, is the issue worth pursuing?

**Euan Pearson:** You pick up correctly our suggestion for another access point. You rightly say that some flats—I think that it is six or seven—are next to it and that its residents would therefore witness some inconvenience.

**Phil Gallie:** Given that acknowledgement, would it not be better for you to concentrate on the issue of car parking?

**Euan Pearson:** No. I am trying to think about how the construction site would operate. Most people are at work between 8.30 am and 6 pm. I do not believe for one moment that big heavy goods vehicles will be trundling back and forth 10 times an hour during the construction period; vehicles will drive into the yard infrequently over the core working hours. I cannot say that it is not a viable option unless a study is done.

**Phil Gallie:** To be absolutely fair, I remember that you asked a previous witness where he lived. If you lived in those flats, would you be happy about such a development?

**The Convener:** You are not required to answer the question, Mr Pearson; it is more of a rhetorical one.

**Phil Gallie:** All right.

**Euan Pearson:** I am quite happy to answer it.

**The Convener:** No, Mr Pearson. What is fair for one witness is fair for another. Is that it, Mr Gallie?

**Phil Gallie:** Yes.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I am interested in exploring a little further the modus operandi of your client, Mr Pearson. I refer you to the company travel plan, which was prepared by Alistair Green. As you pointed out, a travel plan co-ordinator is in position. Will you remind me of his name?

**Euan Pearson:** Mr O'Connell.

**Mr Stone:** You said that Mr O'Connell was thoroughly involved in the development of the company travel plan and that he remains similarly involved in the consideration and evaluation of a new plan. I assume that your client reviewed your witness statement and rebuttal and the supporting documentation before you came before the committee today.

**Euan Pearson:** Yes.

**Mr Stone:** Can I therefore assume that the travel plan co-ordinator—I have forgotten his name again—was fully involved in reviewing the evidence.

**Euan Pearson:** He is the man who instructs me. His name is Douglas O'Connell.

**Mr Stone:** How do you marry the sentiments that you express so eloquently in your statement to the slightly differing sentiments that are expressed—or which seem to be expressed—in the company travel plan? The same gentleman was involved to a fairly large degree in both cases; in one, he would have reviewed the material and in the other he would have commented and worked with the people who put the plan together. I find it hard to reconcile the contradiction between the statement and the travel plan.

**Euan Pearson:** I am sorry, but I do not agree. I see no contradiction between the company travel plan and my written evidence.

**Mr Stone:** Thank you.

**The Convener:** Thank you. Mr Henderson, do you have any follow-up questions for Mr Pearson.

**David Henderson:** No.

**The Convener:** That is great. Thank you. As there are no further questions, I thank you for your evidence, Mr Pearson. Mr Thomson, you have up to five minutes to make your closing remarks about evidence that relates to this objector.

14:45

**Malcolm Thomson:** The first issue is whether the promoter requires to take plot 173 for the purposes of a construction site. My submission is that it plainly does. The alternative site proposal is unsuitable for a variety of reasons that are described in Mr Oldfield's rebuttals in particular. Some of the reasons for its unsuitability were conceded somewhat grudgingly by Mr Pearson.

We turn, then, to the consequences of requiring to take that site for the duration of the construction period. There is no reason to think that the period is likely to be five to 10 years or more, rather than two to three years. If one thinks about the practicalities, one will see that the promoter will have to pay compensation for the length of time that it has the site, so there is no great incentive to have it for longer than is necessary. Whatever problems or delays there might be, they would be related only to the area of the line that is served by this particular construction site. Again, one does not find any obvious reason to think of the arrangement as being anything other than purely short term.

In my submission, the objector's requirement for additional car parking sits uneasily with the terms of its travel plan. The inconsistencies are patent, and the whole tone of the objector's stance differs radically between Mr Pearson's evidence and what is contained in the travel plan. He tries to avoid that particular difficulty by saying that the travel plan is under review and a new version is imminent, but we see no sign of it. Nothing has been produced. Similarly, he suggests that the review is being fuelled by the results of an exercise that established a 45 per cent staff requirement for car parking but, again, no documentation has been produced to support the existence of any survey, far less its detailed findings.

When looking at the travel plan one notices immediately that ideas such as car sharing are highlighted, and incentives are given for people who car share, yet listening to Mr Pearson one would be driven to believe that everyone who comes from outwith the immediate urban area is entitled to come in a car of their own, and that no thought apparently has been given by the travel plan co-ordinator to the practicalities of arranging either public transport or shared transport of some form or another. Against that background of the travel plan as it stands and the total absence from the client of any solid material to suggest that the travel plan is not still its intention, the quest for 132 car parking spaces over and above those mandated by its planning permission sits uncomfortably.

Finally, one comes to compensation. The council has tried to find alternative accommodation. That has not been acceptable to the objector. In that state of affairs, the inevitable consequence is a compensation claim and compensation payments. It is then for the objector to decide how best to spend that money in accordance with what he perceives to be his needs, and perhaps in terms of his travel plan.

**The Convener:** Thank you, Mr Thomson. Mr Pearson, given that you started the session I am sure that you could close it for us. You have up to five minutes to make your closing remarks.

**Euan Pearson:** It is indeed regrettable that we have had to come to this arena today to try to sort out this matter. BAE Systems has tried for more than a year to resolve the issue by asking either for the temporary work site to be moved to council-owned land, which would not require compulsory purchase, at no cost to the promoter, or for an alternative site to be identified to compensate for the temporary loss of the car parking. The relative silence was broken in May, when the council produced out of the hat the housing department site in Crewe Road Gardens. Even if we assume that it is suitable, it does not have planning

permission for a car park and is unlikely to get planning permission.

The promoter has not offered BAE Systems a lease and has not even discussed heads of terms, so there is no prospect of an effective move to that site in the short term or the medium term. A number of other sites have been brought to the promoter's attention, but it has become clear that the promoter has not pursued them. It has simply chosen the route of least resistance and to let the committee decide the outcome.

The issue of compensation is largely irrelevant because everybody knows that to receive compensation the company would have to spend more money and would have to go through the Lands Tribunal for Scotland, which would probably take at least a year and would not solve the issue of replacement car parking.

There is an alternative site, but BAE Systems has seen no evidence that that option has been thoroughly examined—it has seen no drawings and no explanations as to why the site cannot be used. It is in a recreation area, but that area is very underused. The site would have immediate access to the tramline and there is a variety of accesses to it from the surrounding road network.

BAE Systems sustains its objection and asks for the orders to be modified accordingly.

**The Convener:** Thank you very much, Mr Pearson. That concludes oral evidence from group 9. We now move on to group 16, which will discuss evidence relating to Stanley Casinos Ltd.

**Phil Gallie:** I want to say again that all the parties that are involved need to come together at an early date to try to resolve matters, irrespective of any compensation elements that are involved. Doing so would be in everyone's interests.

**The Convener:** Absolutely.

I invite Mark Bain, Stuart Turnbull and Andrew Oldfield to take their places at the table.

The next two groups of witnesses are—I am pleased to say—the final groups that will give oral evidence today. Both objectors have chosen to rest on their original objections, which means that there will be no cross-examination by them. The objectors have not put forward witnesses, but the committee can ask any witness questions. In the light of the absence of the objectors, I encourage members to do so.

MARK BAIN *made a solemn affirmation.*

STUART TURNBULL *took the oath.*

**The Convener:** Mr Oldfield has, of course, previously taken the oath.

The first witness will be Mark Bain, who will address the loss of access and parking and the alternative route.

**Malcolm Thomson:** Mr Bain, will you give us an update on progress with those objectives?

**Mark Bain (Mott MacDonald):** We have been in correspondence with representatives of Stanley Casinos. We believe that we have an in-principle agreement on each of the issues. The promoter's legal advisers are currently drafting a side legal agreement to address each of the issues.

**Malcolm Thomson:** Thank you. I propose to ask no further questions of Mr Bain.

**The Convener:** Although what you have said is welcome, Mr Bain, the objector is not here to confirm it, so the committee may want to ask some questions.

**Helen Eadie:** My first question is about the objector's concerns about ease of access to its property. How would signalised junctions as proposed by the promoter address those concerns?

**The Convener:** I am sorry, Helen. We are questioning Mr Bain.

**Helen Eadie:** I beg your pardon, convener; I will wake up now.

Mr Bain, can you confirm that the promoter's proposal to offset the tramline by 2m would result in no loss of car parking for Stanley Casinos?

**Mark Bain:** Yes, that is correct. The additional mitigation measures that we have proposed also mean that there is no net loss of car parking for Stanley Casinos over the consented spaces. The promoter has already offset the tramline by 2m to provide a 2m footway on the north side of the road, but it would be unable to offset the alignment a further 5.5m southwards, because that would impact on the Tradewinds development, which had full planning consent when the bill was introduced.

**Helen Eadie:** How have you determined that the promoter's proposed loading bay would be appropriately sized?

**Mark Bain:** We sized it on the basis of particular types of rigid vehicles. We believe that the proposed 10m would be sufficient for most vehicles that would be required to service the premises.

**Helen Eadie:** At what stage are the discussions with Forth Ports and Cala Homes—both of which are objectors to line 1—in relation to access to Stanley Casinos for building maintenance and emergency vehicles?

**Mark Bain:** We have had numerous consultations with Forth Ports in recent months

and throughout the development of the scheme. That cannot be said of Cala, however. There is a question mark about the ownership of plot number 47. We have sought clarification from Forth Ports about the current owners of that site. We are not sure whether ownership has transferred from Forth Ports to Cala—the acquisition of land is tied to a planning application that has not yet been determined.

**Helen Eadie:** Okay, and—

**The Convener:** That probably covers the issue, because the final question was answered by the response to the first. That completes the questions from the committee to Mr Bain. Mr Thomson, do you have any follow-up questions for Mr Bain?

**Malcolm Thomson:** No.

**The Convener:** Thank you for your evidence, Mr Bain. There being no further questions, we have finished with you for the moment.

The next witness is Stuart Turnbull, who will also address the loss of access and parking and the alternative route.

**Malcolm Thomson:** I have no introductory questions. I propose that Mr Turnbull should be available for questions.

**The Convener:** Excellent. Are there any questions from the committee?

15:00

**Helen Eadie:** One of the objector's concerns is about ease of access to its property. How would the promoter's proposal for a signalised junction rather than the existing roundabout address that concern?

**Stuart Turnbull (Jacobs Babbie):** There are two issues. First, let us consider the formation of the junction together with the revised access arrangements to the objector's property, which are explained in Mr Bain's statement. It is proposed that the two access points to the property will be moved from their existing position—one to the east and the other to the west. With those locations in place, we went on to consider the appropriate form of the junction.

We believe that the signalised arrangement has a number of benefits. One of the key considerations is the location of the tram depot and the tram route through the area. In such situations, it is far preferable to have a signal-controlled junction to manage tram movements and the movements of other traffic, rather than just having a free flow at a roundabout. The signalised junction—which would incorporate pedestrian and cycle facilities—is not linked directly to the access arrangements. We have worked up what we believe to be the most efficient proposal to fit in

with the access arrangements that have emerged from the revised car parking and servicing layout.

**The Convener:** There are no further questions from the committee. Mr Thomson, do you have any follow-up questions?

**Malcolm Thomson:** No.

**The Convener:** As there are no more questions for Mr Turnbull, I thank him for his evidence.

The next witness is Andrew Oldfield, who will also address the loss of access and parking and the alternative route.

**Malcolm Thomson:** I have no introductory questions.

**The Convener:** I invite questions from the committee.

**Mr Stone:** Mr Oldfield, your four options appear to relate to different alignments of the whole tramline 1 route rather than to the minor alteration that the objector proposes. What specific appraisals have you undertaken in relation to the objector's proposal to move the route some 7.5m south?

**Andrew Oldfield:** That is an alignment issue to which my colleague Mr Bain referred. It is my understanding that the planned development on the opposite side of the road precludes moving the alignment to the south because it would no longer be possible to get in a footpath to the north of that proposed development.

**The Convener:** There are no further questions from the committee or from Mr Thomson for Mr Oldfield. Thank you for your evidence.

The witnesses will now swap over. I invite Steve Mitchell, Scott McIntosh, Leo Eyles and Archie Rintoul to take their places at the table. Before we commence evidence taking, I must invite all four of you to take the oath or to make a solemn affirmation.

STEVE MITCHELL *and* ARCHIBALD RINTOUL *took the oath.*

SCOTT MCINTOSH *and* LEO EYLES *made a solemn affirmation.*

**The Convener:** The first witness is Steve Mitchell, who will address the issue of increased traffic noise and vibration. I invite Mr Thomson to ask questions.

**Malcolm Thomson:** Again, I have no introductory questions for Mr Mitchell or, indeed, for the other three witnesses in the group.

**The Convener:** Perhaps you want to get home, as we do. I know that my colleague Rob Gibson has questions for Mr Mitchell.

**Rob Gibson:** I do. With respect to paragraph 3.3 of your evidence, Mr Mitchell, will you clarify

what the distance will be between the kerb and the building and what the original distance is?

**Steve Mitchell (Environmental Resources Management):** That slightly depends on the part of the building that you are talking about, but the distance will reduce in general from about 14m to about 7m.

**Rob Gibson:** It appears from your witness statement that you have not been in the objector's building and that you have not specifically assessed noise. What reassurances can you give the committee that your noise and vibration assumptions are correct?

**Steve Mitchell:** As my statement says, I have not had an opportunity to go into the casino, but I have a broad understanding of its business and particularly of how sensitive it might be to noise or vibration. I deal with all types of sensitive receptors across the range and I would put the casino fairly well towards the non-sensitive range, compared with what other objectors have mentioned, which we may discuss later.

I have carried out an assessment of the change in noise that I would expect as a result of the realignment of the road, which is reported in the paragraph to which you have just referred and in the following paragraph. With the change in distances, road traffic noise would increase by approximately 3dB. Noise changes of approximately 3dB are simply not significant in environmental noise terms—indeed, if they were asked, most people would not say that they had noticed such an increase. I have therefore concluded that the realignment of the road would not have a significant noise impact on the building.

**Rob Gibson:** There might be a small increase in noise, but it could be annoying when trams on either route enter and exit the depot—I refer to wheel squeal in particular. How might that affect the casino?

**Steve Mitchell:** I am not trying to avoid the issue, but I did not address that matter in my evidence because the objection letter specifically mentioned road traffic—it did not mention trams. I studied the objection letter carefully and the concern seemed to be about road traffic.

**Rob Gibson:** So you would not expect wheel squeal to affect the casino.

**Steve Mitchell:** I would not expect wheel squeal to occur. Even if it did unexpectedly occur, I do not think that the kind of building that we are discussing is particularly sensitive to noise anyway.

**Rob Gibson:** Let us assume that your assumptions are not proved to be correct. What mitigation for noise and vibration would you recommend?

**Steve Mitchell:** Do you mean for tram noise?

**Rob Gibson:** Yes.

**Steve Mitchell:** I repeat that I have not considered tram noise, simply because the objector did not mention it at all in the original objection or in any statements since that objection. However, I am happy to give my opinions on the spur of the moment if they are required.

**Rob Gibson:** I would like you to answer the question that I asked and to talk about traffic noise, too.

**Steve Mitchell:** I am sorry, but perhaps you would help me with the question.

**Rob Gibson:** Basically, I want to know what noise and vibration mitigation you would recommend if your assumptions about noise prove to be incorrect.

**Steve Mitchell:** Do you mean in relation to tram noise and wheel squeal on the bend in particular?

**Rob Gibson:** No—in relation to traffic first.

**Steve Mitchell:** Oh, I see. I do not think that there is any question of an assumption; it is very easy to predict the change in noise level. I do not expect a significant increase in noise in the building. The building has small windows and I believe that it is air conditioned and well insulated, so I would be very surprised if the change in the noise from traffic was perceptible within the building. I do not believe that there will be a problem. If there were to be one, I am not sure that any mitigation could be offered.

**Rob Gibson:** Secondly, you offered to give me an explanation of what you might use as a form of mitigation were wheel squeal to occur.

**Steve Mitchell:** I expect to talk about wheel squeal in the context of other objectors whose buildings are more sensitive to noise. I have written some evidence on that and I would be happy to talk about it in due course.

Perhaps I can answer your question at a fairly high level. A whole series of design measures can be considered to avoid wheel squeal. Bends of the type envisaged do not need to produce wheel squeal; there is a range of examples, throughout Europe and the UK, of bends with such a radius that do not produce wheel squeal. That is why I can say that I am not expecting it to occur.

However, if something unexpected occurred, measures could be taken. Drivers can be trained to drive more appropriately round the bend—the speed that they take the bend at is critical. The tracks can be ground, reprofiled and tuned, in effect, to help the tram around the corner. A third measure would be lubrication—damping—of the track, which is sometimes used on other systems

to avoid the problem. There is a range of methods of avoiding wheel squeal, which is why I do not expect it to happen on this corner.

**Rob Gibson:** Thank you. That is helpful for the laypeople on the committee.

**The Convener:** Are there any other questions from committee members?

**Phil Gallie:** I have a quick question for Mr Mitchell. I accept that 3dB is not high, as far as variation goes, although noise levels sometimes depend on existing levels. I presume that the existing levels are such that the change would be pretty insignificant.

**Steve Mitchell:** The existing noise levels are reasonably high, but the hours of operation of the casino are a bit unusual, to say the least, and at night the stretch of road is still pretty noisy. What is important is the nature of the building and what it is used for. I have not been in the building, but from my external viewing of it it appears to be well insulated. It has small windows and it does not seem to rely on having the windows open. Because the windows are small and the building is modern and well insulated, I think that the noise levels inside it will be very low compared with the levels outside it. That is another reason why I do not think that the change would be significant for the objector.

**Phil Gallie:** In effect, your argument depends on the construction of the building. You could say that you have had a break.

**Steve Mitchell:** It depends not just on the construction of the building, but on the nature of the building's use. Had the building housed a library or something that was more noise sensitive, we might have needed to look at the matter more carefully.

**Phil Gallie:** Thank you. That is very helpful.

**The Convener:** There are no further questions from committee members. Do you want to ask any follow-up questions, Mr Thomson?

**Malcolm Thomson:** No thank you, madam.

**The Convener:** There being no further questions for Mr Mitchell, I thank him for his evidence.

The next witness is Scott McIntosh, who will address the issue of commercial impact. As Mr Thomson has nothing further to add, I turn to committee members for questions.

**Rob Gibson:** How would the experience in Croydon, to which you refer in your statement, relate to the objector, given that Stanley Casinos is not a retailer or part of a retail complex?

15:15

**Scott McIntosh (Mott MacDonald):** In the evidence that I gave in my statement, there are two specific points that are worth looking at. The first is that off-centre developments—I am not being pejorative—need good public transport links. I refer specifically to Purley Way, in Croydon, which is a combined shopping and leisure development. I refer also to Meadowhall in Sheffield; the ExCeL development in the London docklands; and phase 2 of the Merry Hill development in Birmingham, which is also a mixed shopping and leisure development. As all those centres are some distance from the main centre of gravity, they need good transport links to make them function well.

The Stanley Casinos development is off centre in that it is some way from the heart of Leith and Edinburgh. In future, the site will be surrounded by residential buildings, water and—subject to the deliberations of the committee—a tram depot. I believe that public transport accessibility is particularly important for the sort of off-centre developments to which I refer.

Indeed, the Centrale centre in Croydon is much closer to the centre than the Purley Way centre is. Although Centrale's front façade is in a busy shopping street, the building extends some way so that its rear façade is in a quieter area. The developer paid for the cost of installing a tram stop on the quiet side of the building in order to attract people in. The Centrale is partly a shopping centre, but it also has a large element of entertainment and leisure uses.

Research sponsored by Transport for London and the Passenger Transport Executive Group shows that a disproportionately higher proportion of rail passengers using the Docklands light railway and the Croydon tramlink come from the richer A, B and C1 socioeconomic groups. Conversely, bus passengers tend to come from the lower and poorer socioeconomic groups. Those findings tie in well with evidence that I have given in other places on the modal shift from the motor car. One would expect about 20 per cent of the passengers who use a tram system to have previously used a motor car and for them to come from the richer socioeconomic groups.

Evidence from Croydon shows that men in the 25-to-54 age group are disproportionately likely to be represented in the figures for tram passengers. Tram is a mode of transport that attracts the sort of people who drive motor cars, who predominantly tend to be men in their middle years. A case can therefore be made for saying that richer men in the 25-to-54 age group are more likely to use tram services than they are to use other public transport services. That is particularly true of the socioeconomic groups that a company

such as Stanley Casinos will seek to attract into its development. If someone is the sort of impulse traveller who goes out for a quick flutter at the casino, the availability of an attractive public transport system would probably be an additional benefit for them.

**Rob Gibson:** Thank you.

**The Convener:** That was a wonderfully creative answer, Mr McIntosh. I am sure that it was based on evidence, but it was also amusing. Does any other committee member dare to ask Mr McIntosh a question?

**Members:** No.

**The Convener:** No? Mr Thomson, do you have any follow-up questions for Mr McIntosh?

**Malcolm Thomson:** Only to wonder whether the evidence was purely creational or whether it was based to some extent in fact.

**Scott McIntosh:** Oh, yes. It was built rather than created—on solid fact and evidence about the socioeconomic groups that use different sorts of transport and on the evidence from the independent research into modal shift on the Croydon tramlink and other systems that are sponsored by the PTEG. Collecting information on the age profile is inherent to the way in which research on the travel-to-work pattern is carried out in London—the evidence is collected on a large sample base and is statistically significant.

**Malcolm Thomson:** Is there a recognised link between the retail activity and commercial leisure of the sort that you describe?

**Scott McIntosh:** Yes. These days, the developers of most mixed-use developments seek to have a large anchor store, such as a department store, as well as multiscreen cinemas, casinos and other entertainment-complex components. Those elements are seen to have a synergy; mixed-use developments are seen to work better than stand-alone ones.

**Malcolm Thomson:** Thank you.

**The Convener:** Thank you, Mr Thomson. Do you have a question, Mr Stone?

**Mr Stone:** If I may, I will probe further into the question. Mr McIntosh, you gave us a fascinating answer, in which you described well-off, trammy-type people who go out to play blackjack or have a flutter at the casino. I accept what you said about multiscreen picture houses. However, if what you said about casinos is true, why are they not being slapped up next door to big retail developments in other cities? Perhaps they are and perhaps I am missing a trick, so to speak—I would be if we were playing blackjack.

**Scott McIntosh:** If you were to go to the area around Marble Arch in London, you would see that a significant number of casinos are located close to a large element of retail that is aimed specifically at the sort of people who tend to use casinos. The same thing is likely to happen if the supercasino in Blackpool is approved. The site that has been chosen for that development is right between the pleasure beach and some large shopping arcades. People see the synergy between those different activities.

**The Convener:** That was slightly off the procedures that we should adopt, so I invite Mr Thomson to follow up anything that has been said.

**Malcolm Thomson:** Thank you, but I am quite content.

**The Convener:** That is fine. There being no further questions for Mr McIntosh, I thank him for his evidence, which I am sure is built on very solid foundations.

The next witness is Leo Eyles, who will address the commercial impact. Mr Thomson, I assume that you have no questions.

**Malcolm Thomson:** That is correct.

**The Convener:** Mr McIntosh has covered the committee's original question, but I will give members the opportunity to ask any further questions. Do any members have questions for Mr Eyles?

**Members:** No.

**The Convener:** Mr Eyles has got off lightly. There will be no questions at all for him, but I thank him very much for being here.

The next witness is Archie Rintoul, who will address the issue of compensation. I take it that Mr Thomson has no questions for Mr Rintoul.

**Malcolm Thomson:** I do not.

**The Convener:** In that case, I turn to committee members. I believe that Phil Gallie has a question.

**Phil Gallie:** I usually like to fire off having heard something from those who are asking questions, but I have a question that has been written down for me and I will stick to that.

Given the bill's current compensation provisions, will Mr Rintoul please elaborate on whether an operator would be able to seek compensation for any loss in the value of its property or the profitability of its business that arose as a result of the construction and operation of the tram?

**Archibald Rintoul (Scotland South East Valuation Office):** The bill incorporates the usual compensation provisions that one would expect in relation to something that is being constructed by a public body, some of them specifically and some

by implication. If land was acquired from Stanley Casinos, it would be able to claim compensation for any reduction in value of the casino, as in any normal circumstances.

**Phil Gallie:** Could there be an added value, given what we have heard from Mr McIntosh about the pulling power of the tram?

**Archibald Rintoul:** We would certainly take that into account. We are allowed to take into account any betterment that results from the construction of the tramway, and we would certainly have to consider that. It is perfectly possible that the tramline would bring to the casino people who perhaps have to drive there at present and that there would be an increase in the number of people arriving at the casino.

**The Convener:** There are no more questions from the committee. Mr Thomson, do you have any follow-up questions?

**Malcolm Thomson:** No.

**The Convener:** As there are no further questions for Mr Rintoul, I thank him for his evidence.

Mr Thomson, you have the opportunity to take five minutes to make any closing remarks about any of the evidence relating to the subject.

**Malcolm Thomson:** I do not really want to make any comments on the evidence that we have heard. The objector's initial problem was one of access. Solving that problem and reconfiguring the frontage gave rise to a car parking issue. That was then solved satisfactorily, as has been explained in the evidence. There is a potential noise issue, but that is related to the increased proximity of existing road traffic rather than the tram itself, as Mr Mitchell explained. The other problem raised by the objector is the general profitability of the site as a result of the tram. In my submission, the evidence that we have heard today is encouraging, and I invite the committee to accept it.

**The Convener:** Thank you, Mr Thomson. I am sure that we do.

That concludes oral evidence taking on group 16. We now turn to our final group, group 17, concerning ADM Milling. I invite Mark Bain to join Scott McIntosh and Steve Mitchell at the table.

**Malcolm Thomson:** While he is taking his seat, I am pleased to be able to tell you that the Network Rail agreement that we were talking about this morning has been signed by the council.

**The Convener:** Excellent. I am sure that your negotiations with First ScotRail will continue apace.

The first witness is Steve Mitchell, who will address the issue of construction noise. I invite Mr Thomson to proceed.

**Malcolm Thomson:** I do not think that I have a starter question for Mr McIntosh.

**The Convener:** It is Mr Mitchell, rather than Mr McIntosh.

**Malcolm Thomson:** I am so sorry.

**The Convener:** Do not worry.

**Malcolm Thomson:** My order of papers is different. The only witness that I have a question for is Mr Bain.

**The Convener:** That is excellent. I invite questions from the committee.

**Helen Eadie:** I have two questions for Steve Mitchell. Mr Mitchell, how can you reassure the committee that your assumption that ADM Milling's building is

"not particularly sensitive to noise"

is accurate, given that no monitoring has been undertaken?

**Steve Mitchell:** ADM Milling's objection with regard to noise is related to construction and disturbance, rather than to traffic or the operation of the tram system. We are talking about the level of noise during the construction phase.

ADM Milling has two buildings in proximity to us—the store is about 20m away and the main building is about 45m away. Past the company's site is where we will lay tracks. The construction process will involve some enabling work, some track laying, some overlay equipment and so on. An absolute noise level of the order of 75dB is generally considered to be an acceptable and tolerable construction noise level if it occurs outside the building concerned. To do the assessment, we do not need to know the baseline noise level as monitored there; we just need to do a calculation of the noise level. If we calculate the noise levels during construction at the distances that I have just mentioned—which we can only do approximately, as we do not know the precise methods of working that will be used—applying the measures contained in the code of construction practice to screen and reduce them, we find that the levels at those two buildings will be below 75dB. In fact, they will be quite comfortably below that level, so I conclude that we will not cause significant disturbance during the construction phase, which was the concern.

**Helen Eadie:** What mitigation measures might the promoter consider should your assumptions prove wrong?

**Steve Mitchell:** I have just remembered that you mentioned a lack of monitoring. Strictly

speaking, there will be some monitoring during construction. If it is deemed necessary by the council, noise monitoring will take place to check that the level of 75dB is not exceeded. That is one measure that can be taken should our assumptions about construction methods and noise emissions during the construction prove wrong.

The code of construction practice, which I am pleased that the committee has now seen, contains quite a long list of mitigation measures. Furthermore, there is a general requirement to minimise noise. It is not as though we are allowing the contractor to make 75dB of noise. Right at the beginning of the section on noise requirements is a requirement to minimise disturbance and noise. There is a requirement to comply with British standard 5228, which is a whole code of practice on minimising noise from construction sites. The code of construction practice is quite a strong document when it comes to noise control. It requires the best practicable means of reducing noise to be adopted. The practicability of reducing disturbance has been tried and tested in law.

In summary, those are the measures that we have put in place. The code of construction practice is as good as any that I have seen. I have been involved in several tram and linear transport schemes in relation to which people have been concerned about construction disturbance, and the main reassurance that we were able to give them was the code of construction practice. The code gets more and more onerous as projects progress and the current code is no exception. It picks the best measures that I have seen in other systems. All the measures will be in place.

15:30

**The Convener:** As there are no further questions from committee members or follow-up questions from Mr Thomson, I thank Mr Mitchell for his evidence.

The next witness is Scott McIntosh, who will address access, permitted routes and restrictions. I assume that Mr Thomson has no questions, so I invite Rob Gibson to speak.

**Rob Gibson:** We have just heard that the code of construction practice is a strong document, which it has been indicated will address the access concerns of the objector, but what reassurances can you give the committee that it will be enforceable and that breaches will be monitored?

**Scott McIntosh:** Access and temporary road closures are covered by section 5.2 of the code of construction practice. It is my understanding that TIE has not only adopted it as a code of construction practice but intends to incorporate it

in the contractual documents, which will be let to the main contractor and will cover the main contractor, its agents and subcontractors. All will be contractually bound by the code.

**Rob Gibson:** So that deals with any enforcement and monitoring.

**The Convener:** As there are no more questions from the committee or follow-up questions from Mr Thomson, I thank Mr McIntosh for his evidence.

The final witness of the afternoon is Mr Bain, who will address access, permitted routes and restrictions.

**Malcolm Thomson:** I ask Mr Bain the usual question: will he give us an update on anything that has been happening in his discussions with the objector, ADM Milling Ltd, since the date of his written statement?

**Mark Bain:** The legal advisers for the promoter have drafted a legal agreement, which has been put to ADM Milling. The company's main objection concerned the access to the east of its premises, which is currently its sole means of access, being stopped up. I confirm that that will not happen for construction or operation of the tram.

As I said in my witness statement at paragraph 3.16, if there is any ambiguity about the powers in part 1, section 2(3)(d), I can confirm that their use is intended only to avoid road vehicles inadvertently following the tram system as it departs from the public highway. The crossing will be signalised—it will be a level crossing, covered by line 11 of schedule 5 to the bill. As far as I am aware, all the issues are resolvable.

**Malcolm Thomson:** It might be that the objector misunderstood what was proposed about stopping up the access.

**Mark Bain:** I think that that is the case.

**The Convener:** That appears to be further excellent news, but I will allow Phil Gallie to pose some questions.

**Phil Gallie:** I will be brief. A lot of work is ongoing in that area at present. How will it fit in with commencement of the tramline construction? How will that affect ADM Milling?

**Mark Bain:** Do you mean the tram construction rather than the other developments?

**Phil Gallie:** How will other developments affect the commencement of tramline construction and how will they affect ADM Milling?

**Mark Bain:** A planning application has been submitted by Forth Ports plc for the main vehicular access to the western harbour area. I expect that it is likely that it will precede work on the tram proposals. Therefore, further access will be

provided to ADM Milling—a betterment of the access that it is currently afforded, which is only to the east.

**The Convener:** As there are no further questions from the committee or follow-up questions from Mr Thomson, I thank Mr Bain for his evidence.

Mr Thomson has up to five minutes to make any closing remarks about the evidence relating to this objector.

**Malcolm Thomson:** With respect, I do not feel that that will be necessary in this case. The nature of the dispute is so narrow and has probably disappeared altogether. The committee has the evidence and I invite members to accept the further evidence that they have heard today.

**The Convener:** That is excellent.

That concludes oral evidence taking and I thank everyone who has given evidence today. It has certainly been interesting and I have learned a number of new things about the type of people who patronise tramlines.

The committee will now consider a paper on alternative alignments. Members will be aware from last week's meeting that, on 2 June, the City of Edinburgh Council agreed to recommend to the committee two realignments outwith the limits of deviation. One of those alternative alignments is at Haymarket Yards, where line 1 overlaps line 2. The second realignment is at Ocean Terminal. Members will have read the paper. Are there any questions?

**Members:** No.

**The Convener:** A number of procedural implications flow from that and are flagged up in the paper. However, first I ask committee members whether they agree that there is merit in further examining the alternative alignments proposed by the promoter. Is that agreed?

**Members indicated agreement.**

**The Convener:** As a result of that decision, I seek members' agreement to the suggested advertisement and notification timetable that is set out in paragraphs 9 to 12 of the paper. Is that agreed?

**Members indicated agreement.**

**The Convener:** Are members content that the objection period for the proposed alternative alignments should commence on 24 June?

**Members indicated agreement.**

**The Convener:** Are members content with the revised and supplementary documentation that the promoter has identified in the promoter's memorandum at paragraphs 11 to 13?

**Members indicated agreement.**

**The Convener:** Should the committee receive any objections to the proposed alternative alignments, we will need to give the same consideration to them as we did to original objections. However, given that it is unlikely that there will be many objections, there is some merit in truncating the written evidence process so that any new objector is given two weeks to provide information such as witness summaries, statements and rebuttals. In addition, any new objector will be able to view the committee's current evidence taking and prepare on that basis. Are members content that we truncate the written evidence process for any new objections to the alternative alignments?

**Members** *indicated agreement.*

**The Convener:** We now move into private session. Members will recall that we agreed to meet in private at the end of each oral evidence-taking session to enable us to consider the evidence that we have heard.

15:38

*Meeting continued in private until 15:56.*

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