

EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

Tuesday 29 November 2005

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2005.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 29 November 2005

Col.

EDINBURGH TRAM (LINE ONE) BILL: CONSIDERATION STAGE.....	1597
---	-------------

EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

23rd 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)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Cuthbert

Malcolm Thomson QC (Counsel for the Promoter)

THE FOLLOWING GAVE EVIDENCE:

Rahul Bijlani (Bircham Dyson Bell)

Stephen Craig (Hardies)

John Gilchrist

Mrs Odell Milne

Graham Scrimgeour

CLERK TO THE COMMITTEE

Jane Sutherland

LOCATION

Committee Room 4

Scottish Parliament

Edinburgh Tram (Line One) Bill Committee

Tuesday 29 November 2005

[THE CONVENER opened the meeting at 10:34]

Edinburgh Tram (Line One) Bill: Consideration Stage

The Convener (Jackie Baillie): Good morning, everybody. Welcome to the 23rd meeting in 2005 of the Edinburgh Tram (Line One) Bill Committee. I apologise for the considerable delay before the meeting started—I am sure that you were told that the delay was due to a problem with the Edinburgh to Glasgow train. We think that there was a fatality on the line this morning.

We are at the consideration stage, at which the committee must consider the bill's detail. Our job is to consider the promoter's and objectors' arguments and ultimately to decide between any competing claims. All the parties that are attending will be aware of the procedures for taking evidence, which I do not propose to reiterate.

Members will recall that we agreed to postpone the promoter's oral evidence on title conditions until today's meeting in order to enable the committee and group 43 to consider the promoter's late response on the issue. Having reviewed the promoter's rebuttal witness statement, I take the view that the two lines that have been provided do not meet the criteria for a rebuttal witness statement because they do not rebut the particular points that Mrs Milne made or clearly identify the issues in dispute. Therefore, I seek members' agreement that the promoter may not cross-examine Mrs Milne on the issue of title conditions. Do members agree?

Members indicated agreement.

The Convener: Finally, members will note that group 43 has provided additional written evidence on title conditions, which is contained in paper ED1/S2/05/23/14. At this stage, I seek members' agreement to note the written evidence in that paper as part of the evidence on title conditions. Do members agree to that?

Members indicated agreement.

The Convener: We will now take oral evidence from the promoter's witness, Rahul Bijlani, on title conditions in relation to group 43. I remind Mr Bijlani that he remains under oath.

Malcolm Thomson QC (Counsel for the Promoter): Good morning, Mr Bijlani. Will you provide the committee with an update on the topic, please?

Rahul Bijlani (Bircham Dyson Bell): Yes. Good morning. Things have moved on somewhat. The promoter has reviewed the situation and is now prepared to lodge an amendment to the bill that will remove from the limits of deviation and the limits of land to be acquired or used—and therefore strike out of the bill completely—the area of land that is subject to the title condition that is causing concern. The area over which the restriction on the user can be enforced, by numbers 5, 5a, 5b and 9 of Wester Coates Terrace, will be removed from the bill. During the construction period, the promoter is prepared to undertake that there will be a clear demarcation between that area and the area within limits by a fence or otherwise. Precisely how the demarcation will be made will, of course, be a matter for the contractor. We hope that our proposal meets the objection in its entirety.

Malcolm Thomson: Thank you, Mr Bijlani.

The Convener: Thank you, Mr Thomson. I invite Mrs Milne from group 43 to speak.

Mrs Odell Milne: As a result of the indication that the promoter has given, and subject to a written undertaking to that effect, I do not have any questions to ask. I am happy with the promoter's suggestion.

The Convener: We are always happy to hear that people are happy with what the promoter wants to do. Committee members had a series of questions to ask, but those questions will now have to be entirely dispensed with because of the information that we have received. In the light of the new evidence that has been given, do committee members want to add anything to what has been said? Members do not need to rise to the occasion; I am simply being polite.

Phil Gallie (South of Scotland) (Con): I hesitate to prolong the discussion, but I want to be clear. I assume that the area of land that you are talking about is principally at the back of the gardens—I am referring to the station requirements. Does that mean that the access route will now be clear? Will it not be used? Does it still come within the argument?

Rahul Bijlani: I do not think that anything is being argued about any more. The area that we are concerned about, which is subject to the title conditions, is the area that runs behind the gardens and hooks, like a dog's leg, around numbers 9, 5b, 5a and 5. There is separate access that the promoter believes forms a public right of way if it has not been publicly adopted, but that area is not subject to the title restriction.

Phil Gallie: Okay. Thank you very much.

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

Malcolm Thomson: No, thank you.

The Convener: Okay. I thank Mr Bijlani for giving evidence. That concludes the oral evidence from the promoter's witness. We will now move on to the objectors' witnesses. The issues that will be considered include various aspects of value and the European convention on human rights. John Gilchrist and Stephen Craig will need to take the oath or make a solemn affirmation. I remind Graham Scrimgeour and Odell Milne that they remain under oath. I will allow a short suspension for people to change over.

10:39

Meeting suspended.

10:40

On resuming—

JOHN GILCHRIST and STEPHEN CRAIG took the oath.

The Convener: The first witness will be John Gilchrist, who will address the issues of loss of value and compensation for group 34. Graham Scrimgeour will ask the questions.

Graham Scrimgeour: Mr Gilchrist, do the relevant compensation provisions in the bill ensure full compensation for owners of houses that may fall in value because of the tram proposals?

John Gilchrist: No, they do not. Where land is acquired, compensation is assessed as at the earliest date either of physical entry or at the date on which the title passes. Interest on the agreed compensation amount will run from that date. Where no land is acquired—as will be the case with almost all the properties in this section of the tram route—compensation is assessed under the Land Compensation (Scotland) Act 1973.

That act makes a somewhat artificial distinction between loss suffered during the construction of the works and loss suffered as a result of the use of the works. The appropriate valuation date is specified as being one year after completion of the works. In other words, compensation is not payable for any losses sustained either during the construction period or during the first year of use.

If, for example, construction of the tramline were to start in 2006 and, as has been suggested, not become operational until 2009, the first claim for compensation could not be lodged until 2010. The difference between the two bases of compensation is, in effect, the difference between being given £1,000 now and being promised

£1,000 in four years' time. The present value of such a promise is about £800—some 20 per cent less. In effect, owners will be compensated for only 80 per cent of the loss—not for the full loss—that they will suffer as a result of the works. That percentage would be even greater if loss of view or privacy were involved, as those matters are not liable for compensation under the 1973 act.

Graham Scrimgeour: Thank you. Do the blight provisions that were referred to in Mr Rintoul's evidence adequately deal with the problems of owners who cannot sell because of the tram proposals or who can sell only at a reduced price?

John Gilchrist: As it is presently framed, section 71 of the bill incorporates the blighted land provisions of the Town and Country Planning (Scotland) Act 1997. Those provisions require an authority—subject to the fulfilment of certain conditions—to purchase property whose value is seriously affected by public works. However, the provisions apply only in cases where the property has been authorised to be purchased compulsorily. Given that compulsory purchase is scarcely relevant to almost all the houses along the part of the route that we are discussing, the provisions would be of no benefit at all to owners whose circumstances make sale necessary but who are unable to sell their homes at an unblighted price.

10:45

Graham Scrimgeour: Are you aware of any issue or problem with the saleability of houses in the area covered by group 34 between Ravelston and Groathill that has already arisen because of the tram proposals?

John Gilchrist: The effect of the proposals on the marketability of properties is, I think, already evident. I am aware of at least seven houses immediately abutting the proposed route that have been on the market for the past five or six months and remain unsold—and that is in an area where houses are typically on the market for two or three months at the most.

Graham Scrimgeour: In your opinion, what steps can be taken to address or remedy the weaknesses of the bill to which you have drawn attention?

John Gilchrist: Section 24 of the Land Compensation (Scotland) Act 1973 gives authorities a discretionary power to acquire land by agreement for the purpose of mitigating any adverse effect that the existence or use of public works will have on adjacent property. Such acquisitions by agreement may be made where the property is seriously affected either by the construction of the works or by the use of the works.

Unfortunately, public works are defined in the 1973 act as not including a road or any works forming part of a statutory undertaking, which is what I assume the committee is dealing with. As far as roads are concerned, the position was remedied by the Roads (Scotland) Act 1984, but statutory undertakings are still exempt. As a result, if this project were the construction or widening of a road, or any other development by a local authority or Government department for that matter, that remedy would be available. However, it is not available, because the scheme that we are considering is a tram road. For the owners concerned, the depreciating effect of a tram road is little different, I would have thought, from that of a road.

The bill's inclusion of a section similar to section 24 of the 1973 act or section 106 of the 1984 act would rectify that apparent injustice. It is both unfair and anomalous that the remedy is not available just because the scheme is a statutory undertaking. In my view, the legislative provisions that I have mentioned were clearly enacted with the situations that are likely to arise in the case of the tram scheme in mind.

About 50 per cent of the owners who will be immediately affected on the part of the proposed route that we are discussing are elderly and retired. Given the changing circumstances of those people who will need to sell for the usual variety of reasons—perhaps a change of employment, medical conditions or external financial pressures—some of the houses that are currently occupied by retired people will require to be put on the market over the next few years. The inclusion of such a section in the bill would go some way towards removing a rather obvious cause of concern and worry for those people who need to sell.

Given the shortfall in the compensation provisions to which I referred earlier and the difficulty and hardship that will result from the inability to sell at a reasonable, unblighted price, a strong case can be made that those provisions should not be discretionary—as is the case under the 1973 and 1984 acts—but mandatory. We urge that that be done.

To do so would not impose any great burden on the promoter. For instance, it would have to be demonstrated that the value of a property was seriously affected. I assume that that would happen after unsuccessful attempts had been made to achieve a sale at a reasonable, unblighted price. I also assume that any difference between the unblighted price at which the purchase would be made and any lower price at which the property could be resold would simply approximate to the compensation that would otherwise have to be paid under the 1973 act.

If the effects of the tram proposals on house prices are as benign and even beneficial as Mr McIntosh suggests, there would be very few cases in which it could be demonstrated that prices were seriously affected, which would mean that the burden would be slight. The mandatory provision that we have suggested would be a useful backstop; it would be a source of considerable comfort to the many owners whose circumstances may require them to sell in the short term.

Graham Scrimgeour: Is there anything else that you would ask the committee to do in respect of the bill itself?

John Gilchrist: So far as the compensation is concerned, if it is possible to do so, it would be nice to see the date of valuation moved to the date when construction starts instead of the date being one year after the end of construction. As I suggested, we would also like the bill to include a mandatory provision under which the promoter is required to purchase any property whose value has been seriously affected by either the construction or the use of the route.

Graham Scrimgeour: Earlier, we talked about strips of land. I understand that you have been trying to get a response from Transport Initiatives Edinburgh about a strip of land behind some of the houses on Craigleith View. Will you explain the situation? Do you have any questions for the committee?

John Gilchrist: The book of reference that accompanies the bill lists the owners of a narrow strip of ground that lies behind the 11 houses from 32 to 58 Craigleith View as "unknown". In February 2004, the promoter's agents were advised that ownership of the strip of land was understood to be with the individual proprietors of the houses at 32 to 58 Craigleith View. In the promoter's reply, which is dated July 2005—some 18 months after the date of the initial communication—it asked for permission to enter the strip of land for measurement purposes and assent was given. So far as the proprietors are concerned, the matter rests there, as nothing further has been heard from the promoter.

We find it surprising and disappointing that, after 21 months, that uncertainty has not been resolved. We would like the promoter to confirm to the proprietors that it accepts that ownership of the strip of land lies with them. If the promoter does not accept that, the proprietors will be required to take further legal advice on the matter, which is of some importance. It has a bearing on compensation, whether that is assessed under the Land Compensation (Scotland) Act 1963 or the Land Compensation (Scotland) Act 1973. The owners concerned would be very grateful for any steps that the committee could take to remove this continuing source of uncertainty.

Graham Scrimgeour: Thank you. Those are all my questions.

The Convener: Before I bring in the promoter's questioner, I note that, on that last point, we would encourage the promoter to seek a resolution with the owners concerned; it is not for the committee to become involved in individual negotiations.

John Gilchrist: I understand that.

Graham Scrimgeour: Mr Gilchrist was asking the committee to bring to bear any pressure that it could.

The Convener: I have said all that I am going to say on the matter. I invite Mr Thomson to begin his questioning.

Malcolm Thomson: Good morning, Mr Gilchrist. It is a matter of agreement between you and Mr Rintoul that, at present, it is not possible to give an accurate estimate of the probable effect of the tramline on the value of the properties that we are talking about.

John Gilchrist: That is so. One can only make an informed guess, at the moment.

Malcolm Thomson: That is the view of both you and Mr Rintoul on the subject. It is one of the things on which you agree.

John Gilchrist: Yes.

Malcolm Thomson: Is it possible that such difficulties are behind the provision in the 1973 act that postpones the submission of applications until one year after use has begun to be made of the works in question?

John Gilchrist: I believe that the idea was that the market would be given time to settle. It must be remembered that, when land is acquired, an owner has a right to have compensation determined at the outset. By that, I mean either when the work starts or when the title passes. The title may pass well in advance of the construction of the works; nevertheless, an estimate has to be made. As I understand it, an owner would still have the right to refer the matter to the Lands Tribunal for Scotland if no agreement could be reached, even before construction had started.

Malcolm Thomson: The question that I asked was about the 1973 act, which applies when property is not being acquired and when the issue is the direct effect of the use of the works—whatever they are—which can be assessed only after use has started to be made of those works.

John Gilchrist: That is probably so.

Malcolm Thomson: A good reason for waiting a year would be to allow people time to measure the actual noise, vibration and so on arising from the tram before claims were made.

John Gilchrist: Yes, that is undoubtedly a good reason. Nevertheless, some owners from whom land is acquired have the right to have compensation determined at the outset, which may be well before the completion of the works.

Malcolm Thomson: Thus far, we have been talking about people who are affected by the 1973 act, whose property is not being acquired. We will move on to people whose property is being acquired; however, we have been talking, so far, about the 1973 act, which applies to people whose property is not being acquired. Is that agreed?

John Gilchrist: Yes.

Malcolm Thomson: You are raising the point of the uncertainty for people whose property is being acquired.

John Gilchrist: I am saying that, even if 1yd² were being acquired, those people would have the right to have their compensation determined at the outset, whether that was before or after the construction of the works.

Malcolm Thomson: I thought that we just agreed that there are good, practical reasons for delaying the making of claims under the 1973 act. Such claims relate to the effect of the works; therefore, the works must be in operation before it can be determined whether there is any effect, far less how bad it is.

John Gilchrist: There are undoubted practical reasons for that; nevertheless, an owner has a right to have his compensation determined—if even 1yd² were being acquired—even before construction has started. I presume that the matter could be referred to the Lands Tribunal—it happens all the time, actually.

11:00

Malcolm Thomson: The reason for that is that it is known that the land is being compulsorily acquired.

John Gilchrist: Yes.

Malcolm Thomson: And there is no reason to delay until after the works have been carried out to see what effect they will have, because it is known at the beginning that the land is being acquired. Is that not the difference?

John Gilchrist: But one has to make the best estimate that one can of the probable effect to measure injurious affection.

Malcolm Thomson: That is another issue. You seem to be claiming that you want compensation for diminution in value when no property is being acquired and when the triggers under the 1973 act do not apply. Is that your position?

John Gilchrist: That would be under the 1963 act.

Malcolm Thomson: The 1963 act applies when land is being acquired. I thought that you wanted compensation if there was a diminution in value as a result of the tram, even where land was not being acquired. Is that what you want?

John Gilchrist: That is already provided for in the 1973 act. As I understand it, that is the whole purpose of part I of that act.

Malcolm Thomson: The 1973 act applies only to certain prescribed causes of diminution in value.

John Gilchrist: Yes.

Malcolm Thomson: Are you satisfied with the restrictions on the cause of diminution of value in the 1973 act?

John Gilchrist: Yes.

Malcolm Thomson: Have you read Mr Rintoul's rebuttal of your witness statement?

John Gilchrist: Yes.

Malcolm Thomson: At paragraph 3.2, Mr Rintoul states:

"Mr Gilchrist wishes the Bill to be amended to impose a duty to pay compensation to property owners where the value has fallen relative to other similar properties in the area which are unaffected by proximity to the tram. Mr Gilchrist, as a very experienced and distinguished chartered surveyor, will be ... aware that this proposal goes far beyond normal Statutory Blight provisions and beyond normal Compensation provisions."

Are you so aware?

John Gilchrist: Yes, indeed, but I am also aware of the provision for discretionary purchase in the Land Compensation (Scotland) Act 1973 and the Roads (Scotland) Act 1984.

Malcolm Thomson: To which I do not think you referred in your witness statement.

John Gilchrist: The question of mandatory purchase was referred to, as was the question of statutory undertakers, in questions to Mr Rintoul.

Malcolm Thomson: For the first time today you have drawn attention to discretionary acquisition provisions. Is that not correct?

John Gilchrist: Yes.

Malcolm Thomson: You say that various houses have been more difficult to sell over the past few months. Is that correct?

John Gilchrist: Yes.

Malcolm Thomson: You say that they have been on the market for five or six months, when sales would normally take two or three months.

John Gilchrist: Yes.

Malcolm Thomson: What has been the corresponding period for which houses have been on the market elsewhere in Edinburgh?

John Gilchrist: I have no idea, but my experience has always been that in our area, through which the line will travel, the norm is about two or three months.

Malcolm Thomson: So five or six months may have been the norm elsewhere in the city, for all you know.

John Gilchrist: It could have been, but it was not the norm in our area.

Malcolm Thomson: You drew attention in your witness statement to one particular property—32 Blinkbonny Road. Has it been sold?

John Gilchrist: It is still on the market, as far as I understand.

Malcolm Thomson: What inquiries have you made to find out whether it is still on the market?

John Gilchrist: I checked with the Edinburgh Solicitors Property Centre a fortnight ago.

Malcolm Thomson: Would it surprise you to know that it does not appear to be on the market at the moment?

John Gilchrist: The owner may have stopped advertising it; I do not know.

Malcolm Thomson: You have not discussed the matter with the owner before coming to give evidence today.

John Gilchrist: No.

Malcolm Thomson: Am I right in understanding that in the 1963 and 1973 acts, there are provisions that offset the amount of claim against the increase in the value of the property that is directly attributable to the scheme?

John Gilchrist: Are you referring to betterment?

Malcolm Thomson: Yes.

John Gilchrist: As I understand it, betterment applies only when a property is being acquired and a reduction for any betterment can be made from the compensation that would otherwise have been payable. It relates only to a property that is being acquired.

Malcolm Thomson: Under your proposal to bring forward the valuation date for compensation, would you continue to take account of betterment?

John Gilchrist: We are only suggesting that, if it is possible, the valuation date should be brought forward for properties when no land is being acquired. If no land is being acquired, the question of betterment does not arise.

Malcolm Thomson: It is your view that there is no offsetting under the 1973 act.

John Gilchrist: It is not just my view; I believe that it is the law.

Malcolm Thomson: Is it your view that the tram will have a generally adverse effect on properties that adjoin the tramline?

John Gilchrist: Probably. However, as I have said, we do not know the extent at this stage.

Malcolm Thomson: It might be that people rather like being near the tram and that it will increase property values.

John Gilchrist: Yes, but being near the tram is one thing and having a tramline at the bottom of the garden is another.

Malcolm Thomson: Well, that might be a matter of opinion.

You claim that solicitors are warning people against acquiring property in the vicinity of the tramline. Do you have first-hand knowledge of that?

John Gilchrist: No.

Malcolm Thomson: We have heard evidence from Mr Scott McIntosh that estate agents have been using easy access to the tramline elsewhere as an aid to selling property.

John Gilchrist: Yes, but I am not concerned about owners whose properties are near the tramline as much as I am about those whose properties immediately abut the proposed route. Those properties will be sandwiched between a public road to the front and the tramway along their rear boundary. That is never a good selling point.

Malcolm Thomson: But do you accept that for every pessimistic solicitor who advises a client, there might be an optimistic estate agent who points in the opposite direction?

John Gilchrist: Yes, indeed.

Malcolm Thomson: Thank you Mr Gilchrist. Thank you, madam convener.

The Convener: Thank you, Mr Thomson. Do members have any questions?

Phil Gallie: I will follow up the points about short and longer-term impacts on housing that Mr McIntosh made.

Mr Gilchrist, you have said this morning that you have some concerns about the loss of value to properties during a long construction period of three or four years. You made the point that some people will be obliged to sell their property during that period. From what you heard from Mr McIntosh, did you make the judgment that there

could be some loss of value during that period, albeit that he said that there might be advantages in the longer term?

John Gilchrist: I did not hear Mr McIntosh's evidence. I have read some of his evidence, but that is all. We probably would agree with that; it seems reasonable.

Phil Gallie: I am not quite clear, after Mr Thomson's questions, whether the discretionary element would affect only those whose land is being purchased compulsorily, rather than people whose land abuts the tramline. Will you clarify that?

John Gilchrist: If land is being acquired compulsorily there is clearly no need for a discretionary element—the land is going to be taken anyway. The discretionary purchase would apply only in cases in which no land or property was being acquired but, nevertheless, it could be demonstrated that the value of the land or property had been seriously affected by either the construction or the use of the works.

Phil Gallie: You have acknowledged that it would be difficult to assess longer-term changes in value. Given your experience, do you think that it would be relatively easy to assess the impact of construction on sales in the short term? You have said that there is already a delay in the sale of houses. Would you be able to evaluate that, particularly with information from estate agents and solicitors on the purchase prices of various properties?

John Gilchrist: To carry out any such evaluation we would have to consider prices that have been achieved and prices that were blighted. The probability is that there would be very few sales of affected properties—most sales would just fall through because people would lose interest for the time being. What matters to people is not so much experts' opinions as their own perception of what the damage is likely to be.

Phil Gallie: So individuals would either accept that their house would be on the market for a long time or, if they had to move, would purchase elsewhere and take out a bridging loan to cover the cost, in which case there could be substantial loss.

John Gilchrist: Yes.

The Convener: I want to follow up the general view that you are putting forward that when property has not been acquired and there is a loss of value—assuming that that can be proven—compensation should be paid to owners. Would that give the owners a set of rights over and above any other scheme that you are aware of?

John Gilchrist: Sorry, I do not understand.

The Convener: Let us say that I am a householder. My property is not being acquired, but I think that because I need to put my house on the market for an extra month the loss of value is entirely down to the tram scheme. Assuming that that can be proven, is what you are suggesting by way of compensation something over and above any other scheme? Is it an enhanced set of rights for owners that you have not seen elsewhere? Is what you are proposing brand new? Can you cite a scheme that you know of where that happens?

John Gilchrist: This happened a long time ago, but I am aware that, when the new runway was constructed at Edinburgh airport, the British Airports Authority bought up, by agreement, 10 or 12 properties that were going to be seriously affected by the use of the new runway. Such schemes may well happen. If an authority wants to buy a property, one never quite knows why.

The Convener: But in this situation, unlike in the example that you gave of the airport, property is not being acquired. You are arguing that compensation should be paid for loss of value, because the properties are in some way affected, but at no stage is property being acquired. I am trying to establish, for my information, whether that is on a par with other schemes that you are aware of, or whether it is new and beyond the scope of existing legislation.

John Gilchrist: That has been the case since 1973.

11:15

The Convener: My understanding of the 1973 act—I acknowledge that I am no expert and I will need to consider the matter carefully—is that it applies only during construction and when land is acquired, but it does not apply to land that is not acquired.

John Gilchrist: No, I do not think that that is the case.

Phil Gallie: I have a question to put to Mr Gilchrist, given his professional experience. To a degree, this question counters my earlier line of questioning. If your house abutted an open field that was to be developed for a new housing project, do you accept that, under the law of the land, compensation would not be considered?

John Gilchrist: Yes.

Phil Gallie: In that instance, the land adjacent to your property would not be taken into account in the valuation of the property.

John Gilchrist: One would just have to endure the other development.

The Convener: Committee members have no other questions. Does Mr Scrimgeour have any questions?

Graham Scrimgeour: I have a few short questions to try to clarify some of the details.

We have talked about how compensation under the 1973 act for properties that are not acquired would be valued one year after the tram scheme started to operate, given the need to allow some settling down and so on. What is your reason for wanting to bring forward that valuation date?

John Gilchrist: As I said, the 1973 act makes an artificial distinction between loss during the construction period and loss when the works are in use. An owner who is affected by such works incurs simply a loss, so he would make no such distinction.

Graham Scrimgeour: Do you seek to increase the amount of compensation as a result of your proposed change?

John Gilchrist: No. We do not seek 120 per cent of what we should get. Instead of the 80 per cent compensation that is being offered at the moment, we seek 100 per cent.

Graham Scrimgeour: What impact would your proposed change have on someone who was forced to sell their property before the tram was completed and became operational?

John Gilchrist: There would be no impact at all. If such a person chose to sell, that would be their business but they would lose their right to claim.

Graham Scrimgeour: If the bill were to be amended in line with your suggestion, would that enable compensation to be paid?

John Gilchrist: We suggest only that, for land that is not taken but which is seriously affected by the tram scheme, the valuation date should be moved to the date of the start of the works. We ask for no more than that. If someone sold their property before that date, they would not be able to claim compensation.

Graham Scrimgeour: What is the difference between the provisions for the tram and the provisions in the Roads (Scotland) Act 1984, to which you referred?

John Gilchrist: The 1984 act makes provision for purchase by agreement of land for which it can be proved that the land is “seriously affected”—those are the operative words—either by the construction or by use of the works.

Graham Scrimgeour: Further to Jackie Baillie’s question on whether other similar schemes exist, do you seek simply to extend what is available under the 1984 act?

John Gilchrist: Yes, if that is possible.

Graham Scrimgeour: So similar schemes are in existence.

John Gilchrist: Yes, but we would like such agreements to be made mandatory. Such a change would not increase the burden on the promoter. As I explained, the difference between the buying and selling price would be made simpler for the promoter, who would simply pay the compensation that would require to be paid anyway under part I of the 1973 act.

Graham Scrimgeour: In what way would residents benefit from changing the bill to bring it into line with the provisions of the 1984 act?

John Gilchrist: They would have peace of mind.

Graham Scrimgeour: Why is that?

John Gilchrist: They would know that they could sell.

Graham Scrimgeour: Further to Mr Thomson's question, have group 34 objectors changed what they have been asking for since the start of the bill process? Have we made any change to the amendments that we have requested since we submitted our statement in May? In our evidence, have we made any change to what we have asked for?

John Gilchrist: No, I am not aware that that has happened.

Graham Scrimgeour: We have discussed the possibility that houses adjacent to the tramline will not sell. How are houses selling in other streets that are not adjacent to the tramline?

John Gilchrist: As far as I know, they are selling normally. In other words, it is taking two or three months to market a house and achieve a sale.

Graham Scrimgeour: We have argued about whether values will fall. However, is it relevant to try to predict the future in that way? Presumably, if values do not fall, compensation will not be given; if they fall, we will ask for compensation. As far as the bill is concerned, will predicting future house values matter at all?

John Gilchrist: I do not think that valuers should be in the business of predicting anything. They must take the market as they find it.

Graham Scrimgeour: So, in effect, we are asking for a provision that protects homeowners and gives them peace of mind if property values fall.

John Gilchrist: Yes.

Graham Scrimgeour: Mr Thomson referred to the question whether solicitors would draw their clients' attention to the tram as a negative point. Surely in any proposed property purchase the tram will show up in a search as a factor for consideration by a potential purchaser. Do you think that the fact that the area will be a construction site for several years will have an effect on buyers?

John Gilchrist: Of course.

Graham Scrimgeour: Thank you, Mr Gilchrist. Those are all my questions.

The Convener: Thank you very much, Mr Scrimgeour.

We have a question for the promoter that can be answered not quite at its leisure, but not right now. I understand that, if incorporated, section 6 of the Railways Clauses Consolidation (Scotland) Act 1845—you can tell that I stayed up late last night to read this material—would enable compensation to be paid during the construction phase. Will the promoter lodge an amendment to that effect? A response in due course would be much appreciated.

Malcolm Thomson: Thank you, convener.

The Convener: I thank Mr Gilchrist for his evidence this morning. I suspend the meeting for a short time to allow Mr Scrimgeour to swap places at the table and Alex Cuthbert to come to the table for the next block of evidence.

11:23

Meeting suspended.

11:24

On resuming—

The Convener: The next witness is Graham Scrimgeour, who will address his rebuttal witness statement on compensation, the European convention on human rights and property values for group 34. As there is no questioner, Mr Scrimgeour can make opening and closing statements.

Graham Scrimgeour: Do you want me to cover the three issues together?

The Convener: Yes, please.

Graham Scrimgeour: I begin by following on briefly from John Gilchrist's evidence. We are still concerned about the compensation provisions, because they mean that residents will suffer disruption and loss of value to their properties and will have to pursue compensation claims. Residents will feel a particular impact if they need to sell before the tram becomes operational, which

might be in 2010 or 2011. I am advised that, in any one year, one house in 10 might turn over, which means that 40 to 50 per cent of houses in the area might be up for sale during that blighted period. We would like the bill to be amended in order to provide for an option of compensation during that blighted period if circumstances required a sale. That is what we have to say in relation to compensation.

In relation to the European convention on human rights, I would like to pick up on some points that were raised in the cross-examination of the promoter's witness. That discussion confirmed that in order to allow an impact on the free enjoyment of possessions, the scheme has to be demonstrated to be in the public interest. In relation to article 8 of the convention, in order to allow a noise impact that may interfere with sleep, it would be necessary to demonstrate that the development is in the national economic interest. We are not convinced that the point about either public interest or national benefit has been demonstrated.

That cross-relates to quite a lot of issues that we will discuss next Monday. Currently, it is proposed that the tram will operate between 6 o'clock or 7 o'clock in the morning and midnight. However, the bill does not restrict those hours of operation, which is an issue for next week. If the tram were to operate through the night—which it could do under the bill as currently drafted—that would be more likely to lead to interference during a quieter part of the night when most people are asleep. Such night running might be more likely to trigger a European convention on human rights issue.

Given those issues, we ask, principally, that the tram be rerouted. You have heard that before. We ask that the hours of operation be restricted to those that are proposed, so that if the bill is enacted it cannot empower the trams to be run through the night. Neither the impact of such running nor the effect on human rights has been assessed. We have already rehearsed the arguments for speed restrictions in the early evening to reduce noise impact.

On property prices, we rebutted much of what Mr McIntosh said and had a very robust discussion with him in cross-examination, particularly in relation to the points that he made about regeneration effects, because those are not relevant to the area. The information that was given about Croydon, Nottingham and Dublin was selective, subject to bias, and, in general, the opinion of estate agents rather than evidence from a land register or other verifiable, demonstrable facts—and "evidence" was one of Mr McIntosh's key words. The numbers that Mr McIntosh presented on Dublin had, we felt, been misrepresented to exaggerate the effects that he

claimed. They could, perhaps, have been presented with less exaggeration.

I am concerned about the periods that Mr McIntosh used to present changes in value for different tram schemes. He compared a price during the construction period but immediately before operation—a time at which it might be felt that prices would be considerably depressed by construction—with a price after the tram had opened. The price changes that he talked about could simply have been a result of partial recovery from a blighted price during construction. That did not comfort us about the impact of the tram.

That reinforces our concern about compensation, which we have discussed this morning, and the need for amendments, for which we have asked. That is everything.

The Convener: Thank you, Mr Scrimgeour. Mr Thomson?

Malcolm Thomson: Precisely what bit of Mr McIntosh's evidence do you say was exaggerated?

Graham Scrimgeour: In his statement, Mr McIntosh considered percentage changes in values in Dublin. He suggested, say, a general 170 per cent increase but attributed a 180 per cent increase in some areas to the tram. We raised that in cross-examination. I cannot remember the exact figures, but that is the broad idea. He claimed that there had been a 10 per cent improvement in some areas as a result of the tram scheme. However, because the market as a whole had moved so much, the actual benefit of the scheme was less than 10 per cent. The percentage should have been recalculated.

Malcolm Thomson: Is it a difference of opinion between your approach and his?

Graham Scrimgeour: In my experience of presenting financial figures, that is what I would generally expect to be done.

Malcolm Thomson: Thank you, Mr Scrimgeour.

The Convener: Thank you, Mr Thomson. Do committee members have any questions for the witness?

11:30

Helen Eadie (Dunfermline East) (Lab): I am interested in the view at which you have arrived concerning the valuation of properties. On what research have you based your views?

Graham Scrimgeour: I do not fully understand the question. Are you asking what we think may happen?

Helen Eadie: In the context of looking at both the Croydon and the Dublin systems, you have

asserted this morning that the price changes there may have been attributable to other factors. To what extent have you researched the evidence for your statement?

Graham Scrimgeour: The questioning this morning concerns the rebuttals. I have rebutted what Mr McIntosh said. I challenged the detail of his evidence on Croydon and Dublin. His statement talks about depressed areas, regeneration effects and so on. Obviously, the tram affects different parts of Edinburgh. However, I do not see that there is a need for regeneration effects in the area that we are discussing. I made the point in response to what Mr McIntosh said, in order to challenge it, rather than based on research that I have carried out into the Croydon and Dublin systems.

Helen Eadie: All sorts of technology is available nowadays to enable people to see the history of house sales. It is possible to see a pattern for house prices in any street in the United Kingdom. Have you chosen to use any of the technology that is available? Have you examined examples of places across the country where tramlines or railway lines have been developed, to get information on the way in which house prices have risen, fallen or otherwise been affected?

Graham Scrimgeour: I have not tried to do research into the situation in Croydon or Nottingham. It would take considerable effort to do that properly and one would need to have a map of the area concerned. I do not have the time to examine the issue in detail. Earlier we said that we do not know what will happen to prices in Edinburgh as a result of the tramline. If prices are maintained at the same level relative to other properties or enhanced, we will be pleased. However, we are seeking to ensure that there is protection if they are not maintained or enhanced. We do not know how prices will react.

Helen Eadie: If I wanted to buy a house in Palmerston Place, I would go to one of the national websites and type in "Palmerston Place". That would give me the history of property prices in the street and allow me to establish a pattern. I would be able to see whether there have been issues that have affected prices and whether there has been a 5 per cent increase, a 30 per cent increase or a depreciation in the value of the properties. Has a comparable exercise been done in any of the other areas that we are discussing? Nowadays it is simple to do that.

Graham Scrimgeour: I have looked at a couple of snapshots through the Registers of Scotland website, which provides the definitive information. It is possible to get information on a whole area in one search. Although we can make an argument based on the sale of individual houses, at this stage there have not been enough sales for us to

demonstrate the existence of a trend. I have looked at the area to which group 34 refers, but at this stage it is not possible for us to draw conclusions.

The Convener: As there are no further questions from committee members, Mr Scrimgeour has the opportunity to make a closing statement, if he wishes.

Graham Scrimgeour: I do not wish to do so.

The Convener: I thank Mr Scrimgeour for giving evidence.

The next witness is Stephen Craig, who has been waiting patiently to address the issue of loss of value for group 35 and rebuttal issues on compensation. The questioner for group 35 is Alex Cuthbert. I recollect that previously we could not hear Mr Cuthbert clearly, so I ask him to lean towards his microphone.

Alex Cuthbert: I invite Mr Craig to give us a brief resumé of who he is and what his expertise is.

Stephen Craig (Hardies): I am a chartered surveyor; I am a partner in an Edinburgh firm of chartered surveyors. I carry out property evaluations in the Edinburgh area and have worked in Edinburgh for the past 20 years.

Alex Cuthbert: In your opinion, will there be a loss of value for properties in the area along the line, by which I mean those properties that immediately abut the line and are closest to it?

Stephen Craig: Yes. If a property is affected by excessive noise or vibration from the proposed tramline, that could have an impact on its value. The properties in question are located in a quiet residential area, so the introduction of a potential nuisance such as a new tramline could reduce their market value, depending on the level of noise or vibration that is produced.

Alex Cuthbert: Can you give us some examples of comparable situations?

Stephen Craig: My experience of the property market in the Edinburgh area indicates that residential properties that front on to a busy traffic route have a lower market value than similar properties in the streets immediately behind, where the level of noise is not as high. Examples of that lie along Queensferry Road in Edinburgh, which is the main road that links the city centre to the Forth bridge. The market value of the bungalows along that stretch is approximately 10 to 15 per cent less than that of similar bungalows in the streets around Blackhall. There are similar examples around St John's Road, Ferry Road and other main arterial routes that lead into and out of the city.

Alex Cuthbert: If I am correct, your point is that properties that immediately abut the source of the noise have a lower value. Once one steps out with that immediate area, even though one is in reasonable proximity to the source of the noise, the price reverts to what I would call normality. Is that what you are saying?

Stephen Craig: Yes. In my experience, those properties that front on to or abut a noise source such as a main road have a lower value than those in quieter streets nearby.

Alex Cuthbert: In his rebuttal to the witness statement by our expert witness on transport vibration, Dr Andrew Irwin, Mr Rintoul stated:

"it is too early to say whether vibration will have any impact on property values".

Will you please give us your observations on that statement?

Stephen Craig: The impact on a property's value would obviously be dependent on the property's proximity to the source of the vibration and on the extent of the vibration. In an earlier part of his rebuttal, under "Agreed issues", Mr Rintoul said:

"It is accepted that vibration can have an impact on property values."

The truth of that statement will be tested when the system is operational.

Alex Cuthbert: Will you advise us on the ways in which detectable vibration—I understand that there is a difference between detectable vibration and undetectable vibration—and tramline noise will affect the occupants or owners of the nearby houses after completion of the scheme? Again, I stress that that question relates to houses that are immediately adjacent to, or which abut, the tramline.

Stephen Craig: The houses in question are located in an area the high value of which reflects the quality of the buildings. They occupy a quiet setting close to the city centre—that is why people buy properties in such areas. However, if the benefits of living in such a location would be compromised by excessive vibration or noise, that would be a negative factor. The value of such property is likely to be reduced in comparison with the value of similar property elsewhere whose owners did not experience such nuisance.

Alex Cuthbert: Are you saying that the value of houses whose owners will experience noise and vibration will be affected if the tramline is built along the alignment that is proposed?

Stephen Craig: Yes. It is my view that noise and vibration are factors that could affect property values in the future, depending on the levels of noise and vibration that were experienced.

Alex Cuthbert: In which way will the value of such property be affected?

Stephen Craig: Downwards.

Alex Cuthbert: You have given us a fair rundown on loss of value. Are the current arrangements for compensation that arise from such loss adequate?

Stephen Craig: They are inadequate; such loss is not fully covered.

Alex Cuthbert: In what respect do you believe it is not fully covered?

Stephen Craig: In referring to our previous witness statements, I suggest that proposed amendments A, B and D be removed. Their intention is already covered by existing compensation provisions. Amendment C is required to allow full and proper compensation procedures in the event that a property is affected and the owner cannot, as a result of the present scheme, sell it except at a substantially reduced price.

There was a minor omission in amendment C as presented, which requires additional qualification and which Mr Rintoul noted in his written statement. The qualification is that the property cannot be sold except at a substantially reduced price. The existing statutory blight provisions are mentioned by the promoter in Mr Rintoul's rebuttal of August 2005. Basically, an affected owner

"who has tried to sell the property but has been unable to sell it except at considerably less than the open market value ... can require the Acquiring Authority to purchase the property."

As Mr Rintoul's rebuttal indicates, that provision is not currently available if no land or property is being acquired.

Alex Cuthbert: So there is an anomaly.

Stephen Craig: Yes.

Alex Cuthbert: That concludes my questions on the matter.

The Convener: Thank you very much, Mr Cuthbert.

Malcolm Thomson: Mr Craig, I see from your witness statement that below the heading "Group 35", it says

"Roseburn to Ravelston Association of Proprietors".

Is that a reference to group 35 or is there a separate association?

Stephen Craig: That is a reference to group 35.

Malcolm Thomson: Do most houses that front on to Queensferry Road have off-street parking?

Stephen Craig: Some do and some do not.

Malcolm Thomson: Is getting in and out of their off-street parking and parking on what is a very busy road a major source of difficulty for residents?

Stephen Craig: It could be a factor.

Malcolm Thomson: Do they also have to face fairly heavy traffic throughout the night?

Stephen Craig: Yes.

Malcolm Thomson: Do they have to face particularly heavy traffic during the morning and afternoon peaks, which are the commuting times?

Stephen Craig: Yes.

Malcolm Thomson: Do they have to face dirt and fumes from their proximity to the road?

Stephen Craig: I imagine that they do.

Malcolm Thomson: Do all those matters affect the value of properties—in comparison with a similar property away from the Queensferry Road—as you suggested?

Stephen Craig: Those matters are factors in people's choice of location; if a person has the choice between purchasing a property that fronts on to a busy route and a property elsewhere, he or she is more likely to buy the one elsewhere, albeit at a slightly higher price.

Malcolm Thomson: Therefore, the factors that I mentioned affect properties' value.

Stephen Craig: Yes.

Malcolm Thomson: In paragraph 3.7 of Mr Rintoul's rebuttal of your evidence statement, he addresses your amendment C. Does that proposed amendment seek to substantially enhance normal statutory blight provisions?

Stephen Craig: Yes.

Malcolm Thomson: Thank you very much, Mr Craig.

11:45

Rob Gibson (Highlands and Islands) (SNP): Mr Craig, you discussed the phrase "a substantially reduced price" on a number of occasions, prior to which you talked about the potential that nuisance might reduce the prices of houses by about 10 per cent in Blackhall. How do you reconcile the word "substantially" with a 10 per cent reduction?

Stephen Craig: I think I talked about 10 per cent or 15 per cent. I consider such a reduction to be a substantial amount. Given the price range that is involved, that would represent £35,000 or £40,000.

Rob Gibson: I understand that that is a considerable amount of money, but I wonder

whether the concept of "substantial" is something that you might expect to be questioned, given fluctuations in the market.

Stephen Craig: My experience of property markets is that properties that front on to busy traffic routes have lower values than those that are in quieter settings close by.

Helen Eadie: We always say that, if you want to get a particular view in support of your argument, you should hire one Queen's counsel and, if you want an opposing view, you should hire a different QC, because each will bring different opinions. I make the same point about surveyors.

It strikes me that prices, such as for properties along the Leith waterfront, are booming in Edinburgh because one of their selling points is their access to good transport links. One man's trash is another man's treasure. To mention good communication links and easy access to tramlines is a good way of selling a property. Do you agree that the value of a property that has a tramline at its back door might rise by 10 per cent?

Stephen Craig: The value would not increase if the tramline was immediately outside the property's back door. Obviously, it might be beneficial to the values of some properties to have a tramline in the area. However, the values of properties that abut tramlines are likely to be adversely affected.

The Convener: Would it be fair to say that, overall, there is a slowing down in the housing market?

Stephen Craig: Yes.

The Convener: Therefore, some of the anecdotal suggestions that it might take six months to sell a property where, previously, it took two months could fit into that context.

Stephen Craig: Absolutely.

The Convener: How can you say how much of any such difficulty relates to the tramline and how much relates to something else? That is the key question for me.

Stephen Craig: You would have to consider the market as a whole. If the market is slowing down and the tramline goes ahead, two factors will come into play. You would have to iron out the situation.

The Convener: How?

Stephen Craig: You would have to base your advice on your experience and your knowledge.

The Convener: Okay.

As there are no further questions from committee members, Mr Cuthbert may ask follow-up questions.

Alex Cuthbert: Mr Craig, could you say a few more words about the differentiation between properties that immediately abut the line and those that are not so defined?

The Convener: The purpose of this part of the meeting is not to go on another fishing expedition but to respond to issues that have been raised. We have heard quite clearly Mr Craig's view on that issue.

Alex Cuthbert: In that case, I have no further questions.

The Convener: I thank Mr Craig for being patient and for giving evidence.

The next witness is Odell Milne. She will address a number of issues for group 43, starting with issues relating to the European convention on human rights. As Mrs Milne does not have a questioner, she may make a brief opening statement and, following cross-examination by the promoter, she may make a brief closing statement.

I suspend the meeting while people take their seats.

11:49

Meeting suspended.

11:50

On resuming—

The Convener: If Mrs Milne is ready, I invite her to make her brief opening remarks.

Mrs Milne: This is for human rights first, yes?

The Convener: ECHR first. Do not worry—I will take you through it.

Mrs Milne: The promoter's witness Mr Walker agreed the following: that responsibility for determining whether the bill is compatible with human rights lies with Parliament; that any law that is made by the Scottish Parliament is not law if it is incompatible with rights under the ECHR; that our noise expert, Mr Mackenzie has provided evidence to the committee that the scheme would cause noise, which would result in sleep disturbance; that noise that results in sleep disturbance can amount to interference with an individual's rights under article 8 of the ECHR; and that, if Parliament is satisfied that a human right has been breached—that is, if there has been a noise disturbance sufficient to give rise to the article 8 right—it must be satisfied that the interference is necessary and in the economic interest of the country.

Group 43 has led a considerable amount of evidence to the effect that the promoter has not proved that use of the Roseburn corridor, to the

rear of Wester Coates Terrace, is necessary. In order to prove necessity to the committee's satisfaction, the promoter needs to show that it has considered thoroughly at least one alternative route. I ask the committee to consider the promoter's evidence with regard to consideration of alternative routes and the evidence that I and others in my group have given, and to conclude that there is no evidence that there has been thorough consideration of an alternative route for that part of the proposed line between the Holiday Inn at Craighleith and Roseburn.

I would like the committee to consider the evidence that has been put to it by the promoter on the economic case for the scheme, and the evidence that has been put forward by, among others, Mr Raynal of group 43. I would like the committee to consider the business case carefully to see whether the evidence that has been provided by the promoter is sufficient to enable the committee to have a reasonable belief that the economic case stacks up and that the proposal is in the economic interests of the country.

I would like the committee to consider the evidence that our expert witness, Mr Mackenzie, has given, and our cross-examination of Mr Mitchell. On the basis of that evidence, I urge the committee to consider that there is a real risk that the proposals will result in sleep disturbance for residents of Wester Coates Terrace and other properties along the corridor. In my view, if the committee considers that there is a real risk of sleep disturbance, article 8 of the ECHR is brought into play. If that right is brought into play, the committee must remember that the promoter's own human rights witness agreed that any interference could be justified only if it was necessary.

The committee will remember that there was some discussion of the case *Hatton v United Kingdom*, which is cited by the promoter as evidence that noise disturbance that is sufficient to engage article 8 can be justified in the economic interests of the country. However, I remind the committee that the *Hatton* case concerned Heathrow airport—an airport of national strategic importance—and that there was no alternative to aeroplanes flying over people's homes. The human rights impact in this case could be avoided if an on-road route were selected by the promoter.

If no alternative route has been considered, the promoter cannot show that the interference is necessary. Necessity can be demonstrated only by reference to appropriate comparators. The promoter should, at the very least, have shown that the interference was the minimum necessary to allow the objectives to be achieved. I refer the committee to a judgment of the chamber of the European Court of Human Rights in the case of *Hatton v United Kingdom*. It said:

"States are required to minimise, as far as possible, the interference with Art.8 rights, by trying to find alternative solutions and by generally seeking to achieve their aims in the least onerous way as regards human rights. In order to do that, a proper and complete investigation and study, with the aim of finding the best possible solution which would, in reality, strike the right balance, should precede the relevant project."

I remind the committee that the promoter has suggested that the tram could get to Haymarket by some other route, and that cost is one of the reasons why an alternative route may not be attractive. However, the promoter has not shown evidence that there has been consideration of the cost of alternative routes for the section between the hotel at Craighleith and Roseburn. In particular, it has shown no evidence of thorough consideration of the route through Murrayfield, crossing the Water of Leith at Roseburn, which would lead directly to Haymarket station and thus provide for a transport hub. The promoter also indicated that use of the Roseburn corridor was justified by run time, but the promoter's witness, Mr Harries, agreed that the speed that could safely be achieved in the Roseburn corridor could not be determined at present. He indicated that the speed would be determined through a test of the safe speed; thus the justification of run time is not proven.

Compensation—in an ECHR context—is a secondary issue. If interference with article 8 rights cannot be justified in the first place as being in the economic interests of the country, the availability of compensation is irrelevant. However, the courts, in interpreting human rights legislation, have considered the availability of compensation in determining whether the interference can be justified. I remind the committee that the district valuer who gave evidence on behalf of the promoter confirmed that there will be no compensation at all in respect of sleep disturbance; in other words, there is no compensation available for the operational impact of the tram. The only compensation that would be available is if the noise results in loss of value. Noise disturbance, which might wake up residents along the corridor every night, may not result in loss of value of their homes but may have a very real impact, including the possibility of health problems. There is no provision in the Land Compensation (Scotland) Act 1973, or in any other legislation, for compensation for such disturbance.

Mr Thomson's re-examination of the promoter's witness, Mr Walker, referred to the Hatton case and suggested that that case was different because there was a known existing noise level. The existence of a known noise level may have made the decision easier for the court in that case. However, the committee has heard much evidence about the likely noise impact of the tram. There is a real risk that that impact will be

sufficient to cause sleep disturbance. I urge the committee to consider the evidence of Mr Mackenzie and on that basis to conclude that there is a real risk of sleep disturbance. I hope that a reasonable committee would not take the view that because it is not absolutely known that there will be sleep disturbance, it will therefore take the risk.

I turn to what I would like the committee to do if it agrees with my evidence. First, I would like the committee to require that the promoter consider alternative routes to the Roseburn corridor, to ensure that there is no interference with article 8 rights, or at the very least to ensure that any interference is at the minimum that would be necessary to allow the promoter's objectives to be achieved. Secondly, if the committee decides that use of the Roseburn corridor is to be allowed, I would ask the committee first to ensure that the promoter and, in due course, the operator of the tram, be legally bound to ensure that noise mitigation is installed and maintained, in order to ensure that noise levels do not result in sleep disturbance and, secondly, to follow the recommendations of our expert, Mr Mackenzie, with regard to appropriate levels. Also, if appropriate, I would like the committee to ensure that the promoter and, in due course, the operator, be legally bound to impose speed and hours restrictions so that the residents along the corridor can sleep through the night.

Malcolm Thomson: Mrs Milne, in your cross-examination of Mr Angus Walker, you asked him:

"How can you prove that something is necessary if you have not tried anything else?"

You were referring to the alternative route. You were thereafter a little more precise in what you put to him. You asked:

"Do you agree that, given that the promoter has not provided any evidence that it considered an alternative route for the tramline between the Holiday Inn hotel at Craighleith and Roseburn, it follows that the promoter has not shown that the interference is necessary?"—[*Official Report, Edinburgh Tram (Line One) Bill Committee*, 7 November 2005; c 1441.]

Do you remember that?

Mrs Milne: Yes.

Malcolm Thomson: Has the promoter considered alternative routes between the Holiday Inn at Craighleith and Roseburn? I know from your earlier evidence on route selection that you are familiar with the work package 1 report, which considered and appraised various links. The promoter proceeded to join together those links into a loop, having decided from the original "Feasibility Study for a North Edinburgh Rapid Transit Solution" that a loop was the way to go.

The Roseburn corridor route between Roseburn and the hotel at Craigleith was one of those links.

12:00

Mrs Milne: Sorry, it was one of the links—

Malcolm Thomson: That was looked at in work package 1.

Mrs Milne: Yes.

Malcolm Thomson: Also, there is a slight variation of that route, going from new traffic lights at Roseburn Street. I will read to you the description:

“On leaving the public highway the alignment then grades up some 7m and turns sharply through a tight horizontal bend into the former Roseburn railway goods yard to join the disused railway corridor just south of the Coltbridge Viaduct.”

Mrs Milne: Sorry, I do not know where you are talking about by reference to those points. Does anybody have a map?

Malcolm Thomson: Can we try the description again? Imagine Roseburn Terrace near the traffic lights at Russell Road.

Mrs Milne: I do not know which traffic lights at Russell Road. Are they the ones that take you to Murrayfield stadium?

Malcolm Thomson: If you come out of Wester Coates Terrace and turn right, they are the first traffic lights that you come to.

Mrs Milne: Right. They take you to Murrayfield stadium.

Malcolm Thomson: Yes. I think you now have the map showing the various routes that have been proposed by various groups.

Mrs Milne: I have a route with a pink line and a route with a red dotted line and a squiggly red line.

Malcolm Thomson: The pink one will do.

Mrs Milne: It does not go down Russell Road.

The Convener: You probably both have different coloured maps, but they are of the same area. The maps are just to assist you in identifying the streets. The pink or red lines, dotted or otherwise, have no significance.

Malcolm Thomson: I am sorry, Mrs Milne. I thought that you had just been given a copy of the same map as I have, but it does not matter.

At the moment, it is proposed that the tramline should cross Roseburn Terrace just to the west of the traffic lights on the corner of Russell Road and Roseburn Terrace.

Mrs Milne: Just to the east of those traffic lights.

Malcolm Thomson: Sorry, just to the east, on the Roseburn bridge.

Mrs Milne: Yes.

Malcolm Thomson: Between that bridge and the traffic lights, the proposal described in work package 1 is to introduce a set of traffic lights and a route up a steep slope to what was a goods yard near to the station that used to be at Roseburn.

Mrs Milne: So coming from Russell Road, up on to the Coltbridge viaduct and along what is to the rear of Wester Coates Terrace.

Malcolm Thomson: No. If you look at the map I will read it again. At Roseburn Terrace the alignment leaves the public highway via a new signal junction in close proximity to the busy Roseburn Terrace/Roseburn Street signal junction. Those are the traffic lights that we have just been talking about. The description reads:

“On leaving the public highway the alignment then grades up some 7m and turns sharply through a tight horizontal bend into the former Roseburn railway goods yard to join the disused railway corridor”—

Mrs Milne: So it turns left from Roseburn and up on to the existing cycleway and walkway.

Malcolm Thomson: Yes. It joins the cycleway and walkway just south of the Coltbridge viaduct.

Mrs Milne: Okay.

Malcolm Thomson: In other words, it would be further away from Wester Coates Terrace for at least the first part of its route.

Mrs Milne: Do you mean that it would not follow the cycleway and walkway, but would go up through what is presently the disused land?

Malcolm Thomson: Yes. In other words, it would have less impact on Wester Coates Terrace than the disused railway route.

Mrs Milne: It would have less impact on the southern portion of Wester Coates Terrace.

Malcolm Thomson: Indeed. All I am putting to you is whether that is not another alternative route between Roseburn and the hotel at Craigleith.

Mrs Milne: It is another tiny bit of a route between the hotel at Craigleith and Wester Coates. It is not a complete alternative, because it would not make any difference to the northern section of Wester Coates Terrace.

Malcolm Thomson: Are you saying that the promoter, in looking for an alternative route, should have found alternative routes between those two points, namely the hotel at Craigleith and Roseburn Terrace, or is it legitimate to look at routes such as Murrayfield Road to the west or the Belford bridge to the east?

Mrs Milne: In my view, it was for the promoter to find an appropriate route to reach its objectives, which I understand are Granton, Ocean Terminal and Haymarket, pretty well in a circle, and in doing so to choose the route that had the least human rights impact possible.

Malcolm Thomson: Would the route at Belford bridge have met what you consider to be the correct criteria, which the promoter should have been considering, namely that the route should go from Granton to Haymarket?

Mrs Milne: Potentially, yes, but since, as I understand it, no consideration has been given to the human rights impact of the Belford Road location, I could not say that it would definitely have a lesser human rights impact than the route behind Wester Coates Terrace, although it is my uneducated view that it probably would.

Malcolm Thomson: Similarly, it is legitimate to look at the Murrayfield Road—

Mrs Milne: To look at it as a possibility—as reaching the relevant destinations—and to consider whether the impact that that route would have is worse or better than the impact on the properties along the Roseburn corridor.

Malcolm Thomson: Do you accept that, in terms of work package 1, the component parts—the Belford bridge option, the detailed diversion that we have just been discussing from Roseburn through the old goods yard, and the Murrayfield Road links—were all appraised as part of the exercise to see which bits might fit together into a loop?

Mrs Milne: Your own witness used the phrase “looked at”. They were looked at but they were not thoroughly appraised. There was no consideration of human rights impacts and no environmental statement was done, so there was no thorough consideration of those alternative routes to choose the one that had the least impact.

Malcolm Thomson: At the moment, Mrs Milne, I am simply asking you whether you accept that those links and those routes were considered in the way that they were, as is apparent to anyone who cares to read work package 1.

Mrs Milne: They were looked at; they were not considered. I do not agree with you that they were considered. Your own witness used the phrase “looked at”, not “considered”. They were not thoroughly considered in order to reach a decision. They were dropped at a very early stage without any consideration of the different impacts, environmental issues and human rights issues.

Malcolm Thomson: Can we agree that, in work package 1, the various links were assessed in relation to technical matters, the economy, transport objectives and the environment.

Mrs Milne: On environment, I do not agree, because, as I understand it, there was only a walk-along look at it. Noise impacts were not judged or measured.

Malcolm Thomson: I am not suggesting for a moment that an environmental assessment was carried out in respect of each link, but do you accept what you read in work package 1?

Mrs Milne: I accept what I read in work package 1, but I do not consider that there was thorough consideration of the routes to enable determination of the chosen route, given that that route was to have the impacts that it has.

Malcolm Thomson: Ultimately, that is a matter for the committee and then for the Parliament.

Mrs Milne: Absolutely.

Malcolm Thomson: You referred to the case of *Andrews v Reading Borough Council*, as well as to the *Hatton* case, in your witness statement. Do you accept that, in the *Andrews* case, which involved a traffic regulation order and resultant increased traffic flows on a busy road, there had been no environmental statement and no baseline measurement of the pre-existing noise level?

Mrs Milne: I think that various consultations had been carried out. The local authority in that case took the view that the improved transport on the route chosen was appropriate, and I understand that it went ahead without carrying out noise measurements.

Malcolm Thomson: Or there being any environmental statement.

Mrs Milne: I do not think that there was an environmental statement—at least not in the case that I read.

Malcolm Thomson: Are you aware of any case in which article 8 of the ECHR has been used to stop a scheme going ahead, rather than in relation to compensation after the scheme was in place?

Mrs Milne: Do you mean apart from the *Andrews* case? There was a compensation case after that—there was found to be a breach and compensation was awarded.

Malcolm Thomson: But the question was, are you aware of any case—

Mrs Milne: No, I am not aware of any case in which article 8 has been used to stop a scheme going ahead.

Malcolm Thomson: Thank you, Mrs Milne.

The Convener: There are no questions from committee members. Does Mrs Milne wish to make brief closing remarks?

Mrs Milne: I reiterate the fact that although there has been no previous case in which a scheme has been stopped using article 8, that does not necessarily mean that the scheme should not be stopped this time, when there has been no thorough consideration of the human rights impact when selecting the route and where a perfectly valid alternative route exists.

The fact that there is no precedent is not important because there is no exact comparable. In the Hatton case, there were flights over people's houses and in the Andrews case, the road already existed. We have the opportunity to avoid the impact; they did not because they already had the road and the airport.

The Convener: Thank you, Mrs Milne. I was to have moved you on to title conditions, but given the earlier exchange with the promoter's witness, I assume that you are satisfied on that point and so do not require an opening or closing statement.

Mrs Milne: That is correct.

The Convener: Excellent. In that case, we move on to address boundaries.

Mrs Milne: We can be speedy on that issue too because I understand from discussion with Ms Craggs that the promoter is willing to measure the ground and, if appropriate, adjust by amendment the limits of deviation to take any part of the ground that is contained in my husband's and my title out of the limits of deviation and to reference as appropriate.

The Convener: Do you have anything to add, Mr Thomson?

Malcolm Thomson: No, thank you, madam.

The Convener: We encourage such agreement, but we would wish the promoter to provide us with a note as quickly as possible to say that that has been achieved.

As there are no questions from committee members, I now invite Mrs Milne to make any brief closing remarks on boundaries.

Mrs Milne: I have none.

The Convener: That is great. I invite you to address your rebuttal witness statement on compensation for group 43 with brief opening and closing remarks.

Mrs Milne: I will try to be brief because much has already been covered. However, I reiterate that neither the bill nor the existing legislation, including the Land Compensation (Scotland) Act 1973, provides any compensation for any effect that does not result in loss of value.

For me and my husband, the most significant impact of the scheme would be the noise impact,

which would keep us awake at night. That is not compensated for in any of the legislation. There is no compensation for loss of amenity or for visual impact, even if those result in a loss of property value, although if noise impact results in a loss of value, the 1973 act would provide a remedy.

As a group, we are aware that the committee has acknowledged the problem of the timescale between enactment of the bill and completion of the tram scheme and the fact that there is no provision for compensation of parties from whom no land is taken until the tramline has been in operation for a year.

There is a typing error in my rebuttal statement where I say that there is no provision of compensation during the first year of operation; in fact, there is provision in the 1973 act and I suggest that that could be extended to take account of the period between the commencement of construction, or even the enactment of the bill if it is passed, and completion of the tram because that would deal with the missing blight provisions; such provisions exist in other circumstances.

There are specific provisions in the 1973 act that deal with the entitlement to compensation if one tries to sell one's house during the first year of operation. That could be extended if the committee was so minded to help people who might want to sell in that period.

What would I like the committee to do? I do not think that people can be compensated for sleep disturbance. I do not think that anything can be done to help the people who would be woken up every night by the tramline except to move the route on to the roads. If the committee can provide compensation for the blight-type situation, that would be a positive benefit to the residents of the corridor. If the committee also wants to consider provision of compensation for the other non-value effects, that might go some way towards compensating residents for the loss of amenity that they would suffer as a result of losing the Roseburn corridor, which many of the local residents view as our local park.

The Convener: Thank you, Mrs Milne. Mr Thomson?

Malcolm Thomson: I have no questions.

The Convener: Committee members have no questions. Does Mrs Milne have any closing remarks?

Mrs Milne: No.

The Convener: On that basis, I thank you for giving evidence.

That concludes the public part of our meeting today. We move into private session to consider today's oral evidence. As members will recall, we

agreed to meet in private at the end of each oral evidence-taking meeting to enable the committee to consider the evidence that it has heard. That will greatly assist us in drafting our report at the end of phase 1 of the consideration stage.

12:16

Meeting continued in private until 12:30.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 13 December 2005

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Ttypetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron