

WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE

Thursday 16 September 2004

Session 2

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CONTENTS

Thursday 16 September 2004

	Col.
NOTIFICATION ARRANGEMENTS	25

WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE 6th Meeting 2004, Session 2

CONVENER

*Tricia Marwick (Mid Scotland and Fife) (SNP)

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Gordon Jackson (Glasgow Govan) (Lab)

*Margaret Smith (Edinburgh West) (LD)

*attended

CLERK TO THE COMMITTEE

Fergus Cochrane

LOCATION

Committee Room 1

Scottish Parliament

Waverley Railway (Scotland) Bill Committee

Thursday 16 September 2004

[THE CONVENER opened the meeting at 12:57]

Notification Arrangements

The Convener (Tricia Marwick): Good afternoon and welcome to this meeting of the Waverley Railway (Scotland) Bill Committee. I remind members to switch off their mobile phones and pagers.

I ask the committee to consider paper WAV/S2/04/6/1. The committee is asked to consider the explanatory memorandum that has been prepared by the parliamentary agents for the promoter of the bill, Scottish Borders Council. The memorandum explains the reasons why the promoter did not serve the correct notices on some affected persons in Falahill and Fountainhall, and failed to serve notices on 130 properties in Galashiels and Gorebridge when the bill was introduced on 11 September 2003. The committee is invited to consider its response to the discrepancies that have been brought to our attention, and to consider what the implications are for the committee's preliminary stage timetable and, in particular, for the commencement of oral evidence meetings.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): Frankly, it beggars belief that this could have happened in the first place. Here we are, all these months into the process, and already there are delays in the bill. At this late stage, we discover that, for some reason—and perhaps you can elucidate, convener—

Gordon Jackson (Glasgow Govan) (Lab): May I interrupt? There are people in the public seats who cannot hear what is happening. Could we try to get them to hear?

Mr Brocklebank: We can try to speak more loudly.

I was saying that it beggars belief that here we are, all these months into this process, and we find at this late stage that 130 people have not been notified that the project might impact on their lives. I was asking the convener whether she could provide an explanation. Have the promoters explained why this happened in the first place, before we consider what we as a committee will have to do?

13:00

The Convener: The promoter notified the clerks that there was a problem, and the clerks asked for clarification of why the situation came about, in response to which the promoter sent the committee a memorandum explaining how the situation arose. The committee must consider how we progress, given that there is a problem. Margaret, do you wish to comment?

Margaret Smith (Edinburgh West) (LD): Yes, if members have finished asking questions for clarification. I think that we are moving to the debate on what we think about the situation. I share Ted Brocklebank's views. I am disappointed, from the point of view that we were ready to come back after recess and start work on the bill, given that we have done many months' preparatory work. I am disappointed most for the people involved, because it has been a great worry for them. I am disappointed too for the people who have objected already, because the situation will add delay and uncertainty to their lives. I am also disappointed for the project overall, because people want this important project to be concluded one way or the other.

I suggest that we take option A, and give those 130 people the opportunity to submit their objections and have them scrutinised the same as everybody else. That is the fair and legally robust thing to do. It gives us complete clarity as a committee that no objector is going to be treated differently by the committee and the Parliament when it comes to private bills.

It is crucial, at this early stage of the private bills process in the Parliament, that promoters are sent a clear message that they have to get notifications and consultations right. Notifications and consultations are not add-ons; they are fundamental to what the promoters put before us. As a result of notifications, we receive objections and, as a result of them, we determine the key issues that we have to take evidence on and address in our deliberations. The promoter has to get it right, and that must be a message not just for this promoter, but for the promoters of other bills.

As a Parliament, we must be seen to treat these objectors in exactly the same way as those who were notified correctly. I know that that will be a disappointment to those people who were notified correctly and to others, but there is nothing else that we can do, in the interests of clarity, fairness and legality.

Christine May (Central Fife) (Lab): Paragraph 34 of the promoter's memorandum offers the general assurance that, as far as anybody knows, there is nobody else out there who has not been notified. If we make arrangements today in respect

of those interested parties who were not notified in time, can we be 99.999 per cent certain that we will not be in the same position two months down the road, and that nobody else will turn up and say, "Oh, excuse me, but I have a landholding that is materially affected and I was not asked"?

The Convener: I ask the clerk whether he has sought and been given an absolute assurance from the promoter that there are no more in the pipeline.

Fergus Cochrane (Clerk): In paragraph 34 of its memorandum to the committee, the promoter states that, as far as it can tell, the information that is now recorded is correct, although

"the realities of land ownership are that this can never be absolutely guaranteed. However, the fact that no further errors have been notified by landowners in respect of a project that has been publicly known in detail since September 2003 is, it is submitted, a strong indication that there is nothing further requiring notice."

Mr Brocklebank: Would it help if we took out some form of local advertising or if a statement appeared in the local press about what has happened and our being prepared on this occasion to delay, if that is the committee's decision? We want to alert people to what is happening and to the fact that it cannot go on. We must know whether anybody else is in the pipeline.

The Convener: We must reach a conclusion today about what we are going to do. I think that I am getting a sense of what we should do from members. Option A states that we are entering

"a hiatus period on the Bill until the conclusion of the objection period (15 November 2004). The Committee would proceed as it had done for previous objections, meaning that the Committee would firstly need to consider whether the objectors, who had submitted admissible objections, had shown good reason for not lodging their objection within the original objection period (which concluded on 10 November 2003). Given the failure of the promoter to notify these affected persons correctly, it is suggested that the reason for not lodging an objection could be taken as read by the Committee. Secondly, the Committee would then give preliminary consideration to these objections to assess whether each objector had shown that his or her interests are clearly adversely affected by the provisions in the Bill ...

At that point, the Committee would issue an invitation to each objector to submit written comments on adequacy/methodology issues associated with the accompanying documents and the general principles of the Bill. Objectors might be afforded the same time period to submit any comments as the existing objectors to the Bill had during the course of this summer (approximately seven weeks). The promoter would then be invited to respond to these comments. An analysis would require to be carried out to determine any outstanding issues that required to be followed up in oral evidence ...

The Committee would then be in a position to consider a timetable for its oral evidence meetings"—

essentially, the point that the committee was at—"in respect of all the evidence received."

If we go down that road,

"the Committee may not be in a position to commence oral evidence meetings until possibly February 2005."

Christine May: I do not think that we have any option.

Gordon Jackson: The option is not very good, but I think that we are stuck with it. I was interested in what Ted Brocklebank said. Papers will circulate in the area that everybody and their auntie will read. I do not know how things could be done—perhaps the clerks could find out. Is it possible to put something in the press to say what we are doing?

Christine May: Is that our responsibility, or the promoter's responsibility? The committee must be careful not to undertake duties and obligations that properly fall to the promoter.

Margaret Smith: We could certainly make a recommendation to the promoter.

Gordon Jackson: I like Ted Brocklebank's idea. I am not suggesting that we should do the promoter's job. I see that the clerk does not like what I am saying. Officially, there would not be a legal notification, but just a wee word of explanation about what is happening.

The Convener: An alternative is that the committee might consider issuing a press release after the meeting to the newspapers in the affected area. We could put our decision clearly in it in the hope that the local newspapers that have a real interest in such an important issue will pick up on it.

Gordon Jackson: We are not here only for objectors. Many people might take the opposite view to that of the objectors and be desperate for things to get done. They might live in the area and say, "See that Parliament? You put something in there and it just disappears into a black hole." If we are being delayed, we should put out something to the public in the area that will at least give some explanation about what is happening. We are entitled not to receive the opprobrium of people in the area who might say, "That Parliament couldnae consider something within a year."

The Convener: To sum up, we are satisfied that the option that we favour, which will inevitably mean that we will not take oral evidence until around February 2005, is correct. We also hope that a press release will be issued as a result of today's meeting and that the clerks will draw it up.

Mr Brocklebank: We did not seek this regrettable situation. It is not our responsibility, but

it is useful for such matters to go into the public domain so that the committee—

Gordon Jackson: Does not take the blame.

Mr Brocklebank: That is right. That such things are happening in such a way is not our fault. However, like Margaret Smith, I honestly think that we have no option but to agree to option A in order to be fair to everybody.

The Convener: Okay. I thank members for their attendance.

Meeting closed at 13:09.

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