

# **WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE**

Monday 16 January 2006

Session 2

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## WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE

### 1<sup>st</sup> Meeting 2006, 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

#### THE FOLLOWING ALSO ATTENDED :

Alastair McKie (Counsel for the Promoter)

Dr Martin Sales

#### THE FOLLOWING GAVE EVIDENCE:

Neil Amner (Biggart Baillie)

Iain Dewar (BRB (Residuary) Ltd)

Kevin Glass (Cockatoo Bar and Restaurant)

Alison Gorlov (John Kennedy and Co)

John Grimshaw (Sustrans)

Andrew McCracken (Scott Wilson Railways Ltd)

Steve Mitchell (Environmental Resources Management Ltd)

Douglas Muir (Midlothian Council)

Sam Oxley (Environmental Resources Management Ltd)

Steve Purnell (Environmental Resources Management Ltd)

Bruce Rutherford (Scottish Borders Council)

Bill Sandland (Scottish Borders Council)

Fiona Stephen (Anderson Strathern)

Dr David Wyllie

#### CLERK TO THE COMMITTEE

Fergus Cochrane

#### LOCATION

Committee Room 1



## Scottish Parliament

### Waverley Railway (Scotland) Bill Committee

*Monday 16 January 2006*

[THE CONVENER *opened the meeting at 10:34*]

### Waverley Railway (Scotland) Bill: Consideration Stage

**The Convener (Tricia Marwick):** Good morning. I open the second meeting of the Waverley Railway (Scotland) Bill Committee to deal with the consideration stage of the Waverley Railway (Scotland) Bill, which is our first meeting of 2006. I welcome witnesses, their representatives and members of the public.

On 28 September 2005, the Parliament agreed to the general principles of the bill and that the bill should proceed as a private bill. The consideration stage involves the committee's consideration of the bill's detail and of objections. Our job is to listen carefully to the promoter's and objectors' arguments about the bill and ultimately to decide between competing claims. The committee takes that task very seriously.

The committee is in receipt of all the written evidence that groups and the promoter submit. I thank all parties, especially those objectors who have no—shall we say—professional support for their assistance in accommodating the committee's evidence timetable and for complying with the deadlines for submission of written evidence. We are conscious of the demands that are placed on them in that regard, so we appreciate their efforts.

Today, the committee will hear oral evidence relating to seven groups of objectors. The process to be followed in hearing evidence is as I will describe, and every witness who has contributed fully to the written evidence process will face the same three-step process. First, the witness may be questioned by his or her representative; secondly, he or she may be questioned by the opposing side; and finally, he or she may be questioned again by their representative. Those last questions should be restricted to matters that have been covered in cross-examination. The committee can, of course, ask questions whenever and of whomever it wishes. There is no need for witnesses to state their names, job titles or qualifications in oral evidence—we have that information in the written evidence. Written and oral evidence have the same value.

I want to make it clear that questions will be restricted to issues that remain in dispute. Parliament has agreed in principle that there will be a railway, so questions on the merits or otherwise of the railway are therefore not admissible. We are now concerned with the detail of objections.

The committee does not expect, and will not permit, documents to be circulated that it has not previously seen, except in exceptional circumstances. The documents that BRB (Residuary) Ltd submitted to the clerk on Friday afternoon will not be admitted as evidence today.

If an objector or the promoter needs to give us an update, they will be invited to say a few words at the commencement of their oral evidence. Following the completion of evidence taking for each group, representatives of the group and the promoter will be offered a maximum of five minutes each to make closing comments.

The committee intends to complete taking evidence today from the groups that I mentioned. As I said, we have all the written evidence before us. Witnesses should therefore refrain from repeating points that have been made in the written evidence. I will draw witnesses up short if they deviate from that approach.

The committee recognises that evidence will be taken from a mix of objectors today. There will be witnesses who are professionally represented, those who are represented by lay members of the public and those who are not represented at all. I am sure that all parties will welcome brevity and clarity in questions and answers. The use of overly technical language is discouraged.

We wish to ensure that fairness is shown to the promoter and to objectors. This is, of course, not a court of law—we will conduct our proceedings in a more informal manner than a court of law would. There will be a degree of flexibility in the procedures that we will follow so that we can take account of the backgrounds of the witnesses and their representatives. The committee requires all parties to act respectfully to one another and, indeed, to the committee.

Members of the public are, of course, welcome to watch our proceedings and may leave the meeting at any time, although I ask them to do so quietly. The meeting is being held in public, but it is not a public meeting—it is part of the formal work of Parliament. I would therefore appreciate the co-operation of members of the public in ensuring the proper conduct of business.

Finally, it may be useful if the committee were to meet in private at the conclusion of today's meeting and at the conclusion of future oral evidence-taking meetings to consider the day's

evidence. Is it agreed that the committee should do so?

**Members indicated agreement.**

**The Convener:** I ask the clerk to ensure that that decision is recorded in our minutes and I ask everybody to ensure that their mobile phones and pagers are switched off.

Our first group today is group 2. The evidence deals with objections from Scotland Gas Networks and National Grid Gas. The group has chosen to rest on its written evidence and will not give oral evidence. The only witness for the promoter is Mrs Alison Gorlov from John Kennedy and Co, parliamentary agents. She will give evidence about the impact of the railway on property interests, assets and infrastructure.

ALISON GORLOV *made a solemn affirmation.*

**The Convener:** Before I invite Mr McKie to question her, I ask Alison Gorlov to give a brief outline of how matters stand.

**Alison Gorlov (John Kennedy and Co):** There are two agreements. The first is for each of the objectors, and is under discussion with their agents. Two substantive outstanding issues relate to detailed construction of the works. One is to do with the distance that we are from gas pipes—we will leave that to the gas companies. The other concerns the timing and detailed programming of the works. Those are coalface issues, if I can describe them in that way. I have told the agents that we are now able to agree about them. However, there is a third coalface issue, which is about getting the right workmen on site at the right time. Those are detailed matters that will be the subject of assurances and agreements as to how we proceed. They are not issues of principle and I am sure that they will be concluded this week.

**The Convener:** Thank you. Mr McKie, do you have any questions for your witness?

**Alastair McKie (Counsel for the Promoter):** Good morning madam convener and other officials. I have no questions for the witness—your questions have adequately covered everything.

**The Convener:** Why have the two objections not been settled before now, given that one of them was lodged over two years ago?

**Alison Gorlov:** That is right. A draft agreement was prepared in 2004 and has been on the table since then. The negotiations have been somewhat on and off, partly because of pauses on the part of the gas companies, but more frequently because of our lack of resources. Other matters have occupied us fully. Without in any way belittling the concerns about gas, they have inevitably gone to the bottom of the pile because other things have been more urgent.

**The Convener:** Have you not considered the matter to be of the greatest priority before now? The bill has been a long time in getting to this stage, so I am surprised that you have come before the committee to say that it has not been a priority compared with everything else.

**Alison Gorlov:** I do not want the committee to misunderstand what I have just said. The bill certainly has been a priority. Concerns about gas have not, however, taken priority over other more urgent Waverley issues, the time limits for which we have had to comply with.

**The Convener:** When do you expect agreement to be reached?

**Alison Gorlov:** As I said, there are two non-issues that I am sure will be concluded this week, subject to the gas companies giving their agent instructions. I believe that she was going to ask for those on Thursday or Friday of last week.

**The Convener:** Do any other members want to make any points? As they do not, I ask Mr McKie whether he wishes to follow up with any questions to the witness.

**Alastair McKie:** If it would assist the committee I would do so, but I think that the committee has heard the position fully and there is a strong possibility that outstanding matters will be resolved this week.

**The Convener:** Would you like to make a closing statement?

**Alastair McKie:** No.

10:45

**The Convener:** That concludes the oral evidence for group 2.

Our second group today is group 4, which deals with the objection from BRB (Residuary) Ltd. I welcome Dr Martin Sales, who will ask questions on behalf of the group. The witnesses for the promoter on the impact of the railway on the Millerhill rail site are Douglas Muir of Midlothian Council and Andrew McCracken of Scott Wilson Railways Ltd. Alison Gorlov of John Kennedy and Co will deal with the objector's statutory obligations and the acquisition of title and rights over land.

DOUGLAS MUIR *and* ANDREW MCCRACKEN *took the oath.*

**The Convener:** Perhaps the witnesses will give the committee a brief outline on where matters currently stand with the Millerhill rail site.

**Alison Gorlov:** The committee has seen that, following direct meetings between the parties, BRBR produced the draft of a letter of undertaking dealing with the Millerhill issue. As I understand it,

the terms of that letter were thought to reflect the agreement that the parties reached at that meeting. I expressed no view about that; I was not at the meeting, and I do not think that it is an issue. We looked carefully at the letter, and it was not something to which Scottish Borders Council could commit in the terms in which it was written. There is broad agreement that the authorised works should not conflict with BRBR's plans for its site. It has shown us some plans with which we can fit; Douglas Muir can speak about that. As we understand matters, those may not be the plans that will go ahead.

As far as SBC is concerned, there must be some means of ensuring that the Waverley works do not, when they are designed, conflict with BRBR plans for its Millerhill site. There is no wish to prevent prospective development plans. However, BRBR's undertaking went much wider than that, in that it seemed to seek a completely open-ended commitment that the Waverley works would accommodate any development that it cared to come up with at whatever time. SBC was not able to give that commitment. We hope and believe that this is what I might describe as wordsmithing. In principle, the parties do not want conflict, and the Waverley team believes that that can be achieved. It is a question of finding a form of words to which everybody can commit.

**The Convener:** Mr McKie, do you have any questions on this topic for your witness?

**Alastair McKie:** No. The matter has been adequately covered.

**The Convener:** Dr Sales, do you have any questions on this topic for these witnesses?

**Dr Martin Sales:** I have questions for Douglas Muir and Alison Gorlov. I am trying to remember whether Mr Muir has taken the oath.

**The Convener:** He has.

**Dr Sales:** I am sorry; I missed that.

May we take it that, as the transportation policy manager for Midlothian Council, you are familiar with the council's adopted local plan in relation to transport matters in particular?

**Douglas Muir (Midlothian Council):** Yes, I am.

**Dr Sales:** Are you familiar specifically with the policy that relates to the Millerhill site?

**Douglas Muir:** Could you point to the particular policy to which you refer?

**Dr Sales:** I am thinking of policy ECON 1. Are you aware—

**Gordon Jackson (Glasgow Govan) (Lab):** I think that Mr McKie objects to Dr Sales's line of

questioning. I do not know why, but he should be allowed to say so if he does.

**Alastair McKie:** I do not object vigorously, madam convener, but I recall that you said earlier that documents including Midlothian Council's local plan, to which Dr Sales referred, were lodged late and were to be excluded from today's proceedings because they are not competent. A witness is now being asked a question about one of those documents.

**The Convener:** I ask Dr Sales where this line of questioning is in his written evidence.

**Dr Sales:** I am trying to get at—

**The Convener:** Can you point to it in your written evidence? I made it very clear at the beginning of proceedings that I would allow questions only on information that has already been given to the committee in written evidence. It is important, for the sake of the committee and the witnesses, that we keep very closely to the remit and instructions that you were given.

**Dr Sales:** There is reference to the local plan in the written evidence, and this line of questioning is intended to go to the heart of paragraph A1 of the promoter's response, specifically the last sentence:

"It is clear from the evidence that these projects are at an early stage and no option has yet been chosen."

**The Convener:** I suggest that we suspend for a few minutes to allow the committee and others to look very closely at the written evidence so that we can be very clear about the line of questioning that you are pursuing.

10:50

*Meeting suspended.*

10:57

*On resuming—*

**The Convener:** I make the point again to Dr Sales that the committee has before it the BRBR evidence, the response from the promoter and the BRBR response to that. You should base your questioning on those documents. I invite you to start questioning the witness.

**Dr Sales:** Thank you, madam convener.

I asked whether you were familiar with the transport component of the Shawfair adopted plan, and you said that you were. Can you recall whether there is a commitment in the plan to seek to ensure that whatever adjacent uses there may be, which would include the proposal for the Waverley line, they do not conflict with the local plan's view of the uses of the Millerhill site?

**Douglas Muir:** From memory, I think that that is correct. A number of developments were proposed in the area, and we tried to ensure, wherever possible, that none of them conflicted.

**Dr Sales:** Can you confirm that the aim of the local plan—which has been adopted and is therefore statutory—is that the use of the Millerhill site should be rail related?

**Douglas Muir:** That is my understanding.

**Dr Sales:** May we also take it that you, as the transportation policy manager for the council, are familiar with correspondence that Mr Pollock wrote to BRBR last month?

**Douglas Muir:** That concerns the waste public-private partnership that is proposed for the site. I am not fully aware of all the correspondence, as I am in touch with Mr Pollock fairly infrequently.

**Alastair McKie:** This line of questioning goes into the detail of documents that the committee ruled to be not competent. We have gone into the detail of the plan and now we are going into the detail of a letter that is not before the committee. I do not see how such questioning will assist either the committee or the witness.

11:00

**The Convener:** I agree. Could you move on, Dr Sales?

**Dr Sales:** As I have said, I am trying in the line of questioning to get at how the promoter reached the view that is expressed at the end of paragraph A1 of its response.

**The Convener:** You have also referred to documentation and letters that the committee does not have. At the beginning of proceedings, I made it clear that you could ask questions only on BRBR's evidence, the promoter's response and BRBR's response to that. You are going in a direction that concerns letters that are not in the written evidence. I ask you to move on.

**Dr Sales:** I am trying to avoid references to documents and trying to work with the witness's knowledge about matters that are mentioned throughout the evidence.

**The Convener:** I am struggling to find the relevance to our proceedings.

**Dr Sales:** Very well—I will try as far as possible to keep my questions short and away from documents.

**The Convener:** That would help.

**Dr Sales:** Mr Muir, are you aware that the Millerhill site has been identified as a preferred location for a potential waste processing and transfer plant?

**Douglas Muir:** Yes.

**Dr Sales:** Are you aware that that use and the other intended part-use as a rail maintenance depot have the support of the Scottish ministers as expressed by the Scottish Executive?

**Douglas Muir:** That is my understanding.

**Dr Sales:** Against that background, why does the promoter say in paragraph A1 of its response to my client's evidence that it is suggested that the waste proposal or the train maintenance facility might not proceed?

**Douglas Muir:** I understand that no contracts have been prepared or signed on those proposals, so I suppose that, until they are, the proposals are not technically committed.

**Dr Sales:** However, is not the reality that both projects have reached a critical and advanced stage in their development and that they require comfort on neighbouring developments such as the Waverley line? Everybody involved, on both sides of the debate, seems ready to acknowledge that such comfort is necessary but it is not yet forthcoming. Do you agree with that analysis?

**Douglas Muir:** The principle is agreed; we are just trying to sort out the detail.

**Dr Sales:** Is it not the case that, while Scottish Borders Council as promoter awaits powers, detailed design and even a contractor, such matters are all at a fairly advanced stage for the waste project and the maintenance depot?

**Douglas Muir:** I cannot speak on how advanced either of those projects is. I am not closely involved in either of them.

**The Convener:** I understand that the promoter has agreed not to hinder development of the site in so far as is practicable. What does the objector now seek from the committee?

**Dr Sales:** In the absence of a contractual obligation not to hinder neighbouring developments, the objector seeks a restriction on the powers that are granted to the authorised undertaker on the basis of the evidence that I would like the committee to hear.

**The Convener:** Thank you for that.

**Dr Sales:** Mr Muir, if the promoter's view is that nothing may happen in rail connection terms at the Millerhill site although the detail of those projects is so far advanced whereas the bill is still at consideration stage, do you not see an element of the pot calling the kettle black?

**Douglas Muir:** I represent Midlothian Council on behalf of the Waverley railway partnership. I do not represent Midlothian Council in terms of the waste public-private partnership or the rail



maintenance depot, which would involve the economic development department. I am not dealing with those matters, so it is difficult for me to give detailed answers on how advanced those projects are and whether any agreements have been signed. I am sorry—I cannot do that.

**Dr Sales:** Can any other witness for the promoter help me to understand why the main response from the promoter to BRBR's objection is that the proposals are all pretty vague and in the future and may not happen?

**Douglas Muir:** I do not think that saying that is the intention. We are trying to obtain a workable solution. Some technical difficulties are involved in providing a turnout at the northern throat of Millerhill yard and we await information from Network Rail, which said that it would look into several other possibilities, which included feeding your site from the freight line and doing upgrades in the throat of Millerhill marshalling yard. We do not have that information yet and it is difficult for us to commit to a specific matter when we do not know what is going on round about. We are at an early stage, but I am sure that we can get there. We agree in principle; we have no problem with that.

**Dr Sales:** Do you agree that, however remote the options—what the promoter chooses to call the waste and train maintenance projects—may seem, once operational, they will deliver considerable benefits to the implementation of United Kingdom and Scottish policy on waste, sustainable transport and sustainable development issues?

**Douglas Muir:** I can speak only for the waste project. Midlothian Council is the lead authority on that, so we are obviously signed up to it. I do not have enough detail on the rail maintenance project, so I am sorry, but I cannot answer for it.

**The Convener:** Dr Sales, the committee has enough evidence on that point. I ask you to move to your next line of questioning.

**Dr Sales:** I am about to do that.

Mr Muir, I understand that the problem as the promoter describes it in paragraph A3 of its response is one of co-ordination. Is that correct?

**Douglas Muir:** That is correct.

**Dr Sales:** The solution in paragraph A4 of the response is that the promoter has asked for wide limits—I presume that they are limits of deviation or related limits—at Millerhill. Is that correct?

**Douglas Muir:** That is correct.

**Dr Sales:** Will you enlighten me and the committee as to how taking more land compulsorily, either permanently or temporarily, will deal with the problem of co-ordination?

**Douglas Muir:** One problem that we face is that the current design of the Waverley route has a transition curve in the area where you look for a turnout. I understand that we cannot produce a turnout from a transition curve; it must come from a section of straight track, so we will have to realign the Waverley line over a reasonable length—I do not know how long that will be—to achieve a straight length of track. To do that, we need fairly wide limits. We cannot straighten a track when our limits provide for what is not a tight curve, but a curve that is too tight to take your turnout. We must have the ability to realign the Waverley line to give you what you want.

**Dr Sales:** That is, to give the objector what the objector sees as necessary. However, does not taking more land than may be needed really give comfort only to the authorised undertaker?

**Douglas Muir:** Could I pass that to Alison Gorlov?

**Dr Sales:** I am happy for Ms Gorlov to answer, if the committee permits it.

**Alison Gorlov:** May I answer, convener?

**The Convener:** You are a witness, so that is fine. Please proceed.

**Alison Gorlov:** First, the authorised undertaker will be authorised to acquire only such land as is reasonably necessary for the purpose of constructing the works. That means that the authorised undertaker would not be able to acquire the whole of the site within the limits of deviation, unless it were needed for the railway, which it is not, as Mr Muir just explained.

We say that the very wide limits benefit the objector because they allow for flexibility. If the plans had been drawn to show a narrow corridor with a centre line in a given situation and only a limited corridor within which the centre line could fluctuate, it would not be possible to design the realignment that Mr Muir just described. To provide full flexibility to deal with whatever is necessary to accommodate BRBR, we need the wide limits within which the railway can, if necessary, fluctuate.

**The Convener:** Thank you.

**Dr Sales:** I will paraphrase that in the simplest terms. The limits are enabling. If the authorised undertaker chooses to do the work, it may do so within the wider limits, but the question is whether it chooses to do that. Is that not the case?

**Alison Gorlov:** The authorised undertaker will have authority to construct the railway anywhere within the limits but, as SBC has said several times, it agrees in principle that it should design and construct the railway in a way that can accommodate BRBR's development. The only

issue is the terms in which that undertaking is given, so that it accommodates the development when we reach that stage and not whatever development might happen in 10 years' time.

**Dr Sales:** That is an undertaking if it is given. However, the allowance of wider limits does not of itself guarantee that the authorised undertaker will ensure that there is dovetailing with the requirements of the other two schemes.

**Alison Gorlov:** No one was suggesting that that was the case.

**Dr Sales:** I have a question for Mr Muir about paragraph A5 of the promoter's response to BRBR's objection. The solution to the tricky problem of co-ordination seems to lie in the promoter's confidence that things can be made to come right. That is a fine sentiment, but do you agree that that one-sided confidence alone is not sufficient basis on which commercial acquisitions can be made for strategically important rail uses adjacent to the Waverley line?

**Douglas Muir:** I do not think that that is the case. Midlothian Council is keen that both the Waverley project and the waste PPP progress. We want that to happen, but one project cannot threaten the other. We must ensure that both projects can go ahead and we are trying to do that. As a representative of the Waverley line promoter, I do not want to do anything that would stop the waste PPP happening. Likewise, I am sure that Midlothian Council, as promoter of the waste PPP, would not want the Waverley route to suffer or to be unable to progress as a result of the waste project. We must find a solution that allows both projects to go ahead and I think that we are heading in that direction.

**Dr Sales:** That is all in the future—it is all jam tomorrow. It is jam that has not been achieved in more than two months of discussion. What if such agreement outside the powers and the restrictions on them in the bill is never achieved? What will happen to protect BRBR's position?

**Alison Gorlov:** I wonder whether I might answer, as that is essentially a legal and administrative question. First, Dr Sales is sceptical about our confidence that agreement will be reached, but we feel strongly that agreement should be reached. Secondly, the authorised undertaker must act reasonably, given that it will be a statutorily created entity. If it acquired land that it did not need for the railway, it would be vulnerable to attack in the courts. It is understood that that is not the same as giving Dr Sales the comfort that his client seeks. The third aspect concerns the possibility of the imposition of a statutory restriction on the authorised undertaker's exercise of its functions. That is indeed a possibility, but if we could formulate the terms of

such a restriction for the purposes of the bill, we could formulate them for an agreement between the parties.

It might assist the committee if I suggest a solution, which is the solution that SBC has put to the objector. We are in the difficulty that none of the three projects that we all know about has been designed in detail. That is the truth of it. We have said that once the railway has been designed, the plans will be submitted to BRBR. In the light of the state of its projects, BRBR will be able to say what adjustments to the railway are needed to protect those projects. Although it will not be able to veto the railway, it will be able to protect its projects and we believe that that should be sufficient comfort. We argue that that is the only workable solution. I add that that is the way in which railway undertakers and the rest of the development world have got on together for several hundred years. They have ensured that each approves the other's plans and protects its own patch.

**The Convener:** Thank you for that.

The committee does not wish to get into the detail of the proposed development of the site. An undertaking is being discussed and the committee hopes that agreement will soon be reached. Before I ask Dr Sales to make any further points, I will bring in committee members who seek the opportunity to question witnesses.

11:15

**Christine May (Central Fife) (Lab):** My question is for Douglas Muir and Andrew McCracken. In the light of what Ms Gorlov has said, why have you not been able to settle the dispute?

**Douglas Muir:** On the technical side, we are almost there, although Network Rail is considering some alternatives and has not reported back on them. Our position will be difficult until we obtain that information. Although we have not done a detailed design of the route, we are as confident as we can be at this stage that we can accommodate a turnout into the Millerhill yard for BRBR in that general area. We do not think that there is any problem. Andrew McCracken may have something to add.

**Andrew McCracken (Scott Wilson Railways Ltd):** I will not go into too much detail on the technicalities. Although there are some alignment issues to resolve, in our response to BRBR, which we made through Douglas Muir, we said that, within the wide limits that have been discussed, we thought that we could refine the Waverley alignment to allow such a turnout and thus provide a connection for BRBR's future development.

**Christine May:** I have a question for Dr Sales. You heard Ms Gorlov say that it was normal for railway developers and landowners to operate using agreements such as the draft agreement that was put. Do you accept that?

**Dr Sales:** As a generality—yes. I do not think that I can take objection to that as one way of giving assurance that the necessary dovetailing or co-ordination of projects should occur. Historically, that may have been the case. The difficulty that BRBR faces is that although attempts have been made for several months to get past the principle of agreement to the detail, that has not happened. The purpose of my line of questioning is to ensure that if such agreement is never obtained, BRBR gets the protection that, in my respectful submission, the committee is in a position to recommend to the Parliament that it should get on a statutory basis.

**Christine May:** Thank you for that answer, but do you accept that the detail on which you seek reassurance is not available at this stage and that the fact that it is not possible to make it available means that it would be impossible to get some of the assurances that you seek? Would it not be good business practice to accept that, to seek such assurances as are needed at this stage and to look for more detail at a later stage?

**Dr Sales:** We are looking for statutory protection not on the detail, but on the generality. I think that it was Ms Gorlov who said that statutory restrictions would be possible and that plans could be put before the objector for approval. In the absence of contractual machinery for protection, we would seek a statutory protection that was framed in very general language that would enable the objector to have enforcement through the courts.

**Christine May:** Thank you. I think that I am now clear about what you are asking the committee to do.

**The Convener:** No other committee members have questions for the witnesses. Dr Sales, have you finished questioning the witnesses?

**Dr Sales:** In the light of my most recent exchange with the member, I have reached the end of my questions for the witnesses.

**The Convener:** Thank you. Mr McKie, do you have any questions for your witnesses?

**Alastair McKie:** I have none.

**The Convener:** Many thanks. I also thank the witnesses for their evidence. We will now hear from Iain Dewar of BRBR and Neil Amner of Biggart Baillie.

**Dr Sales:** I would like to check whether Ms Gorlov will be available to answer any questions.

**The Convener:** She will not be.

**Dr Sales:** We have not dealt with parts B and C of the written evidence.

**The Convener:** When I asked whether you had any more questions for the witnesses, you said that you did not.

**Dr Sales:** I was thinking more of Mr Muir—

**The Convener:** Excuse me. I ask Ms Gorlov to stay where she is. I have been advised that she can be questioned. Please continue, Dr Sales.

**Dr Sales:** I am much obliged. I am sorry for any confusion that I may have caused by referring to witnesses in the plural rather than to Mr Muir.

Ms Gorlov, is it the case that as well as drafting revisions to the draft letter of undertaking, about which you have commented this morning, you have been responsible for drafting or agreeing the proposed amendment to the bill to cure the mischief that is referred to in section B of BRBR's written evidence?

**Alison Gorlov:** Yes.

**Dr Sales:** That mischief, in the briefest of terms, is that BRBR should not be left with any prior statutory obligations over land that it will have had taken from it if the bill passes into law.

**Alison Gorlov:** That is correct.

**Dr Sales:** There is therefore no issue between the promoter and the objector that a saving provision must go into the bill in terms similar to those that are suggested by BRBR at paragraph 32 of its written evidence to the committee or, as the promoter says at paragraph 7 of its response, that there must be a provision similar to section 36 of a bill on which you worked with Mr Amner, the Stirling-Alloa-Kincardine Railway and Linked Improvements (Scotland) Bill.

**Alison Gorlov:** That is right.

**Dr Sales:** When will that be done?

**Alison Gorlov:** A draft is with you now. It was sent last night to Mr Amner.

**Dr Sales:** I have the same series of questions on section C of BRBR's written evidence, but in this case the mischief is not prior statutory obligations but land title conditions and burdens. Is that correct?

**Alison Gorlov:** Yes.

**Dr Sales:** Again, the promoter agrees that, by way of an example of such a condition or title burden, BRBR should not be left with an obligation to fence land that the bill, if enacted as it is, will take from BRBR compulsorily.

**Alison Gorlov:** I am not sure that fencing is a particularly good example, because I very much doubt whether such an obligation subsists in respect of a railway, the demise of which is several decades old. However, it is accepted that there are rights and obligations of various sorts—the details of which we do not know—that will have to be preserved.

**Dr Sales:** And the style or precedent for curing this particular mischief is to be found in paragraphs 47 and 48 of BRBR's written evidence.

**Alison Gorlov:** In general terms, yes.

**Dr Sales:** When will the promoter come to grips with that aspect of the objection?

**Alison Gorlov:** I wish that I could give a precise date, but I am afraid that I cannot; it will be a matter of days.

**Dr Sales:** Is it not something that has been on the table since as far back as May last year?

**Alison Gorlov:** Yes.

**Dr Sales:** Thank you. I have no further questions.

**The Convener:** Does Mr McKie have any questions?

**Alastair McKie:** No.

**The Convener:** We will now hear evidence on the Millerhill site issue. We have Iain Dewar of BRBR and, on statutory obligations in the acquisition of title and rights over land, Neil Amner of Biggart Baillie.

IAIN DEWAR and NEIL AMNER took the oath.

**The Convener:** Does Dr Sales have any questions for his witnesses?

**Dr Sales:** Yes.

Will Mr Dewar please explain briefly what the role of BRBR is today in relation to retained land such as that at Millerhill yard?

**Iain Dewar (BRB (Residuary) Ltd):** The British Railways Board is now, as members may be aware, a wholly owned subsidiary of the Department for Transport. It retains the residual obligations of British Rail in relation mainly to land assets and to various other assets and liabilities. Under its remit from the Secretary of State for Transport it is to dispose of the land that it owns wherever possible for transport purposes and often for freight purposes. Millerhill is seen as an important site with rail potential.

**Dr Sales:** Specifically, are schemes afoot—if I can put it that way—to fulfil that role or duty?

**Iain Dewar:** There are two schemes in relation to Millerhill.

**Dr Sales:** Would the first of those schemes be a private finance initiative waste scheme sponsored by the council as part of the Lothian and Borders waste management project?

**Iain Dewar:** That is correct.

**Dr Sales:** Is the second a scheme to construct a new railway maintenance facility?

**Iain Dewar:** That is also correct.

**Dr Sales:** How remote or uncertain do you consider those two prospects to be?

**Iain Dewar:** Neither is certain to take place, but both are in an advanced state of negotiation. We heard from an earlier witness about the Lothian waste scheme. We are also in a state of advanced negotiations with a company for a passenger rolling stock maintenance facility.

**Dr Sales:** Do you have a projected date for when the maintenance facility should be operational?

**Iain Dewar:** We do not have an absolute date, but the developers tell us that they wish to be in possession of the site this year with a view to having something up and running in 2007.

**Dr Sales:** Do either or both of those projects have the support of the Scottish Executive?

**Iain Dewar:** Both have the support of the Scottish Executive.

**Dr Sales:** Why is that?

**Iain Dewar:** We have had a letter from a gentleman named Peter Fuller. He told us that he believes that the schemes—certainly the maintenance facility—are of significant value to Scotland and to the wider United Kingdom.

**Dr Sales:** As far as you are aware, do either or both of the projects have the support of the local authority—Midlothian Council?

**Iain Dewar:** The Lothian refuse scheme certainly has such support.

**Dr Sales:** Does the maintenance depot have support in the adopted local plan?

**Iain Dewar:** I am not aware whether it is in the adopted local plan; I would have to refer to the plan to tell you that. The adopted local plan certainly refers to rail use and rail development for the site.

**Dr Sales:** I have finished that line of questioning, convener.

**The Convener:** Thank you—I think that the committee has sufficient evidence on the potential development of the site. I have said that before. I invite you to move on.

**Dr Sales:** In rail terms, what is the strategic significance of the Millerhill site that would be developed by one or both of those schemes?

**Iain Dewar:** The Millerhill site is a strategic rail site because it is the largest site that is easily rail connectable in the Edinburgh area. Both of the proposed uses, which incidentally will have to be shoehorned on to the site—that is one of the critical factors—would be of significant rail and wider-use benefits.

**Dr Sales:** One of the tasks that the committee faces is to weigh the safeguards that are sought by an objector, such as BRBR, in relation to the detail of the bill with the cost or disbenefit to the authorised undertaker of providing such a safeguard or series of safeguards. In the light of that, what safeguards have you been seeking from the promoter? I ask you to give us the briefest of outlines.

**Iain Dewar:** We have been seeking from the promoter undertakings not materially to interfere with our abilities to develop the site. We want to ensure that the costs—which could be high—of creating a rail connection and providing the ability to use it are minimised. Certainly the creation of the Waverley route should not make those costs worse than they are now.

**Dr Sales:** As far as you are aware, have those safeguards been agreed in principle between the promoter and BRBR?

**Iain Dewar:** They have been agreed in principle. We had a second meeting on 8 December, at which we thought that we had reached agreement on a text. So far, however, the text has not been confirmed as agreed and various other proposals are now in front of us.

**Dr Sales:** As we sit here today, have the safeguards been agreed in any detail in a contractual document?

**Iain Dewar:** Sadly they have not.

**Dr Sales:** In your view, would there be any significant cost or disbenefit to the authorised undertaking if the safeguards that you have been seeking from the promoter were to be given?

**Iain Dewar:** I have worked in and around the rail industry for 30 years and my work has included dealing with such developments. I can think of no significant cost that would result for the promoter in giving the undertakings that we seek.

11.30

**Dr Sales:** The obverse of that question is whether the cost or disbenefit to BRBR of not having the safeguards will be low, medium or high.

**Iain Dewar:** It will be high, particularly in relation to the rail connection. One of the difficulties with rail connections is that interference with the signalling system on a line means extremely high costs. We are seeking synergy between our plans and the promoter's plans for the Waverley route so that the signalling for both are designed at the same time, along with the detail of the turnout. We are seeking a commitment to that synergy so that neither we nor the promoter bear undue cost in putting in a connection.

**Dr Sales:** So, viewed in the round, is it fair to say that the authorised undertaker could preserve BRBR's interests without incurring significant additional costs or loss of flexibility?

**Iain Dewar:** In my view, yes.

**Dr Sales:** Without any such contractual safeguards to that end, what is there to ensure that BRBR's interests and duties will be held to be harmless in the construction and operation of the Waverley line?

**Iain Dewar:** I fear that there is nothing, which is why we have put so much effort into trying to get an agreement. I do not think that it is a difficult agreement to reach; it is fairly standard, and with good will and a locked door, it could be sorted out in a couple of hours. However, we have not managed to achieve that so far.

**Dr Sales:** We have had nothing more than good intentions to date.

**Iain Dewar:** We have good intentions and drafting that we thought had been agreed, including that which was done by a legal representative of the promoter. We also have alternative drafting, which appears to be rather different, and which was produced very recently by the promoter.

This is a matter of timing and concentration, and that is why we are frustrated and why we are troubling the committee, I fear, by asking it to give us statutory protection. We have spent a lot of time discussing, negotiating and exchanging and, so far, we do not have something that appears to be quite simple to achieve. We have little or no confidence that we will get it without applying some pressure.

**Dr Sales:** Is the absence of anything concrete and the existence of good intentions only a sufficient basis on which a statutory company such as BRBR can proceed to secure an appropriate disposal of the site?

**Iain Dewar:** I fear not, particularly in relation to the connection that you asked about. That could cost several hundreds of thousands of pounds—perhaps more than a million if the cost is needlessly higher than it should be. The developments might not take place and the site

might not be developed for rail purposes, even though we have a remit from the Secretary of State to try to achieve that.

**Dr Sales:** The promoter has offered wide limits of deviation. Is that sufficient comfort for BRBR and the purchasers of your site?

**The Convener:** Let me interrupt. The issues that remain outstanding are clear. The committee understands the statutory protection that BRBR is seeking. Is it possible for you to move on, Dr Sales?

**Dr Sales:** Yes, madam, I will certainly try to do that. Could the witness just answer my last question on whether the limits of deviation alone are sufficient?

**Iain Dewar:** The short answer is no.

**The Convener:** Before you move on, Dr Sales, one of our committee members has a question.

**Margaret Smith (Edinburgh West) (LD):** I am not sure whether this is the best point in the proceedings for my question. I am unclear about the extinction of pre-existing statutory obligations. BRBR has come forward with a suggested amendment, and the promoter has accepted that there is an issue that, from reading its response, I think would probably be dealt with within the draft agreement. Could you give us some clarity about where we are with that? Even if there was a draft agreement, would you still require that amendment to be made to the bill?

**Iain Dewar:** If I may, I will ask Mr Amner to deal with that question.

**Neil Amner (Biggart Baillie):** The amendment that is suggested in BRBR's objection would still be required. It is not in the draft agreement that is being discussed.

Effectively, three elements to the BRBR objection are outstanding. There is the question of how to protect the Millerhill site in a practical way. That is the commercial agreement that we thought had been agreed but now turns out not to have been agreed and is still being worked on. There is the question of the extinction of pre-existing statutory powers. Finally, there is the question of how to deal with the title conditions that are applicable to the individual plots of land, as opposed to the general statutory obligations.

The member's question relates to the second element of the BRBR objection. The terms of the amendment are not currently in the draft agreement. If they were to be put in, that would be a matter of contract between the parties whereas, because there are statutory obligations, we prefer that the amendment be made in any event.

I am sure that the promoter will correct me if I am wrong but I understand that it accepts that the

amendment, or an amendment to the same effect, should be made to the bill. As Ms Gorlov said earlier, she e-mailed me suggested alternative wording last night, when, unfortunately, I was not available to see it. However, I saw it this morning, and, subject to one small point, we could probably readily agree it.

The only point to make in passing is that our original objection refers to a 1984 court case—the Walker case—which specifically referred to fencing obligations for a line that had been closed. I make that point just to correct a comment that Ms Gorlov made; what she said would not have applied to the circumstances of that case. That was the point of the case: although it seems utterly bizarre at best, such fencing obligations exist and would be enforceable against BRBR unless the bill is amended as we ask.

**The Convener:** I advise that amendments are a matter for phase 2 of the consideration stage of the bill.

**Neil Amner:** I appreciate that.

**The Convener:** I also kindly advise that the suggested amendment to which you have referred would not be acceptable to the committee because it is not drafted in clear language. Given that you have been talking about amendments, I ask that you consider their language very carefully and resubmit them before we reach phase 2 of the consideration stage.

**Neil Amner:** I certainly will. I should say that the amendment was taken from the original version of the objection to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, because that was the only precedent that we had at the time. It came from a transport and works act order. The final section of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill was slightly different in format and language. It has taken the best part of two years to have a discussion about that, but we did so about an hour ago. I hope that the amendment will be clearer when you receive it.

**The Convener:** I am sure that it will be, but I thought that you would appreciate a piece of kindly advice.

**Neil Amner:** Thank you. It is noted.

**The Convener:** Dr Sales, do you have any more questions for Mr Dewar?

**Dr Sales:** I have one final short line of questioning, if I may, madam convener.

Mr Dewar, will you enlighten the committee in the briefest of terms—perhaps just a sentence or two—as to the detail of where, how and when the connection needs to be dovetailed with the Waverley line?

**Iain Dewar:** It depends. We do not have detailed timings for either the Waverley Railway (Scotland) Bill or the developer's proposals. We want one common set of plans to be produced so that whichever goes first can take advantage of them and know that the work will not get in the way of whichever comes second. It does not matter which comes first or second; the important thing is to have a common set of plans done in unity. The difficulty with Network Rail's planning process is that if plans are done in two stages, costs shoot up and timescales extend significantly.

**Dr Sales:** Timing is important for the establishment of signalling records, as I think that they are called. Could you please deal with that point in a sentence or two?

**Iain Dewar:** In order to ensure that the integrity of signalling records is maintained, I understand that only one set is kept. Therefore, if someone is working on a scheme, they take those records and work on them and no one else can intervene and produce alternative or additional plans until the first party has finished with the records. That is a fair summary of the position.

**Dr Sales:** Finally—

**Christine May:** Could I interrupt to ask a question? I hear what Mr Dewar is saying—it sounds eminently sensible that if there are several projects, signalling should be designed jointly. Are you aware from discussions that you might have had with the promoter whether that would cause it any difficulties?

**Iain Dewar:** We understand that it would not. When we discussed the matter at a meeting at which Network Rail representatives were present, everyone was entirely happy that it could be accomplished.

**Christine May:** Perhaps the promoter will confirm that either now or later.

**Dr Sales:** Finally, it is my impression that the promoter thinks that capacity is not an issue because of the crossrail aspects. Will you confirm whether that remains an issue for the Scottish Executive?

**Iain Dewar:** The current lines are capacity constrained. In recognition of that, the Scottish Executive has assured us that it will take account of our needs—that is, the needs of those who use the site—when it specifies passenger services.

**Dr Sales:** Is there a link between capacity and the design parameters—which feature in some detail in the written evidence—that might not have come through in the promoter's rejection of the capacity issue as a matter that can be addressed by the crossrail aspects?

**Iain Dewar:** As the promoter has acknowledged, there is a clear connection between the design work that is carried out on a railway and the available capacity. Indeed, the Scottish Executive has also acknowledged that, which is why it has given us the assurance that I referred to.

**Dr Sales:** Thank you.

Convener, I have no further questions for Mr Dewar, but I have some for Mr Amner.

**The Convener:** We will come to them in a moment.

Mr McKie, do you have any questions for Mr Dewar?

**Alastair McKie:** Yes.

Mr Dewar, BRBR appears to be considering two schemes: the potential waste transfer private finance initiative scheme and a new railway scheme. Do you agree that the first scheme will require planning permission?

**Iain Dewar:** Indeed.

**Alastair McKie:** Has that planning permission been applied for?

**Iain Dewar:** I understand that it has not been applied for.

**Alastair McKie:** In such circumstances, do you agree that the Waverley railway project can be distinguished from the waste transfer project, in that the promoter of the railway project is applying for authorisation for its scheme through the bill under discussion today?

**Iain Dewar:** The Waverley scheme has clearly reached a more advanced stage in obtaining permissions. However, as far as planning the physical infrastructure is concerned, the two schemes are about neck and neck. That said, I understand from Midlothian Council that it intends to embark on the planning process soon.

**Alastair McKie:** I believe that in your evidence you referred to the Walker case.

**Iain Dewar:** I did not.

**Alastair McKie:** So it was Mr Amner. Convener, can I put my questions to Mr Amner?

**The Convener:** Yes.

**Alastair McKie:** Mr Amner, am I right in saying that a distinction that can be drawn between the Walker case and the present case is that the first related to a closed but existing line but, in this case, most of the Waverley railway corridor has gone?

**Neil Amner:** My recollection is that the Walker case related to a line that was closed and no longer used—indeed, it had been taken apart. I

could be wrong—I would need to check the details. I should say that, this morning, I had someone in the office look at the case for me, and she indicated that the Walker case relates to a line that is closed and dismantled.

**Alastair McKie:** The people instructing me say that the opposite is the case.

**Neil Amner:** Perhaps the answer is to look at a copy of the rubric. If I am wrong, I fully accept the error.

**Alastair McKie:** Regarding the reference to good intentions, would the objector's evidence be that, beyond those good intentions, there has been a rapid and very intensive exchange of contracts? I myself have not negotiated those contracts, but I have certainly seen the e-mails relating to them over the past seven to 10 days.

**Neil Amner:** I should answer that question, as I have been involved in drafting the contracts.

From the promoter's initial submission, the rebuttals and the responses to the rebuttals, the committee will be aware that there were two meetings: one in November and one in December. Between those meetings, drafts were exchanged and, after the December meeting, a further mark-up was prepared based on written notes that I had taken at that meeting and that I had agreed at the meeting with the head of legal at Midlothian Council—on the hoof, as it were. The mark-up was then typed up and circulated.

Much to my surprise, instead of tinkering with the mark-up, the promoter's agents expressed some very substantial concerns about its contents. That happened before Christmas, in the run-up to the original date of this meeting. We received a mark-up containing suggested changes to the document only on 11 January and, that same afternoon, I marked up the agreement for our side and sent it back. We now await a response to that mark-up.

My point is that our side has sought to turn the matter around as quickly as is humanly possible. In fact, the day after the December meeting, I received an e-mail from the head of legal at Midlothian Council, thanking me for such a productive meeting. That was why I was very surprised at the reaction that our mark-up subsequently received.

11:45

**The Convener:** Thank you, Mr Amner, but I think that this line of questioning is turning into a blame game that the committee does not want to get into. I wonder whether the questions and answers could be more tightly focused on the subject under discussion.

**Alastair McKie:** Certainly, convener.

Mr Amner, the promoter has said that it cannot sign the undertaking that you seek because of its open-ended nature and that, as a responsible public body, it would not be advised to do so. Would you not give similar advice to BRBR if such an open-ended commitment were sought from it as a responsible public body?

**Neil Amner:** I disagree about the agreement's open-ended nature. In fact, one point on which there is no dispute is that before the draft plans for the Waverley route are finalised, they will be submitted to BRBR for its comments and approval. A couple of points arise from that. Because the plans will be sent to BRBR for approval before they are finalised, it will be a one-bite-at-the-cherry, one-point-in-time exercise. It will not last for ever and a day; we will not return to change things again and again. The promoter will simply say, "This is what we want to do. If you have any concerns, for heaven's sake, shout now or hold your peace".

As a result, the argument that we seek an open-ended undertaking is disingenuous; we simply dispute the parameters for agreeing plans at that point. In other words, as far as drafting is concerned, on what grounds could BRBR object to what is being put to it? From the very first meeting, we agreed certain parameters or issues that BRBR wished to be covered off in any commercial agreement. However, we appear to have gone backwards, in that some of the drafting appears to have been removed. I do not want to bore the committee with the details of the matter, but we need to close the gap by finding a form of words that ensures not only that the promoter is comfortable that it is not committing itself beyond its reach but that BRBR has the comfort that it needs to carry on working up its site.

**Alastair McKie:** I have no further questions, convener.

**The Convener:** Thank you. Dr Sales, do you have any follow-up questions for your witnesses?

**Dr Sales:** I have a tiny question for Mr Amner. There has been some discussion of the Walker case. If we leave aside what might or might not be in the rubric of the case, and therefore in the facts behind it, do you feel that the bill as it stands needs to be amended?

**Neil Amner:** Yes.

**The Convener:** I thank Mr Dewar for his evidence on that matter. However, I ask him to remain seated as we turn to our other witness in this group, Mr Amner, who will address BRBR's statutory obligations and the acquisition of title and rights over the land. Dr Sales, do you have any questions for Mr Amner on these topics?



**Dr Sales:** Just a few, convener.

Mr Amner, who is responsible for drafting the proposed amendment to the bill to cure the mischief identified in section B of the objector's written evidence?

**Neil Amner:** The bill's drafting is a matter for the promoter. It is for the committee to amend the bill, but the promoter will seek amendments. I understand that it would help if those amendments to the bill—or something similar to them—were set out in a joint submission to the committee. On that basis, we await the promoter's written response to our objection.

**The Convener:** That submission will be set out in clear language.

**Neil Amner:** Indeed.

**Dr Sales:** Who is responsible for producing the first draft of the amendment that will address the problem of title conditions and burdens set out in section C of the objector's written evidence?

**Neil Amner:** There is no hard-and-fast rule on the matter. However, the objector has lodged the objection. According to the rules of the game—as it were—the promoter seeks to engage with the objector to resolve the objection and to have it withdrawn. In any event, Ms Gorlov indicated that she would produce a draft agreement, which we have been waiting for.

**The Convener:** Dr Sales, I think that we have heard quite enough about this drafting dispute. We understand the issues. If the objector and the promoter do not reach an agreement soon, the committee will determine the matter. I ask that we do not waste any more time on the issue; we simply encourage the parties to settle things soon.

**Dr Sales:** I move to my final question for Mr Amner. Just to be clear, is there an opportunity for a contractual arrangement to be entered into in relation to the issues raised in section C of the objector's written evidence, or must there be an amendment to the bill? I refer to the title conditions and burdens. In other words, must it be a matter for Parliament to decide or can it be done outside the bill in a contractual arrangement?

**Neil Amner:** As I said in answer to a question from one of the members earlier, although the question of the extinction of statutory obligations needs to be dealt with in the bill—

**Dr Sales:** You are referring to section B.

**Neil Amner:** Yes. The title conditions point would probably be more cleanly and easily dealt with by a commercial agreement. However, there is precedence in some transport and works act orders for protective provisions to be put into the bill. Although that would be a fairly involved bit of drafting, it would be possible.

**The Convener:** We understand about contractual agreements—I repeat that it is for the parties to settle the matter, and we encourage you to do so soon. Do you have any further questions, Dr Sales?

**Dr Sales:** I have no further questions.

**The Convener:** Mr McKie, do you have any questions for Mr Amner?

**Alastair McKie:** None, convener.

**The Convener:** As committee members have no questions, I thank Mr Amner and Mr Dewar for giving evidence today. I suspend the meeting for five minutes.

11:51

*Meeting suspended.*

11:59

*On resuming—*

**The Convener:** I thanked the witnesses for their evidence—we will now hear from the promoter. Mr McKie, you have a maximum of five minutes in which to make a closing statement.

**Alastair McKie:** Thank you, convener. I will take a lot less time than that.

It is the promoter's position that BRBR is taking a rather hard line on the matter. The issue concerns the terms of an undertaking. The promoter believes that it is providing BRBR with the level of comfort that BRBR ought to require in a reasonable world. The promoter will continue to endeavour to reach agreement with BRBR on the point and will report to the committee as soon as agreement is reached. The same goes for the other outstanding items of agreement and the list of amendments.

**The Convener:** Thank you, Mr McKie. I invite Dr Sales to speak.

**Dr Sales:** Thank you, convener.

BRBR is obliged by statute to encourage and facilitate the release, at appropriate value, of land that is required for railway or related purposes. That duty will be fulfilled in the case of the Millerhill yards through two advanced prospects. One is a private finance initiative waste scheme that is sponsored by Midlothian Council as part of the Waverley partnership. The second is a scheme to construct a new railway maintenance facility.

Both prospects have the explicit support of the Scottish ministers and the Executive. Neither prospect is remote or uncertain, as the evidence that is before the committee demonstrates. Development of the Millerhill site for rail use also has the support of the adopted local plan and is

regarded by the Scottish Executive as having high strategic value. Such development will deliver considerable benefits to the implementation of both United Kingdom and Scottish policies on waste, sustainable transport and sustainable development.

In considering BRBR's objection to the detail of the bill, the committee will wish to weigh the safeguards that are sought by BRBR with the cost or disbenefit to the authorised undertaker of providing such safeguards. The evidence of the objector sets out the safeguards that are sought and will not benefit from repetition now. This morning, Mr Dewar expressed the view that the cost or disbenefit to the authorised undertaker of the safeguards that are sought will be low compared with the cost or disbenefit to BRBR of not having the safeguards. In the view of BRBR, the authorised undertaker can preserve BRBR's interests without incurring significant additional costs or loss of flexibility in the Waverley project.

I regret to say that to date no contractual safeguards have been put in place. As of today, all that the objector has to rely on are the good intentions of the promoter. According to Mr Dewar's evidence, that is not enough for BRBR. With all due respect, I submit that it should not be enough for the committee. As we have heard in evidence, the widely drawn limits of deviation are not sufficient. If no contractual safeguards are forthcoming before the end of the bill's consideration stage, a statutory obligation will need to be placed on the authorised undertaker to ensure that BRBR's concerns as set out in the evidence are addressed satisfactorily, before statutory powers are exercised at the Millerhill section of the Waverley line.

Likewise, the statutory savings on which Alison Gorlov and Neil Amner seem to be agreed should be incorporated into the bill by amendment, to avoid BRBR's having continuing statutory and title obligations in relation to the land at Millerhill, which it will no longer control once the bill is enacted. I urge the committee to take on board the concerns of BRBR and to be willing to give it the protection that it requires if contractual remedies are not in place before the next stage of the bill's progress through Parliament.

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

**Christine May:** I listened carefully to the evidence that we heard this morning and recall the convener saying that you hoped that agreement could be reached between the two parties in the dispute. You also said very early on that there was no point in the committee meeting as a forum in which people would swap complaints with one another. I feel that that happened to some extent this morning. I hope that both parties will try hard to reach agreement; I encourage them to do so

before the committee has to arbitrate, which it will do if it has to. However, that may not be to the liking of either party.

**The Convener:** The third group to be considered today is group 5, which relates to the objections from Sustrans and Railway Paths Ltd. The witnesses for the promoter on loss of amenity at the Newbattle viaduct are Douglas Muir of Midlothian Council, Chris Bone of Turner and Townsend LLP and Bill Sandland of Scottish Borders Council. I also welcome John Grimshaw, who will ask questions on behalf of the group.

CHRIS BONE and BILL SANDLAND took the oath.

**The Convener:** I remind Douglas Muir that he is still under oath.

Before I invite Mr McKie to question his witnesses, I invite one of the witnesses to give a brief outline of where matters currently stand.

**Douglas Muir:** We have, over a number of months, worked with Sustrans and Railway Paths Ltd to resolve all the issues, which revolve around three matters. The first is the removal of part of national cycle route 1 in Galashiels and Eskbank. The second is the possibility of extending the route through some of the areas along the old Waverley line corridor. The third is an issue for Railway Paths Ltd and concerns the transfer of some of its property to the promoter. In my opinion, we have reached agreement on all three matters. The last section on which we agreed was at Lothianbridge, where we had difficulty in determining a route. I met Tony Grant of Sustrans on Friday 6 January. We are happy with the route that has been agreed and are pushing through and trying to promote the path.

**The Convener:** Mr McKie, do you have any questions for your witnesses?

**Alastair McKie:** Yes. Earlier today the clerk was given copies of an exchange of e-mails between Mr Muir and an official of Sustrans. The last of those e-mails was sent only last night, so they are not older documents. I do not know whether the papers have been circulated.

**The Convener:** We do not have copies of the e-mails. In view of my earlier stricture, I would appreciate your not referring to them. The committee will consider the e-mails later, but I ask you not to dwell on them for the moment.

**Alastair McKie:** I will proceed without referring to them. For clarification, I note that the Lothianbridge viaduct is also known as the Newbattle viaduct. What role does the viaduct perform at the moment in the cycle route in Midlothian?

**Douglas Muir:** At the moment it has no role in the cycle route. The viaduct is owned by Railway

Paths Ltd and has the potential to form part of an extension to national cycle route 1.

**Alastair McKie:** Do you agree that the Lothianbridge viaduct will be used by the Waverley railway if the project proceeds?

**Douglas Muir:** Yes.

**Alastair McKie:** So we are dealing with the loss of a potential cycle route, not the loss of an existing route.

**Douglas Muir:** That is correct.

**Alastair McKie:** You mentioned that you had a meeting on Friday 6 January with a Mr Grant. What was the purpose of the meeting in relation to the Lothianbridge viaduct?

**Douglas Muir:** In an earlier submission, Sustrans identified a route that comes from the centre of Newtongrange and connects to what we call route X, which was part of a Sustrans report that we submitted earlier as evidence. I questioned whether we could achieve that, given the line that is shown on the plans. I met Mr Grant on site and we walked from one end of Newtongrange right through to route X. We established a route at that time. It was not quite the same as the route in the plans, but it was quite satisfactory, in that it would connect the two bits of the path and give us a link right through.

**Alastair McKie:** When you say “a link right through”, are you talking about the potential loss of Lothianbridge viaduct? Would some other form of bridge or crossing be required?

**Douglas Muir:** There is a bridge across the river, although it is fairly badly damaged. I have asked my structures colleagues in Midlothian Council to do a report on that. The bridge was put in about five or six years ago, but it was hit by a tree in a flood, so it needs some repairs. I am waiting for that report, but in principle we could establish that route.

**Alastair McKie:** What is your understanding of the position of Sustrans and of Railway Paths Ltd on the alternative route that would reuse that damaged bridge?

**Douglas Muir:** Sustrans will produce a report identifying the route and has asked whether Midlothian Council would work with Sustrans to find funding for that at some future date. I have confirmed that I would be more than happy to do that.

**Alastair McKie:** What is Railway Paths Ltd's view?

**Douglas Muir:** I have informed Railway Paths that I will do that, but I have had no response to date.

**Alastair McKie:** Has the other issue on which Railway Paths objected, which related to certain parcels of land, been resolved?

**Douglas Muir:** Last week, Railway Paths sent me plans showing the areas to which it was referring. I have since been in touch to say that the promoter is more than happy to take those small pockets on, and we shall deal with that when we acquire the remainder of Railway Paths Ltd's land, should the bill be passed.

**Alastair McKie:** Thank you, Mr Muir.

**The Convener:** Mr Grimshaw, do you have any questions for the witnesses?

**John Grimshaw (Sustrans):** I thank the committee for giving us the chance to come here today. I have just one or two questions. I should explain to the committee that the council has been very supportive in working out how to resolve the route that is parallel to the railway, and that our concern is really about whether that will be achieved.

Mr Muir, in your response to our objections, you noted that we had acquired the viaduct for the purposes of making a route. Is that correct?

**Douglas Muir:** Yes. Railway Paths has the viaduct.

**John Grimshaw:** Did you also point out in your response that such a route could be achieved by using the viaduct?

**Douglas Muir:** I think that my response said that it was not terribly clear how the viaduct would be accessed, but that once it was accessed, the route could be achieved. It is not clear how one would get from national cycle route 1 on to the viaduct.

**John Grimshaw:** Nonetheless, you accept that we own the viaduct for the purposes of making a link from one side of the valley to the other, to join the two communities together.

**Douglas Muir:** Yes, I do.

**John Grimshaw:** Do you agree that it is important that the alternative route be given the same protection as the route that we already own, as—I must emphasise—we believe it should? In other words, do you agree that the substance of the only remaining discussion between us is our contention that the promoter should develop that alternative route as part of its project, instead of leaving us to pioneer another route, having given up the land that we already own to create a certain route?

**Douglas Muir:** I cannot go quite as far as that. If we go from Newtongrange south to Borthwick, we are in exactly the same position, where Railway Paths Ltd owns various pockets of the old railway

line. The promoter is putting in some parts of the route, Midlothian Council will develop some and there are some areas that still need detailed work. Our basic agreement was that we would work together to do that. I see the section that we are talking about now as being in exactly the same position as the Newtongrange to Borthwick stretch, in that there are various parts that we can work together on. The council is quite happy to do that, and I have given an undertaking to that effect.

**John Grimshaw:** Is it true that the council has not yet formally approved that alternative route from Gorebridge through to Dalkeith, and that we are relying on your personal support?

**Douglas Muir:** That is correct. We identified the route only a week ago and I have not had the time to take the matter to my committee, but I see no problem with the proposal. We examined route X and route Y and the council fully backed the Sustrans proposal and, indeed, investigated whether it could be developed. Therefore, I see no reason why it would not back the reopening of the route that we are discussing. I add that the bridge that was damaged was put in place about six years ago, with council backing, as were the routes. The route was lost only because the bridge was badly damaged and we had not identified money to fix it.

12:15

**John Grimshaw:** What would be the case if we, as a charitable group, were unable to reach agreement with a landowner on the alternative route? Would Midlothian Council compulsorily acquire that route or would you abandon us?

**Douglas Muir:** Midlothian Council is keen to promote that route, but I would have to take legal advice as to whether we could take it compulsorily, although I do not envisage a problem. We know who the owners are and we know that they have previously agreed to that route. If the owners refused permission, the council would have to decide whether to use its compulsory purchase powers.

**John Grimshaw:** Is it therefore the case that, if the council decided not to use those powers, we would end up without a route?

**Douglas Muir:** No. There are alternative routes that are perhaps not as good, such as the one that would go through Newtongrange, down through Mayfield and back up. We could still make the links. The route that we are discussing seems to be the best, however.

**John Grimshaw:** I assure you that we are interested only in the best route.

If the final detailed arrangements on the best route require the promoters to acquire slivers of land off the railway land, would the promoters support short links and so on being built on their land, where doing so would be physically possible?

**Douglas Muir:** I think that we already have such an agreement in place in Galashiels—Mr Sandland might be able to confirm that—so I can see no reason why that would not also be possible in Midlothian.

**Bill Sandland (Scottish Borders Council):** I understand that that is the case.

**John Grimshaw:** I should confirm that we are in complete agreement with the arrangements in Galashiels.

**The Convener:** Have you finished questioning the witnesses?

**John Grimshaw:** Yes.

**The Convener:** Does Margaret Smith want to ask a question?

**Margaret Smith:** I want to clarify a point about the route around the Newbattle viaduct. Am I right that the objector owns the area on top of the viaduct but not the access to or egress from the viaduct?

**Douglas Muir:** That is correct.

**Margaret Smith:** So the objector is concerned about the loss of a potential cycle route, rather than the loss of one that is in operation at the moment.

**Douglas Muir:** Yes.

**Margaret Smith:** With regard to the suggestion that Sustrans originally made in relation to the Newbattle viaduct—to which you referred intriguingly as “route X”—what deviation is there? Is there any deviation between what has been put to us in respect of that route and the one that you walked and discussed with Sustrans a week ago? Is that basically the same as the proposal that we have seen?

**Douglas Muir:** That route is quite different. Last year—or perhaps even the year before that—we asked Sustrans to examine two issues. One was a possible replacement for part of the black path, or national cycle route 1, which was lost. It ran from Eskbank station through to a point just south of Glenesk viaduct before connecting to the main road network through Dalkeith. I also asked Sustrans to think about a proposal that would avoid the need for cyclists to have to go through the centre of Dalkeith because, at times, it is extremely busy and not very attractive, as the A68 trunk road runs through the middle of the town.

Sustrans carried out that work and came up with what we call route X and route Y—I accept that we might have been able to come up with better names. Route X was the long-distance route that would connect the east side of Dalkeith to the west side of Dalkeith. It would go underneath the Lothianbridge viaduct at right angles, underneath the A7 from an existing road and follow the river until Thornybank, on the east side of Dalkeith. Route Y, however, was designed to come specifically from Eskbank station to a point on the Eskbank road in a way that would directly replicate the part of national cycle route 1 that was lost.

The route that we looked at a week past Friday is an attempt to see how we can connect all the bits of land that Railway Paths Ltd owns. It owns various sections of the Waverley line as it goes to the Midlothian boundary. We produced a report that covered the area from Newtongrange to Borthwick. That was accepted by Sustrans and Railway Paths Ltd, but it left us with the need to join Newtongrange to route X. One possibility would have been to use the viaduct to do that, although that would leave problems in relation to crossing the A7. The route that we examined a week past Friday would avoid that. It would follow part of a fairly quiet road in Newtongrange and then go through some wooded areas before crossing the river to join route X just behind some housing.

**Margaret Smith:** Do you know how many people own that land?

**Douglas Muir:** Quite a bit of the land is around public roads, which are owned by Midlothian Council. As far as I am aware, the section through the woods is part of Lady Lothian's plantation, which is owned by Grange Estates Ltd, with whom we are working throughout Midlothian. I do not envisage problems because Grange Estates is quite reasonable to work with.

**Margaret Smith:** You keep mentioning an agreement. What level of agreement would that be? Are you talking about a written legal agreement? What sort of agreements have you entered into with Sustrans elsewhere, and would you enter such an agreement in respect of this route?

**Douglas Muir:** In relation to routes X and Y, a report was endorsed by the Midlothian Council cabinet. As I said, I have not had the time to report to the cabinet on the section that we are discussing because it has just been identified. I am happy to put the proposal to the cabinet for approval and can see no reason why it would not approve the proposal.

**Margaret Smith:** Can you give us some kind of timeframe for that?

**Douglas Muir:** I would need to check the frequency of the cabinet's meetings, but I think that the proposal could be approved within a month to six weeks.

**Margaret Smith:** I do not wish to be churlish—I accept that you have done a considerable amount of work in and out of the office—but I would like to know why the objection has not been settled, given that it has been on-going for some time.

**Douglas Muir:** I am satisfied that the objection has been settled, although Sustrans is obviously looking for a bit more comfort than is provided by a letter to say that we are happy to support the proposal.

**Margaret Smith:** Are you saying that your understanding is that the objector's basic problem relates not to whether there is a viable route, but to whether that route will ever come to fruition if Midlothian Council does not sign up to funding it or to taking it on as something to which it will give its full backing in terms of compulsory purchase orders and potential funding?

**Douglas Muir:** Not quite. The e-mail that Tony Grant sent to me asked whether we were in a position to confirm that Midlothian Council would work with Sustrans to secure funding for, and to support the creation of, the route along the line that was identified between the end of route X and Station Road in Newtongrange. I confirmed that we would be happy to do that.

**The Convener:** Mr McKie, do you have any further questions?

**Alastair McKie:** I have a question for Mr Muir. Earlier, you mentioned that an assessment of the alternative route would be required. What would that involve?

**Douglas Muir:** We need to assess the condition of the existing structure. It is obvious that we will need to repair it because it has been damaged, but we must consider whether it needs to be replaced. That is what we are doing at present. We are also examining various parts of the route. I am waiting for Tony Grant's report, but I have asked my access and cycling officers to consider whether any work needs to be done on those parts. For example, we have a small section of wall to take down and a small ramp to make, but I do not envisage any problems with those. It is purely a question of assessing what needs to be done.

**Alastair McKie:** When do you expect to receive Mr Grant's report?

**Douglas Muir:** I expect to receive it within the next week or two.

**Alastair McKie:** Thank you. I have no further questions.

**The Convener:** I thank Mr Muir, Mr Bone and Mr Sandland for their evidence.

Next, we will hear from Mr John Grimshaw of Sustrans.

JOHN GRIMSHAW *made a solemn affirmation.*

**The Convener:** There is no one to ask John Grimshaw questions, so will you give the committee a brief outline of where you stand? We heard from the promoter and you have asked questions, but we would like to hear about the areas in which disputes still exist.

**John Grimshaw:** The development of routes for walkers and cyclists is our primary business and it takes a while for the details to evolve. I must apologise for not coming to that conclusion during the earlier questions. During the past year, we have gradually come to understand the opportunities that exist to create a high-quality walking and cycling route from Gorebridge to Newtongrange and down to the valley floor. We are well on the way towards reaching a final decision on exactly how to do that and I expect to work with Mr Muir in the next four weeks to produce detailed plans.

Our only substantial anxiety is the question that the convener asked: Is it possible for comfort to be given that the plans will be realised? There will undoubtedly be some difficulties with land negotiations, and funds will need to be raised. In our role as constructors of walking and cycling routes, we negotiate for land and we raise funds all the time, but I want to be confident that we will work with the promoter to resolve matters so that we can create good infrastructure that will fulfil our sustainable transport ambitions and encourage more people to walk and cycle. At the moment, we have every assurance from the council, but—dare I say it—if the council changed its opinions we would be all at sea.

Our hope is that we will end up with good-quality walking and cycling routes when the railway is built.

**The Convener:** Mr McKie, do you have any questions for Mr Grimshaw?

**Alastair McKie:** Just a few, convener.

Good afternoon, Mr Grimshaw. Mr Muir said that he is waiting for a report from Mr Grant. Is that the drawings and plans that you referred to?

**John Grimshaw:** We have the preliminary report from my colleague Mr Grant, but we spent the whole of yesterday—from 8 o'clock until 5 o'clock—re-examining the site in minute detail because we want to report in a little more detail. Mr Muir will provide us with larger-scale plans and our report will be written on the basis of those.

**Alastair McKie:** I have no further questions. Thank you, Mr Grimshaw.

12:30

**The Convener:** Mr Grimshaw, the committee has been discussing the bill for a long time and it seems to me that there is hardly any disagreement between you and the promoter. Was it not possible to come to a formal agreement before now, at the objection stage?

**John Grimshaw:** It is entirely our fault for not being more vigorous in pursuing the details but, as I explained, one arrives at the optimum solution rather incrementally. I can only apologise. We are vigorously pursuing the matter now and I anticipate that, with Mr Muir's support, we will have a detailed route with which we will all be satisfied within a few weeks.

**Margaret Smith:** You have some outstanding issues on which you seek formal assurances from the council. Mr Muir responded to one of my questions by saying that something still has to go through the council's cabinet system. I presume that you will also be looking for that to happen. He said that that will happen in a fairly short time—four to six weeks. I presume that your final stumbling block is funding. What sum of money are we talking about?

**John Grimshaw:** The precise details will depend on the need to build bridges. The most costly bridge will be across the A7 to connect the community of Gorebridge to the country park. The A7 is a major road. In general, the construction of such routes costs about £100,000 to £120,000 per kilometre plus the cost of bridges. If the convener will allow it and if it would be helpful, I will get an estimate to the committee within 24 hours.

**The Convener:** If you could make an estimate available to the clerk, we would be grateful.

**John Grimshaw:** Thank you.

**Gordon Jackson:** I get the impression that, although you are worried and you want things to be nailed down, things seem to be okay. Given your relationship with the council, you seem to be optimistic. Is that fair?

**John Grimshaw:** Yes. I think that we are entirely optimistic—we have to be optimistic in life. Our concern is just that, within the committee process, the necessity of constructing the railway will outweigh other issues and we will be swept to one side as being a less relevant party. Actually, we are more advanced than the railway because we own the land. Our concern is about giving up something that we have worked hard to acquire in the past six years in anticipation of a future route. We want surety. We support the railway, of

course, but we do not want to lose what we have worked for.

**The Convener:** Mr McKie, you have five minutes to make a closing statement on group 5.

**Alastair McKie:** I will make only a short statement. The matter here seems to be one of process and the degree of certainty about the establishment of the alternative route. We heard evidence from Mr Muir, who is actively assessing the bridge, and he is about to receive a report from Sustrans. He will look at that report quickly and he believes that he will be able to bring the matter to committee within a short time. That will, I hope, satisfy the objectors.

**The Convener:** Thank you. Mr Grimshaw, would you like to make a short closing statement?

**John Grimshaw:** I have nothing further to say, madam.

**The Convener:** Thank you for coming to the meeting and for giving evidence. That concludes the oral evidence for group 5.

We will break for lunch now and resume at 1.30.

12:35

*Meeting suspended.*

13:36

*On resuming—*

**The Convener:** Good afternoon everybody. Our fourth group today is group 8, which relates to the objections from the Cockatoo Bar and Restaurant, Linda Page and Mr and Mrs Lamb. The concerns of the Cockatoo Bar and Restaurant regarding noise and vibration and loss of amenity have been withdrawn, but the committee understands that all other aspects of all three objections remain outstanding. Although the Cockatoo Bar and Restaurant is the lead objector for the group, it would appear from the written evidence that Mr Glass intends to speak today only on behalf of the Cockatoo Bar and Restaurant. Perhaps Mr Glass could confirm that that is the case.

**Kevin Glass (Cockatoo Bar and Restaurant):** Yes, that is correct.

**The Convener:** The committee will therefore proceed on the basis of Ms Page and Mr and Mrs Lamb having rested on their objections.

The witnesses for the promoter on the impact of the railway on the viability and revenue of the business are Douglas Muir of Midlothian Council and Alison Gorlov of John Kennedy and Co. On access, the witnesses for the promoter are Douglas Muir and Andrew McCracken of Scott

Wilson Railways. I remind the witnesses that they are still under oath.

Mr Glass will ask questions of the witnesses on behalf of the Cockatoo Bar and Restaurant. I invite the witnesses to provide a brief outline of where matters stand on the viability of the business and on the loss of revenue.

**Douglas Muir:** We have had a number of meetings with Mr Glass and the other directors of the Cockatoo Bar and Restaurant, and we have made pretty good progress. The main impact on the business will be as a result of the railway cutting off two of the roads in the Shawfair area. The railway promoter proposed a new road network in line with the Shawfair local plan. The proposal had the backing of Shawfair Developments Ltd, which is the promoter of the Shawfair development. However, the Cockatoo Bar and Restaurant had some problems: it would, in effect, be left at the end of a cul-de-sac.

Midlothian Council is involved with Shawfair Developments Ltd, so we have managed to arrange a number of meetings with the directors of the Cockatoo Bar and Restaurant. At the moment, we are considering the possibility of relocating the business within Shawfair. A letter will go out today, a draft of which has been approved by the business, committing Midlothian Council to the principle of that relocation. We cannot commit to too much because, obviously, we are the planning authority and the roads authority and are required by statute to judge on any planning applications. However, we are working on an exchange of land between one of the developers in Shawfair and the Cockatoo Bar and Restaurant. That should resolve the business's problems.

**The Convener:** Mr McKie, do you have any questions for your witnesses on business viability and loss of custom and revenue? We will discuss access later.

**Alastair McKie:** The promoter will rest on the documents that it has submitted to the committee on compensation. In those documents, the promoter has answered the compensation issues.

**The Convener:** Mr Glass, do you have any questions for the witnesses on business viability and loss of custom and revenue?

**Kevin Glass:** I have no questions.

**The Convener:** Do committee members have any questions?

**Mr Ted Brocklebank (Mid Scotland and Fife) (Con):** I am interested in knowing about the new proposal. Has the proposal been put to the objector?

**Douglas Muir:** Yes. We have been in discussion with the objector and have produced a

draft letter of comfort, if you like, which the objector was looking for. The objector recently agreed to the draft. That draft will go out as a formal letter from Midlothian Council to the objector in the next day or so. A number of parties are involved. Obviously, Shawfair Developments Ltd, the other developers and a number of other people must be party to what it says, but we are making good progress.

**Mr Brocklebank:** Mr Glass, are you happy with what has been proposed?

**The Convener:** Excuse me, but—

**Mr Brocklebank:** I am sorry, convener. Am I ahead of myself?

**The Convener:** You are. We will come to Mr Glass shortly.

**Mr Brocklebank:** Fair enough. Thank you.

**The Convener:** Members of the committee have no further questions to ask. Mr McKie, do you have any further questions to ask the witnesses in the light of Mr Brocklebank's question?

**Alastair McKie:** No, I do not.

**The Convener:** The witnesses may give a brief outline of where matters stand with regard to access if they have anything to add to their previous statement.

**Douglas Muir:** I have nothing to add, convener.

**The Convener:** Mr McKie, do you have any questions about access for the witnesses?

**Alastair McKie:** I presume that plans have been circulated to committee members—I would be grateful if Mr Muir had a copy of those before him. Plan A02, which is a more technical drawing, is a much bigger plan; the other drawing is entitled "11.7 Development Access from Core Roads". The location of the Cockatoo Bar and Restaurant is highlighted in yellow.

**Douglas Muir:** That is correct.

**Alastair McKie:** For the benefit of the committee, the Cockatoo Bar and Restaurant is called "The Marmalade Cat" on the larger of the two drawings. Mr Glass will confirm that when he gives evidence.

Mr Muir, do we agree that the proposals will not land-lock the Cockatoo Bar and Restaurant?

**Douglas Muir:** They will not.

**Alastair McKie:** Will you explain the relationship between the road configuration that is required as a result of the Waverley railway proposals and the road configuration that is required by the Shawfair new settlement proposals?

**Douglas Muir:** The road configuration that the Waverley railway promoter has proposed reflects the road proposals in the Shawfair local plan, the Shawfair master plan and the other documentation relating to the Shawfair development—the promoter has reflected their requirements. Shawfair Developments Ltd is paying for the bridges, structures and road network in the area and the promoter has reflected its wishes.

**Alastair McKie:** I ask members to look at the smaller of the two plans. The location of the Cockatoo Bar and Restaurant is shown with a highlighting smudge in the bottom corner of the plan. For the committee's benefit, will you explain where it will be in relation to the Shawfair development? Will it be in a development area?

**Douglas Muir:** It will be. It will be almost surrounded by housing that is part of the new Shawfair development. It will be located in the south-west corner of that development.

**Alastair McKie:** What will surround the Cockatoo Bar and Restaurant when the Shawfair development is completed?

**Douglas Muir:** There will be almost exclusively housing in the area, although there will be one or two small commercial centres.

**Alastair McKie:** How many houses is it intended that the Shawfair development will contain?

**Douglas Muir:** Four thousand.

**Alastair McKie:** Thank you. I have no further questions.

**The Convener:** Mr Glass, do you have any questions for the witnesses about access?

**Kevin Glass:** No, I have no questions.

**The Convener:** Thank you. Do committee members wish to ask the witnesses any questions?

**Mr Brocklebank:** Yes. I jumped the gun slightly previously. Mr Muir, have you had the opportunity to put the new proposals to Mr Glass and the people at the Cockatoo Bar and Restaurant?

**Douglas Muir:** Yes. We have been in frequent dialogue with Mr Glass.

**Mr Brocklebank:** From what we have heard, are you happy that the new location will give those people access to business that is the same as—or possibly better than—the access that they have previously enjoyed?

**Douglas Muir:** Yes. Subject to some detail being sorted out, the Cockatoo Bar and Restaurant will in effect be relocated on to one of the main arteries passing through Shawfair.



13:45

**Mr Brocklebank:** Okay. I do not know whether Mr Glass is—

**The Convener:** We will return to Mr Glass. Mr McKie, do you have any further questions?

**Alastair McKie:** No.

**The Convener:** Continuing with group 8, we shall now hear evidence in relation to the Page and Lamb objections on noise and vibration and the impact on property value. The witnesses for the promoter are, on noise and vibration, Steve Mitchell of Environmental Resources Management Ltd and, on the impact on property value, Alison Gorlov of John Kennedy and Co. As indicated previously, no representative for this group on these issues is present. The committee may of course ask questions relating to the original objection. Perhaps the witnesses can give a brief outline of where matters stand on the impact on property value and on noise and vibration.

**Alastair McKie:** Convener, I am not sure whether Mr Mitchell has taken the oath.

**The Convener:** Thank you for keeping me right, Mr McKie.

STEVE MITCHELL *took the oath.*

**The Convener:** I again invite the witnesses to give a brief outline of where we stand on the matters of the impact on property value and noise and vibration.

**Alison Gorlov:** On property values, the committee has our paper on compulsory purchase and compensation. The bill applies the compensation code and the compulsory purchase procedure is as outlined in our paper. The promoter's position is that it is proceeding on that basis.

**The Convener:** Mr Mitchell, can you speak on noise and vibration?

**Mr McKie:** Convener, can I just interrupt you? Would the committee find it useful if Mr Mitchell outlined the promoter's policy on noise and vibration before dealing with the application of that policy to the particular circumstances of the two objections?

**The Convener:** That would be helpful.

**Alastair McKie:** I invite Mr Mitchell to explain the salient points of the promoter's policy and to apply the policy to the particular circumstances of Page and Lamb as objectors.

**Steve Mitchell (Environmental Resources Management Ltd):** I welcome the opportunity to refer to the policy for these objectors, as I will do for other objectors in subsequent meetings. I will keep it brief.

The policy simply outlines the promoter's commitments to mitigating noise and vibration during the operational phase of the railway. The construction phase is dealt with in the code of construction practice. I suspect that Mr Purnell will introduce that document to the committee later in the meeting.

There are no statutory requirements for noise and vibration control on railways in Scotland; nonetheless, the policy makes clear commitments to controlling noise and vibration. First, we are adopting the noise insulation regulations that are used in England for insulating properties if noise levels are sufficiently high. Those regulations do not apply in Scotland, but we are voluntarily adopting them in this case.

The noise control policy has a three-level hierarchy of noise control measures, which I will summarise. The first level is the commitment to design, using the best practical means, the track and the track bed in such a way as to create a quiet railway. Secondly, where those measures are not sufficient, we are committed to using noise barriers to provide screening and noise attenuation. Thirdly, if we cause sufficiently high noise levels, we are committed to implementing the noise insulation scheme to which I just referred. It is important to realise that the noise and vibration assessment will be revisited during the detailed design of the scheme and that the measures will be designed in detail subsequent to today's proceedings.

Section 3 of the noise and vibration policy talks about two sets of noise standards, which are referred to as threshold levels and unacceptable levels. I accept that the committee does not want technical terminology but, as I may refer to the numbers and would like the committee to be able to recognise them, I will read them out. The threshold levels are a daytime equivalent noise level of 55dB and a night-time equivalent noise level of 45dB. We can come back to definitions of those levels if we need to. The purpose of the thresholds is to set a target level in the design of the railway. The targets will apply in any case in which we increase noise noticeably at particular properties. The rule of thumb in such cases is an increase of at least 3dB. To trigger mitigation, there are two criteria that have to be met at the properties in question: noise must be above the thresholds and we must be increasing noise noticeably. The policy makes a commitment to use all practicable measures to achieve the targets wherever possible.

The second noise levels that are referred to are the unacceptable levels. They are the noise levels that are taken from the noise insulation regulations that are used in England and Wales. Unsurprisingly, those levels are very much higher,

because noise insulation is not a preferred form of noise control. Nonetheless, if we breach those levels, we will offer noise insulation to the affected properties.

Section 5 of the policy covers train vibration. We have adopted the relevant British standard as a design standard for the railway. Just as we are committed to using all practicable measures to reduce noise, we are equally committed to achieving the values that are set out for vibration wherever we can. The main measure that is available to us relates to the track form, which we can adjust if we need to in close proximity to properties.

Section 6 of the policy—there are only two more sections—refers to monitoring and maintenance. There is a commitment to maintain the railway so as to control noise and vibration levels. Wheels and rails get rougher and noisier if they are not maintained; if they are maintained, the noise levels can be controlled. There is a commitment to the monitoring of levels to demonstrate that the design process has been successful in achieving the targets that we have set ourselves. We will monitor the levels within six months of the railway opening to test that the design has worked.

Section 7 is a reminder that if a property is shown to have been devalued as a result of noise or vibration, there is a mechanism for compensating for the lost value under the Land Compensation Act 1973.

That is a quick run-through of the policy. There is a companion guide to the policy—"Public Briefing Note on Noise and Vibration"—that gives more explanation on the technical information for objectors who are interested, as indeed one or two are. It offers a very responsible level of noise and vibration control for a railway. From my experience, I can say that it meets best practice across the industry in other projects of its kind. It certainly adopts all relevant standards and guidelines that I am aware of for such projects.

**Gordon Jackson:** This might sound stupid, but what does 55dB sound like? Can you give me an example rather than use figures?

**Steve Mitchell:** The companion guide tries to give a feel for that, as we appreciate that such things are not intuitive.

The problem is that train noise is a series of peaks that we are obliged to quantify as one number. The equivalent noise level is a way of picking up all those peaks to provide one number for the noise level that occurs over the whole day. I do not think that I can answer the question by saying that an equivalent noise level of 55dB sounds like an X, as the noise levels are very site specific. I am not trying to be difficult; I just want to avoid misleading anybody.

**Gordon Jackson:** I just wonder what 55dB is like.

**Steve Mitchell:** As a continuous sound level, 55dB is like the noise that would result from two people who were 1m or 2m apart talking to each other at a normal voice level, without raising their voices or shouting.

We set an equivalent noise level of 55dB for the daytime because that is the level below which community annoyance is generally avoided. All sorts of guidance documents and research support that figure. That is not to say that a particular individual might not find such a noise level to be objectionable in some way. However, if one asked a large number of people whether they were bothered, annoyed or disturbed by a noise environment of 55dB, the vast majority of them would say no. That is why we have adopted that number.

**Gordon Jackson:** I am still trying to understand the concept of how the peaks are dealt with. Is the noise in some way averaged out over the day? If so, that could be a wee bit misleading. To give a foolish example, if no noise occurs for 23 hours in the day but a fantastic noise happens for one hour, the average noise level might be quite low but it could still be pretty horrible to have to sit through the noise that occurs during that one hour.

**Steve Mitchell:** I appreciate that a conventional average might be misleading, but what I have carefully called the equivalent noise level is not a conventional average. Again, I refer you to the companion guide. To give you a feel for what the equivalent noise level is, I should explain that it is very biased towards the peaks.

Rather than provide a slightly technical answer, I can illustrate the equivalent noise level measurement in another way. If a school classroom contains 20 children who are five years old—in fact, let us say 30 five-year-olds, as that will make the maths easier—and one teacher who is 40 years old, the average age of the people in the classroom is roughly six. However, an equivalent average of the sort that I have been talking about would be about 16, because the single peak—the 40-year-old teacher—has a big effect on the averaging process. Thus, the equivalent noise level is not a conventional average but is very biased towards peaks. It is the noise unit that the Government recommends should be used for assessing railway noise. I am sorry if that is not intuitive.

**Gordon Jackson:** I will ask a last question before the convener shuts me up.

If we employ this fancy method—which I do not fully grasp, but that does not matter—and arrive at an equivalent noise level of 55dB, what would the peak noise level be? If I may go back to your

analogy of the 40-year-old school teacher and the 30 five-year-olds, what peak would be equivalent to the schoolteacher's 40?

**Steve Mitchell:** If the noise level policy was achieved precisely for a given property along the route, the peak would be somewhere above 70dB for the short moment when the train was directly opposite the property. Obviously, the duration of that peak would be very small and it would be surrounded by a rise and a fall.

**The Convener:** Does Mr McKie have any questions for the witness on noise and vibration?

**Alastair McKie:** Yes. Mr Mitchell, now that you have given that explanation of the promoter's policy, will you inform the committee how the properties that are owned by objectors Page and Lamb have been assessed under the policy? Can you confirm whether you have carried out site visits and give your assessment of the extent to which noise and vibration resulting from the scheme will have an impact on those properties?

14:00

**Steve Mitchell:** I will talk about the Page objection first—objection 124—which concerns Sheriffhall House. The property is approximately 45m from the alignment of the railway, which will fall into a cutting as it crosses there. Members might have spotted that on their site visit, as I was able to do. There will be screening, rather like a noise barrier, as the railway drops into the cutting. However, even without that screening, the predicted noise levels are a small amount below the noise policy targets. In fact, the predicted night-time level is about 39dB as opposed to the 45dB that we set as a target. Even without the screening, there will not be enough noise to create a significant noise impact on the dwelling; with the screening, the levels will be even lower. The objectors will be aware of noise—I have no doubt that they will hear the trains—but it will not be loud enough to cause significant disturbance according to the standards that I used to assess it.

The other relevant fact about the Page property is that it is quite close to two main roads, both of which are within about 100m of the property, so the ambient noise level is already fairly high. That lessens the effect of train noise because the car and lorry noise effectively masks it and makes it less prominent. I do not predict a significant noise impact with regard to the Page property and we do not need to take any special noise control measures at that location.

Would you like me to talk about Mr and Mrs Lamb's objection?

**Alastair McKie:** If you would, Mr Mitchell.

**Steve Mitchell:** Their location is Glenarch Guesthouse. There are a number of buildings within the property boundary and we are not completely sure which ones are used, but when I was there last week, it appeared that there might be a bed-and-breakfast facility in a building remote from the house. I see from my notes that the nearest of those buildings is approximately 50m away from the proposed railway, but it is also a lot lower than the railway, which is on a high level at that point. When we did the noise predictions there, they were below the targets that we set ourselves, so I do not believe that there will be a significant noise impact on those buildings. In the same way, there is no need for specific noise control measures.

**Alastair McKie:** Thank you. What is your evidence on the vibration impact on both objector properties?

**Steve Mitchell:** Vibration is more complicated to predict than noise because it requires more detailed information. At this stage, I refer to other surveys that my colleagues and I have done on vibration levels on other railways that use the same types of trains in similar conditions. In all cases, those vibration levels are substantially lower than the impact criteria that we have used to assess vibration at these two properties.

We look at vibration in two ways. First, we consider whether the level would be high enough to damage a property, because that would be an extremely serious impact. Certainly, these properties—and indeed all properties along the route—are far enough away that that does not concern me, as a specialist on the topic.

The second thing that we look at is whether vibration could be high enough to annoy people or disturb them in their home or building. For that we look at the accumulated level of vibration, which is rather like the strange average that we spoke about just now that is not like an average, if you see what I mean. As I mentioned in my introduction, there is a British standard that tells us how people respond to vibration and whether they would comment on vibration at given levels. The two properties are comfortably far enough away for those levels not to be breached, so I feel that, by some margin, there would not be vibration impacts on the properties.

**Alastair McKie:** I have just one follow-up question, which is simply for clarification of your earlier evidence about the noise and vibration policy. It might assist you to have that document in front of you—that might also help members. You referred to several sections of that document. Will you confirm that when you referred to section 3, you meant paragraphs 7 to 11?

**Steve Mitchell:** We may have different versions of the document. My version has seven section headings, which are numbered. In each section, the paragraphs are numbered 1.1, 1.2 and so on. Perhaps I should check which version was put on the website.

**Alastair McKie:** I ask for clarification.

**The Convener:** I will suspend the meeting to seek such clarification.

**Alastair McKie:** I would appreciate that.

14:05

*Meeting suspended.*

14:06

*On resuming—*

**The Convener:** I believe that Mr Mitchell now has the same version of the document as the rest of us have.

**Alastair McKie:** The issue concerns just the numbering, which is a little confusing. Mr Mitchell, are paragraphs 7 to 11 of the document that you now have—and which everyone else has—the same as section 3 of your earlier document, to which you referred?

**Steve Mitchell:** That is right. I apologise; I have seen many drafts of the document as I have worked on it with people in the past few months. The paragraph numbering appears to have been changed at the last moment. However, the headings have not been changed.

**Alastair McKie:** So for section 3, you meant paragraphs 7 to 11 in the document that we have.

**Steve Mitchell:** Yes.

**Alastair McKie:** When you mentioned section 5 with reference to vibration, you meant paragraphs 14 and 15.

**Steve Mitchell:** I did.

**Alastair McKie:** For section 6, on monitoring and maintenance, you meant paragraphs 16 and 17.

**Steve Mitchell:** Yes.

**Alastair McKie:** Finally, for section 7, on compensation, you meant paragraph 18.

**Steve Mitchell:** Yes.

**Alastair McKie:** Thank you. I am sorry for that confusion, convener.

**The Convener:** Thank you, Mr McKie. I call Mr Brocklebank.

**Mr Brocklebank:** I return to the evidence that Mr Mitchell gave on Ms Page's property. I think

that I am right in saying that you did not think that the noise level to which she would be subjected would be unacceptable. However, I understand that bridge strengthening and remedial works are being undertaken near that property and that they are likely to last for up to a year. Have you taken into account that additional noise?

**Steve Mitchell:** I have talked about train noise so far. I began by explaining the noise policy and how it related only to the railway's operational phase. I have not talked about the construction phase and I am happy to answer a question on it.

During construction, there will be the potential for disturbance at that property. Mr Purnell will introduce the committee to the code of construction practice in its entirety, but I will tell you about its function in regard to noise and vibration. Two sections—one for each subject—deal with that. The aim is simply to apply the best practice that we can to control and reduce noise during construction to a minimum. It is quite likely that some properties—I believe that the Page property is one of them—will still experience some disturbance.

People may find it undesirable to have that noise nearby. However, it is important to realise both that the code of construction practice will minimise that as far as it is practical to do so and that the duration of any noise disturbance will be much shorter than the duration of the works as a whole. I think that you said that the works might have a timescale of a year, but I would not want anyone to think that we would cause the maximum noise for a year. Even with heavy engineering activity, work is noisier on some days than on others. The predictions in the environmental statement, in which we outline where the disturbance would be, are based on the noisiest days. I cannot put a length of time on that, but it would certainly last for a lot less than a year. Any disturbance will be temporary, although it might be over several consecutive days. To some extent, that is the nature of construction. All that we can do is minimise the disturbance and we have made a clear commitment to doing that.

**Mr Brocklebank:** Would any compensation be available to Ms Page for the noise levels to which she might be subjected, even though she might be subjected to them for less than a year?

**Steve Mitchell:** I would prefer not to answer questions on compensation, if that is okay.

**Mr Brocklebank:** The promoter might have a view on that.

**Alison Gorlov:** There is scope for the payment of a limited amount of compensation in respect of construction noise, but the whole of the compensation code is geared towards property

values, so compensation would come in there if it came in at all.

**Mr Brocklebank:** I think that we are coming on to that topic, so it would be best for me to leave it at that.

**The Convener:** Do any other committee members have questions for Mr Mitchell on noise and vibration?

**Members:** No.

**The Convener:** Mr McKie, do you have any follow-up questions on noise and vibration?

**Alastair McKie:** I have none.

**The Convener:** Do you have questions for your witness, Ms Gorlov, on property values?

**Alastair McKie:** I have none. The promoter is simply resting on its stated policy and the application of the bill to the compensation code. Ms Gorlov will obviously answer questions.

**The Convener:** Committee members have no questions on property values for the witnesses. I take it that you have no further questions.

**Alastair McKie:** That is right.

**The Convener:** I thank the witnesses for giving evidence.

We will continue our consideration of the Page and Lamb objections by hearing evidence on loss of amenity and acquisition of land. On loss of amenity, the witnesses for the promoter are Sam Oxley, Steve Purnell, Douglas Muir and Andrew McCracken and on acquisition of land, they are Douglas Muir and Andrew McCracken.

*SAM OXLEY made a solemn affirmation.*

*STEVE PURNELL took the oath.*

**The Convener:** I remind the other witnesses that they are still under oath. I invite the witnesses to give us a brief outline of where matters stand on loss of amenity and acquisition of land.

**Alastair McKie:** Madam convener, it might again be useful if Mr Purnell were to give a brief outline of the salient points of the promoter's construction code before applying that to the objector groups under consideration.

**The Convener:** We found that helpful last time, so I concur that that would again be helpful to the committee.

**Alastair McKie:** I invite Mr Purnell to explain the salient points of the promoter's construction policy.

**Steve Purnell (Environmental Resources Management Ltd):** Do you want me to talk in both general and specific terms?

**Alastair McKie:** Speak in general terms first.

You may then address the specifics of the objection.

14:15

**Steve Purnell:** As the committee will be aware, the promoter has prepared a policy paper on the code of construction practice. Such codes are not statutory requirements when undertaking assessments of major infrastructure schemes, but they contain good practice. The promoter has sought to undertake the preparation of a code in the case of the Waverley railway scheme.

A draft of the code of construction practice was first presented in the environmental statement back in November 2003. It was updated in further environmental information that was presented to the Parliament and has now been updated further as a result of a certain amount of ecological work that took the form of an appropriate assessment and following discussions with local planning authorities, statutory agencies and residents.

The document remains live, as it were, for some time. There is the facility for the code to be updated, as and when the need arises. Compliance with the code is enforceable through being a legal requirement of the eventual contract for construction work. It is monitorable by local planning authorities, in exactly the same way as any condition attached to a planning permission is monitorable. Additional support and weight is also available to ensure that the code is enforced and monitored through facilities such as a telephone hotline, which the promoter will set up. If people suspect that the building work has not been undertaken in the way that is described in the code, that can be reported and amended instantly.

In my experience, there is plenty of evidence that such codes can be tremendously successful. Looking back to Westminster legislation, there was a comprehensive, two-part code of construction practice for the Jubilee line extension. That code afforded a good deal of protection to some very sensitive sites, in that case in central London. It was seen to work by people who both lived and worked near the sites. In cases where codes have not been applied, the contractors have failed to do some of the things that will be done under the code that has been drawn up for this project.

**Christine May:** Before Mr Purnell continues, I would like to ask one question of clarification about the code of practice. The information may be in the papers, but I have not found it. Is there an element of self-compliance and self-regulation in the code? In other words, does the contractor monitor his compliance? Is he under an obligation to report any breaches?

**Steve Purnell:** It depends on the wording that is set up to appoint the contractor. I missed out an

important point that I might have mentioned had Mr McKie asked me further about the details of the code. In finalising the code of construction practice, the contractor will be required to prepare his or her own code, which fully complies with the code that we have set up to date. The contractor can do that only once they know the full design details of the scheme. My experience is that they will be required to employ people on site to ensure that the code is adhered to.

**The Convener:** Mr McKie, do you have any questions for the witness?

**Alastair McKie:** Yes. Mr Purnell, perhaps you could apply the code to the particular circumstances of the objection. Among the concerns of the objectors is road safety. I imagine that, if there are to be construction works, hours of operation will be important. Will those be applied?

**Steve Purnell:** Certainly. The issue is of particular concern to Mr and Mrs Lamb of Glenarch House. As I mentioned, the code will be updated continually until the scheme is finalised. The promoter has given detailed consideration to Mr and Mrs Lamb's concerns about a number of issues, including safety, vehicles accessing their property and vehicle size. I understand that the Lambs have small children and that they are particularly concerned about them. I also understand that Douglas Muir, for the promoter, has had discussions with the Lambs and has put in place several—

**The Convener:** Interrupting for one moment, I understood that we were dealing with loss of amenity. We intend to question the witness on safety later. Could we perhaps return to loss of amenity?

**Alastair McKie:** For sure. We could return to hours of operation, which would clearly have an impact on loss of amenity.

**Steve Purnell:** Yes, it would. The code sets out a number of things, including the hours in which contractors are allowed to operate. Effectively, they have to stick to normal daytime working hours unless there is a specific extraordinary need not to. The contractors will be required to comply fully with those hours. Not doing so will be a breach of their contract, and, as I mentioned earlier, anybody can report on the working methods of that contractor if they believe that those methods do not comply with the code of construction practice.

**Alastair McKie:** What is your evidence about the impact that the scheme will have on the amenities of the two properties?

**Steve Purnell:** There will inevitably be construction impacts in any scheme of this nature. The aim of a responsible promoter is to put in

place everything that they possibly can to minimise those impacts. In most cases, that is straightforward, but a code is needed to enshrine all those practices.

Ordinarily, during this part of the development of a code of construction practice, the measures tend to be quite general. As time moves on, they get more specific. We now have a specific set of measures that were put into the code at a reasonably early stage. The code is currently on the Waverley website. Part 1 covers general conditions, and part 2 is a set of specific measures. Some of those have resulted from the appropriate assessment that I referred to earlier. However, a large number are in response to objectors' concerns. For example, measures have been put in place specifically as a result of Mr and Mrs Lamb's concerns about the impact on Glenarch House. Those include: a limitation on the size of the vehicles that will carry materials into and out of the site; the restoration of their driveway if it is damaged during construction; the protection of specific trees, including the three silver birch trees, which the promoter is committed to retaining; and securely fencing off particular parts of the construction compound. That comes back to the safety issue to which Mr McKie referred.

**Alastair McKie:** Thank you. I have no further questions, convener.

**The Convener:** Do members have any questions on loss of amenity?

**Gordon Jackson:** In their objection, Mr and Mrs Lamb refer to the loss of amenity—which I suppose means their privacy—through the removal of vegetation. How does the promoter intend to replace that loss after construction?

**Steve Purnell:** Vegetation will be replaced as far as possible. Sam Oxley might care to comment on certain valuable landscape aspects, but ordinarily the code would suggest that things that are removed during construction should be replaced.

**Gordon Jackson:** And that would apply in this case.

**Steve Purnell:** Yes.

**Gordon Jackson:** Do any of the other witnesses have anything to say on that matter?

**Douglas Muir:** The general policy is to remove as little of the existing vegetation as possible and to retain as much as we possibly can. As Mr Purnell says, any vegetation that has to be removed for construction purposes will be replaced where practicable.

**Sam Oxley (Environmental Resources Management Ltd):** The replacement of vegetation or planting of additional vegetation to screen off or

filter views for reasons of public amenity or ecological value will be implemented through the scheme's landscape design, which is currently at the concept stage and has been issued as part of the supplementary information for the environmental statement. As I say, the design is very much a conceptual document and its detail will hang on the engineering detail for the overall scheme and constraints with regard to sight lines, operational safety, amount of land available, stability of embankments and so on. Certainly, the intention is to offset, where possible, some of the vegetation that will be lost.

**Gordon Jackson:** I believe that the promoter sent Mr and Mrs Lamb a letter last November. Did you receive a response to that?

**Douglas Muir:** I have been trying to speak to Mr Lamb for a considerable time and finally got him on the phone last week. At that point, he indicated that he was satisfied with our suggestion and said that he would withdraw his objection. However, I note that he has not yet done so.

**Gordon Jackson:** But he gave you the indication that the issues in question had now been pretty much resolved.

**Douglas Muir:** That is what he said on the phone. I will chase him up when I have the opportunity.

**Gordon Jackson:** Well, strictly speaking, you have given us that evidence under oath. I have no reason to doubt what you have told us, but we could simply ask Mr Lamb to confirm it officially.

**Douglas Muir:** I can tell the committee that I e-mailed Mr Lamb on 12 January.

**Gordon Jackson:** Thank you very much.

**The Convener:** Mr McKie, do you have any more questions for your witnesses on loss of amenity?

**Alastair McKie:** No, convener.

**The Convener:** Do you have any questions for your witnesses on the acquisition of land?

**Alastair McKie:** No, convener.

**The Convener:** Do members have any questions on this topic?

**Christine May:** How will the proposed works interfere with Mr and Mrs Lamb's home and business during construction and operation?

**Douglas Muir:** The Lambs own a house that sits at the very bottom of the Glenesk viaduct. The only access to the viaduct's lower stretch is through their grounds; you can access one of its piers by going down their driveway and into a corner of their garden.

That method of access was used 10 years ago when Midlothian Council repointed and carried out quite a bit of other work on the structure. However, if a railway is to run over the viaduct, we will have to carry out additional work, which will include taking some test bores to check that the foundations are okay and that they have not been scoured by the river over the years. Unfortunately, the only way to get to the underside of the bridge is to go down the Lambs' driveway and through their property. However, we have undertaken to restrict the size of the vehicles that are carrying out the work. Moreover, we will not hinder the Lambs' access; we will take as little of their garden as possible; and we will reinstate everything on the way out. It is unfortunate that there is no other way of getting down to the bottom of the bridge.

**Andrew McCracken:** We will try to gain access from the top wherever possible. For example, a scissors platform would allow us to reach over from the current black path. We will endeavour to do that where we can, which will minimise traffic down the existing access road.

**Christine May:** Mr and Mrs Lamb have contended that the proposed land take—both temporary and permanent—is excessive. Can you comment on that?

14:30

**Douglas Muir:** We met Mr Lamb on site and had a look at that. His concern related to an area of the garden, referred to earlier, where there are three mature birch trees, and we have agreed that we will not take that land. All that we require is enough room for a small lorry to get down and turn to get back out. I think that it is the use of the phrase "construction compound" in the parliamentary plans that confuses people. It is not a construction compound with a lot of site offices and huts and men going about; it is a small area that is required to enable us to do the work at the foot of the bridge.

**Christine May:** Is it your view that Mr and Mrs Lamb are content with that? If the committee were to write to them for confirmation, would they confirm that?

**Douglas Muir:** Mr Lamb has indicated that to me, although that may have been just to get rid of me.

**Christine May:** We can presumably check on that.

**Mr Brocklebank:** There is another point of concern. I do not know whether it has been dealt with in your correspondence with Mr Lamb, but I gather that there are stone gate piers at the opening to his driveway that are listed by Historic Scotland. Might they be adversely affected, and

what steps might be taken to replace them? Have discussions taken place with Historic Scotland?

**Douglas Muir:** The discussions that I had with Mr Lamb were very brief and related to the size of the vehicles going up and down his driveway. The gates themselves dictate the size of vehicle that can go in and out. We have assured him that we will limit the size of the vehicles, so the risk to the piers is relatively minor. However, we accept his concern and have given an undertaking that we will make good any damage that might occur, to the piers, to the driveway or to his garden generally.

**Mr Brocklebank:** Is it a fact that those piers are listed by Historic Scotland, and would Historic Scotland have any involvement?

**Douglas Muir:** I was not aware of that, but I can check it out. We have a similar situation in one or two places on the site and I think that there is sufficient room to barricade the piers off while we are doing the work, so that we can get a fairly small hire-type lorry with a crane on the back through. That is the sort of vehicle that went up and down the drive last time, when we refurbished the bridge. We managed it last time and I am fairly confident that we can do it again.

**Mr Brocklebank:** So, as far as you are concerned, access to the Lambs' property will be maintained during the construction period and they will be able to get in and out.

**Douglas Muir:** Absolutely. An issue would arise only if we have to resurface the driveway, and I have already agreed that we would do that in consultation with Mr Lamb, because we would have to shut it off for a time, but he is quite happy with that.

**The Convener:** Do other committee members have any questions?

**Members:** No.

**The Convener:** Mr McKie, do you have any further questions to ask the witnesses?

**Alastair McKie:** I have none.

**The Convener:** I thank the witnesses for their evidence on loss of amenity. We now turn to the remaining concerns in the Lamb objection, and we will hear evidence on safety from Douglas Muir of Midlothian Council, and evidence on the European convention on human rights from Fiona Stephen of Anderson Strathern and Alison Gorlov of John Kennedy and Co.

*FIONA STEPHEN made a solemn affirmation.*

**The Convener:** I remind Ms Gorlov that she is still under oath.

I invite the witnesses to give us a brief outline of where matters currently stand on the subject of safety.

**Douglas Muir:** I think that we have probably covered most issues. The safety that Mr and Mrs Lamb were concerned about was to do with access through their property, not the safety of the railway. I think that we have basically reached agreement with them on how we will maintain access and segregate the works from their family home. My understanding is that they are satisfied with the measures that we propose.

**The Convener:** Does Alastair McKie have any questions?

**Alastair McKie:** No.

**The Convener:** Do members of the committee have any questions?

**Members:** No.

**The Convener:** Does Mr McKie have any questions for his witnesses on the ECHR? Perhaps they wish to give a brief outline of where we are.

**Fiona Stephen (Anderson Strathern):** I would like to rest on the written evidence that the promoter has prepared.

**Alastair McKie:** That is also my position.

**The Convener:** Do any committee members have questions?

**Members** *indicated disagreement.*

**The Convener:** In that case, I thank Fiona Stephen.

I ask Mr Kevin Glass to come forward. Mr Glass will speak on behalf of the Cockatoo Bar and Restaurant. He will talk to us about the impact of the railway on the viability of his business, about loss of revenue and about access. I thank Mr Glass; he has had to sit waiting for a long time. I ask him to make a solemn affirmation.

*KEVIN GLASS made a solemn affirmation.*

**The Convener:** I invite Mr Glass to comment on whether he accepts the promoter's evidence on where matters currently stand.

**Kevin Glass:** Yes, I do.

**The Convener:** Do you wish to make an opening statement?

**Kevin Glass:** No. I would like to rely on the written evidence that we submitted. I agree with what Douglas Muir said earlier, which is that we are in on-going discussions and are trying to find a solution to the problem.

**The Convener:** Does Mr McKie have any questions?



**Alastair McKie:** If that is the witness's position, I do not have any questions for him.

**The Convener:** Do committee members have any questions for Mr Glass?

**Gordon Jackson:** Again, I will try to get impressions without tying people down. Do you feel that agreement will be reached? I do not want to take away your commercial positioning. Are you confident that the problem will be sorted out?

**Kevin Glass:** I am as confident as one can be. The only issue is that a different party—a private landowner—with whom we also have to reach agreement is involved. We must also go through the planning process with Midlothian Council on licensing and so on. All those things look to be—

**Gordon Jackson:** From your point of view, the move to the other location is in principle something that you can work with.

**Kevin Glass:** Yes.

**Gordon Jackson:** Obviously, you need to be able to get the land and the planning permission, but subject to other people's issues you are happy with the promoter's suggestion.

**Kevin Glass:** Absolutely.

**Gordon Jackson:** That largely solves the problem for us.

**The Convener:** I will touch on access, as I did not ask you specifically about that. Are you satisfied with where matters stand in respect of access? Do you want to add anything on that?

**Kevin Glass:** No. That would be dealt with if we moved to the alternative site.

**The Convener:** Does Mr McKie have any questions?

**Alastair McKie:** No.

**The Convener:** Do committee members have any questions?

**Members indicated disagreement.**

**The Convener:** I thank Mr Glass for coming to give evidence. That is much appreciated. You may have a five-minute statement if you wish to avail yourself of the opportunity.

**Kevin Glass:** No. That is okay.

**The Convener:** Mr McKie?

**Alastair McKie:** I do not wish to sum up. We will rest on the evidence as given.

**The Convener:** Thank you. That concludes the oral evidence for group 8. I propose that we suspend the meeting for five minutes.

14:39

*Meeting suspended.*

14:46

*On resuming—*

**The Convener:** Welcome back, especially our witnesses. We move on to our fifth group today, which is group 9. The group covers the objections from Symon of Edinburgh, K & I Ltd and Tesco Stores Ltd. The witnesses for the promoter on impact on access and business operations are Alison Gorlov from John Kennedy and Co, Douglas Muir from Midlothian Council and Andrew McCracken from Scott Wilson Railways. I remind the witnesses that they are still under oath.

I invite the witnesses to give a brief outline of where matters currently stand.

**Douglas Muir:** Sorry, convener, are we dealing with Tesco in the first instance?

**The Convener:** Yes.

**Douglas Muir:** Tesco has plans to redevelop its Eskbank site, so it wishes to retain the ability to lift and shift—as it put it—the access road to the station. Through the bill, we aim to take over the road to ensure access to the station park-and-ride site, but Tesco was not terribly keen on that idea. Since then, we have made an offer to Tesco that we would take over the road but would not object to Tesco lifting and shifting the road at its expense should it wish to do so, provided that it maintained access to the car park. Alternatively, we said that Tesco could retain ownership of the road provided that it gave us a long-term lease on it. Again, we would not object to Tesco lifting and shifting the road at its expense as long as access was maintained.

Tesco is in discussions with Midlothian Council's planning department as part of the local plan consultation on the possible redevelopment of the site. I suspect that Tesco is waiting for the outcome of those discussions before it decides which of the two options it prefers. That is as much as I can tell you at the moment, I am afraid.

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

Mr McKie, do you have any questions for the witnesses on the impact on access and business operations in relation to the Tesco objection?

**Alastair McKie:** I have no questions. I think that the matter has been adequately covered.

**The Convener:** As committee members have no questions, we move on to hear evidence on the K & I Ltd and Symon of Edinburgh objections on acquisition of land and impact. The witnesses for the promoter are, again, Alison Gorlov from John Kennedy and Co, Douglas Muir from Midlothian

Council and Andrew McCracken from Scott Wilson Railways. As previously indicated, no representative for group 9 on these issues is present today. The committee may, of course, ask questions in relation to the original objections.

Mr McKie, do you have any questions on acquisition of land and impact in relation to the K & I Ltd and Symon of Edinburgh objections?

**Alastair McKie:** Yes.

Mr Muir, for the committee's benefit, will you confirm the state of negotiations between the promoter and K & I Ltd and Symon of Edinburgh, given the recently revised drawings of the Eskbank station site?

**Douglas Muir:** I met Mr Symon and Mr Kirkness of K & I Ltd on a couple of occasions. Mr Symon was concerned about a short footpath link between Tesco and the new station and both gentlemen were concerned about access to the front of their buildings from the new access road to the park-and-ride site. They were fairly happy to discuss those concerns. They asked whether we would move the access road across a bit, in line with their gates, and whether we would reroute the path. We did both those things, in relation to which we submitted a drawing, which I think that you might have seen. It is Scott Wilson drawing PO6, to which we referred in relation to the Hardengreen Lane residents.

Since we submitted the drawing to Mr Symon and Mr Kirkness, I believe that Mr Symon has written to the Parliament to say that he is happy with the proposals, except that he would prefer a wall instead of a fence. We have said that we are happy to discuss the detail with him at a later date. He also made reference to something to do with the business case. As far as I am concerned, we have addressed all Mr Symon's concerns.

When I last spoke to Mr Kirkness, he apologised and said that he had not had time to look at the plans. He said that he would do so and get back to me but he has not done that, unfortunately, so I am not sure whether he is happy or not. However, we incorporated in the drawing all the things that he asked for at our meeting. I will attempt to chase him up.

**Alastair McKie:** I have no further questions.

**The Convener:** Do committee members have any questions?

**Members** *indicated disagreement.*

**The Convener:** Mr McKie, you have a few minutes in which to make a closing statement on group 9.

**Alastair McKie:** I wish to comment only on topic B, which was raised by Symon of Edinburgh and which purports to relate to a challenge to the

business case. I am assured that the clerks have determined that it is not competent. Given that assurance, I am happy to rest on the evidence.

**The Convener:** Thank you. That concludes the oral evidence on group 9.

We turn to our sixth group today, which is group 10. The group covers the objections from Grange Estates and the trustees of the Newbattle Trust. The objectors have chosen not to rebut the promoter's written evidence. The witnesses for the promoter on acquisition of land, impact on viability and operation of business, planning and development potential for sale of the land, land value, loss of storage facilities, access, safety and impact on farming operations are Alison Gorlov from John Kennedy and Co, Douglas Muir from Midlothian Council, and Andrew McCracken from Scott Wilson Railways. I remind the witnesses that they are still under oath.

Before I invite Mr McKie to question the witnesses, I invite one of the witnesses to give a brief outline of where matters currently stand on those topics.

**Douglas Muir:** We have had a number of meetings with Grange Estates and the trustees of the Newbattle Trust. They had concerns about two distinct sites: Eskbank station and Newtongrange station. At Eskbank station, the objectors sought a realignment of the access road as it enters the park-and-ride site. We sent to Grange Estates and the trustees the drawing to which I referred in my comments on the previous group. The objectors wrote to me on 16 December to say that, if we formally issued the drawing, they would withdraw their objection in relation to the Eskbank site. We did that, but the objectors have not withdrawn their objection, as far as I am aware.

On the Newtongrange objection, we had discussions about relocation of a store shed. The objectors wrote to me to say that they are having a complete rethink of their operations at the Newtongrange station site. Somebody is doing a valuation of their property and they want to meet us when they have the results to discuss the options that might be open to them. I have confirmed that I am happy to meet them when they get the outcome of the valuation. They have not arranged a meeting yet, but I am pretty confident that we are almost there with all the objections from Grange Estates and the trustees of the Newbattle Trust.

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

Mr McKie, do you have any questions?

**Alastair McKie:** I have none.

**The Convener:** I have a question for Alison Gorlov. If the objectors are content with the changes to the layout of Eskbank station that the

promoter suggests, would that require an amendment to the bill?

**Alison Gorlov:** I do not think so. We have been careful to make sure that adjustments are within the limits of deviation, and I think that I am right in saying that, in this case, nothing strays outside our limits. It would be an issue for the bill only if unauthorised work strayed on to someone's land—if, for example, a boundary wall had to be built. If the owner does not object, it will not be an issue for the bill.

**Andrew McCracken:** Can I just confirm Alison Gorlov's point? We have to change access in relation to K & I, but that will stay within the limits of deviation.

**The Convener:** As committee members have no questions, I ask Mr McKie whether he has any further questions on the topic of land acquisition.

**Alastair McKie:** I have none.

**The Convener:** I turn to impact on viability and operation of business planning and development potential for sale of land and land value.

Mr McKie, do you have any questions for your witnesses on those topics?

**Alastair McKie:** It is the promoter's intention simply to rest on the written evidence before the committee, madam.

**The Convener:** As committee members have no questions on those points, I turn to loss of storage facilities, access and safety and impact on farming operations.

Mr McKie, do you have any questions for your witnesses?

**Alastair McKie:** The position is the same as before: I have none.

**The Convener:** As committee members have no questions, you have a few minutes in which to make a closing statement, if you so wish.

**Alastair McKie:** I do not wish to make a closing statement in the circumstances; I will rest on the written evidence.

**The Convener:** Okay. I thank the witnesses for giving evidence. That concludes the oral evidence for group 10.

Our final group today is group 11, which covers the objections from Doctors Wyllie, Mr and Mrs Combe, Lea Taylor and David Flynn. Dr Wyllie will speak on behalf of the objectors.

On safety, the promoter's witnesses are Douglas Muir from Midlothian Council and Andrew McCracken from Scott Wilson Railways. On loss of amenity and privacy, the promoter's witnesses are Douglas Muir, Sam Oxley and Andrew

McCracken. On noise, vibration and pollution, the promoter's witnesses are Andrew McCracken, Steve Mitchell and Steve Purnell. On reduction of property value, the promoter's witness is Alison Gorlov.

While the witnesses are getting settled, we will have a short suspension.

14:58

*Meeting suspended.*

15:00

*On resuming—*

**The Convener:** I remind the witnesses that they are still under oath.

Before I invite Mr McKie to question the witnesses on safety, I invite one of the witnesses to give the committee a brief outline of where matters currently stand.

**Alastair McKie:** Convener, it would be useful to ask Mr McCracken to summarise how health and safety measures are applied to and enforced in a new railway project.

**The Convener:** Mr McCracken?

**Andrew McCracken:** I draw the committee's attention to our fourth policy paper—the one on rail regulation—which we submitted in December. It covers three specific areas. The second part of the paper is on railway safety and we have outlined the legislative requirements and the legislative framework for the rail industry.

The Health and Safety Executive and its railway arm, if you like—Her Majesty's railway inspectorate—are responsible for regulation and policy making and for the enforcement in the rail industry of the Health and Safety at Work etc Act 1974. It is in their power to ensure that the duty holders in the rail industry follow the legislation. By duty holders, I mean anyone who has a licence to operate in the rail industry, including Network Rail and any train operating company.

I draw the committee's attention to paragraphs 16 and 17 of the rail regulation policy paper. The duty holders, or operators, are required to have a safety case in place; that is the mechanism for ensuring that the safety legislation is enforced. I will not read out the paragraphs verbatim but will summarise them. The operator has to have a safety case in place that has been approved by the Health and Safety Executive. Thereafter, the HSE and HMRI can audit, police and enforce any breaches of safety legislation. A rigid legislative framework is in place to ensure that railway safety legislation is complied with.

**Alastair McKie:** I want to ask about paragraph 21 of the paper, which refers to transitional arrangements for the transfer of powers that govern safety cases. Those powers will come into force fairly soon I believe.

**Andrew McCracken:** That is correct.

**Alastair McKie:** Dr Wyllie has concerns about safety and, in particular, derailment near his property at 5 Westfield Bank. Is there anything about the character of the line, the topography, or conflicting railway movements in this vicinity that makes it different—as regards safety—from any other part of the modern railway network?

**Andrew McCracken:** Derailments occur for several reasons but two of the primary reasons are severe topography and severe geometry. If the location is subject to heavy snowfalls, for example, or if it has a large cutting slope, the risk of landslip is higher and that can lead to derailments. If there are tight curves that require high maintenance, and if the standard of maintenance slips in any way, track failures or twists can occur and that, too, can lead to derailments.

Dr Wyllie's location is fairly mundane in terms of topography and geometry. It is an at-grade location on a straight section of track and no key factors suggest a high risk of derailment.

**Alastair McKie:** Thank you, Mr McCracken.

**The Convener:** Thank you, Mr McKie. Dr Wyllie, do you have any questions for the witnesses on safety?

**Dr David Wyllie:** I have several.

Mr McCracken, do you agree that putting a railway line closer to our house than I am sitting to Mr McKie introduces a safety risk that was not present before?

**Andrew McCracken:** If you are asking me whether, if a railway is put on the black path, the risk will be higher than it is in the current scenario, the answer must be yes, because no trains run there at the moment.

Let me amplify that point. It is the Health and Safety Executive's role to set standards and policies if it deems that a particular situation represents a high risk to safety. I can confirm that there is no policy, piece of legislation or codified requirement in the rail industry on how close a dwelling can be to a railway, other than the normal structural clearances that apply. That suggests that it is not deemed that the proposal will create a high-risk scenario if all the other legislation is enforced.

**Dr Wyllie:** I simply asked whether a risk—not a high risk—would be introduced. You have agreed that that is the case. In your opening statement, you mentioned that derailments occur as a result

of a particular track alignment or topography. You did not mention another risk—that of an object appearing on the line, whether accidentally or as the result of malicious behaviour. Is it correct that that is another cause of derailment?

**Andrew McCracken:** It is true that acts of vandalism register on the HSE's list of causes of accidents.

**Dr Wyllie:** A new element of risk to safety is being introduced at the locality in question. What would the consequences be of the derailment of a train that passes within 6m of my property?

**Andrew McCracken:** It is difficult to say. That would depend on several factors. If a train derails on a curve—

**Dr Wyllie:** The section of track that we are discussing is not curved, but straight.

**Andrew McCracken:** Please let me finish. If a train derails on a curve, the effect tends to be more dramatic because the train naturally goes sideways rather than continuing straight on. If a train comes off the rails on a straight section of track such as that which is proposed at your location, it tends not to be subject to a sideways force that would push it towards the edge of the line. The issue of whether the track is curved or straight is relevant because a derailment would have a more significant effect on a curved section of track.

**Dr Wyllie:** Given the proximity of the line, if a train simply toppled over, its 90 tonnes would hit our property.

**Andrew McCracken:** You assume that the train would topple over. That is an assumption.

**Dr Wyllie:** I am giving an example—

**The Convener:** The point that Dr Wyllie is making is that if a train were to topple over, it would hit his property. Do you agree that that would happen?

**Andrew McCracken:** I am under oath, so I cannot say how far a train would fall if it toppled over and whether it would hit Dr Wyllie's house.

**The Convener:** The point that he is making is that if the train just toppled over completely, it would hit his property. Do you agree that that is the case?

**Andrew McCracken:** If the train were to topple over as you have suggested, it would be very close to Dr Wyllie's property.

**Dr Wyllie:** If the train were to hit our property, what would the consequences be?

**Andrew McCracken:** To answer your question, I would need to know about the structural stability and soundness of your property, but I do not have

that information. The consequences would also depend on the line speed and on how much momentum and speed the train would lose over the distance between the point of derailment and your property. All those factors would contribute to the effect at the point of contact with your house. It is difficult to answer your question.

**Dr Wyllie:** Do you agree that if a train were to hit my property at any speed—bearing in mind that it would be accelerating from, or braking into, Eskbank station—the consequences would be severe, both for the building's structure and the safety of its occupants?

**Andrew McCracken:** If a train were to hit a property, there would be damage.

**The Convener:** Perhaps you could move on, Dr Wyllie. The committee made a site visit and we are highly familiar with the location of your property. We may have exhausted the issue of safety, unless there is something specific that you want to pursue.

**Dr Wyllie:** I would like to raise a couple of other items.

**The Convener:** On safety?

**Dr Wyllie:** Yes.

**The Convener:** Okay, but please make it brief.

**Dr Wyllie:** I would like to bring to the promoter's attention the fact that the occupants of the homes in Westfield Bank sleep on the side of the property that is nearest the railway.

The location that we are discussing extends north from Eskbank station through what is primarily a residential area, although it contains the Hardengreen industrial site. The area is mostly made up of new properties and families with young children. I suggest that bringing a railway into such an area has implications for the safety of children at play.

**Andrew McCracken:** The only response that I can make to that is that we will ensure that the full railway specification with respect to line-side fencing is applied. I can confirm that the Network Rail policy on this issue involves a kind of risk-rating approach. If the line is in an urban area, in which there is a higher risk of trespass, higher specification fencing is deployed. We have priced the project using such fencing at that location.

**The Convener:** Do committee members have any questions on this aspect?

**Members:** No.

**The Convener:** Mr McKie, do you have any further questions?

**Alastair McKie:** I have two further questions.

Mr McCracken, what will be the maximum speed on the railway, across the whole line?

**Andrew McCracken:** The maximum line speed on the route is 90mph.

**Alastair McKie:** What would be the line speed at the location that we are discussing?

**Andrew McCracken:** From our model, we can confirm that trains will be either accelerating from or decelerating into Eskbank station. We think that the maximum speed will be in the order of 45mph.

**Alastair McKie:** You have given evidence on the approval mechanism by which a new railway scheme is given permission to go ahead by HMRI. Do you have any reason to believe that that approval will not be given for this rail link at this location?

**Andrew McCracken:** On the contrary. We have talked to HMRI twice during the preliminary stage and all the indications are that it will approve the scheme.

**The Convener:** We will now deal with the loss of amenity and privacy that is referred to in the three objections. I invite one of the witnesses to give the committee a brief outline of where matters stand.

**Douglas Muir:** In early discussions with Dr Wyllie, we identified that our original plans—which would have resulted in a footbridge being located outside his house—would contribute significantly to loss of amenity and privacy. At a fairly early stage, we moved that bridge to another location to remedy that.

I accept that the railway will run close to Dr Wyllie's garden. Currently, there is a footpath running along there that cyclists and pedestrians use, which will be replaced by the railway. Apart from Dr Wyllie's fence, there will be a noise barrier about 2.6m high along that section and we are also examining what screening we could put between the two fence lines.

**The Convener:** Mr McKie, do you have any questions on loss of amenity and privacy?

**Alastair McKie:** I have a question for Ms Oxley. Dr Wyllie gave evidence about the desire for some form of additional screen planting to ameliorate the effects of the railway. What is your advice to the committee on that possibility? Have you looked at the location recently?

**Sam Oxley:** I was at the location last week. There are a couple of points to note. First, Dr Wyllie already has a line of conifers in his garden, just on his side of the fence. I guess that the trees stand at around 3.5m high. Conifers grow quite quickly; I expect that they will be about 4m or 5m high in a couple of years. They filter the view from his property, rather than totally screening it. As we

said, there will be a noise barrier, which will be approximately 2.6m high. A gap will be left between the boundary fence of Dr Wyllie's property and the noise barrier. There is no reason why we cannot undertake further planting in that gap.

15:15

**Mr McKie:** Would that apply equally to Mr and Mrs Combe at 6 Westfield Bank?

**Sam Oxley:** Yes. There will be a gap all the way along. I know that Dr Wyllie expressed interest in vegetation in the gap being maintained as a hedge of about 5m. In reality, the planting would be more informal than that because getting into the gap to trim and maintain a hedge would not be practical. We would want to plant native species that would fit with the landscape and with the ecological aspirations for the corridor. In principle, there is no reason why there could not be a hedge in the gap, as long as everyone is happy—from an operational point of view—that such a hedge would not interfere with safety.

**Christine May:** We are all familiar with the concerns that train operators express when there are leaves on the line during the leaf-fall season. Have you had any discussions with either train operating companies or track companies about the advisability of the nature of the planting to which you referred and whether the restrictions on the species that you would put in the gap would, in fact, meet the objector's requirements?

**Sam Oxley:** As landscape architects, we are familiar with working with the requirements that are involved in planting adjacent to railways. Those requirements are detailed and go down to the level of specifying species. Some species are preferred because they have smaller leaves, their leaves are less likely to drop or their leaves decompose more quickly. Species that have large leaves, such as sycamore, are more likely to cause problems on a line. Obviously, we cannot be definitive until we have measured all the distances and have the exact detailed design in front of us, but I am fairly confident that a solution can be determined in this location. The important point is that we do not plant trees that could fall across the line, which would obviously be very dangerous. If we maintain shrubby vegetation that is unlikely to fall and cause the kind of damage that a large tree trunk falling across the line would cause, there should not be an issue.

**The Convener:** Mr McKie—have you finished questioning Miss Oxley in this initial round?

**Mr McKie:** Yes.

**The Convener:** Miss Oxley, you said a number of times that there are no reasons why you cannot

do X, Y and Z. You also said that you visited the location last week, as did the committee. If there is no reason why you cannot do X, Y and Z, why has agreement not been reached between you and Dr Wyllie on more satisfactory solutions for landscaping than those with which we are faced today?

**Sam Oxley:** The only reason why the detail is not available is because we cannot produce detailed landscape design until we have the detailed engineering design. We get out our scale rules literally when the engineering design has been done and we consider the space that is available for planting. We do the landscape design on that basis.

**The Convener:** Are you saying that when we get to the detailed engineering drawings and the like, you will not only take cognisance of the difficulty of leaves falling on the line, but ensure that the landscaping will satisfy Dr Wyllie?

**Sam Oxley:** Yes.

**The Convener:** Thank you.

**Mr Brocklebank:** I have a question about the barrier that you mentioned, which I think you said would be 2.6m high. I assume that, in the first instance, that barrier is intended to preserve amenity, cut down the visibility of the line and possibly help noise abatement. Will that barrier also be strengthened to answer the safety points that we talked about earlier regarding a train coming off the line? Would the barrier do anything to help in such a situation?

**Sam Oxley:** The prime reason for the presence of the barrier is to alleviate noise. Its effect in screening views is incidental to its prime purpose. Whether the barrier has the capability to contain trains will depend on its structural design, but I imagine that that is unlikely.

**Andrew McCracken:** Noise barriers are not normally built for that purpose.

**Mr Brocklebank:** So it would do nothing to ameliorate the situation if a train was derailed.

**The Convener:** Dr Wyllie has been very patient. Do you wish to question the witnesses on loss of amenity and privacy?

**Dr Wyllie:** Yes, convener. Notwithstanding Sam Oxley's recent statement that the promoter is now amenable to additional planting, its response to our original written evidence suggested that it was not considering such planting. I will point out a few salient features of detail. The devil is always in the detail and, for three and half years, we have been pressing for detail.

**The Convener:** You will give evidence later. This is your opportunity to question the witnesses on the evidence that they have given. I ask you to

confine yourself to questioning the witnesses.

**Dr Wyllie:** Is it correct that if the engineering report came back with the final alignment on the distances measured and it transpired that there was insufficient room for additional planting, our position would be no better?

**Sam Oxley:** That is unlikely, given the space that will be left between the two fences. For a hedge, only 1m or 1.5m is needed. There will be about 3m, so it is unlikely that additional planting will not be possible between the fences.

**Dr Wyllie:** Would planting take into consideration the suggestion in our written evidence from November that it should not compromise the foundations of the property, given that the property is in such close proximity to it? There is a very limited amount of space that can be used.

**Sam Oxley:** It would be essential not to pick species, such as willow, that have invasive roots, so that your property was not undermined. The same would apply to planting in close proximity to the railway.

**The Convener:** Are you finished, Dr Wyllie?

**Dr Wyllie:** I think so—for the moment.

**The Convener:** Mr McKie, do you have more questions for the witnesses on loss of amenity and privacy?

**Alastair McKie:** I have none.

**The Convener:** We return to noise and vibration, which were referred to in the three objections. There will be a change of witnesses. Andrew McCracken, Steve Mitchell and Steve Purnell will give evidence on noise, vibration and pollution. Alison Gorlov will remain for the next section, on property value. I invite our witnesses to give a brief outline of where matters stand on noise and vibration.

**Alastair McKie:** Steve Mitchell has assessed each of the properties in relation to the potential impacts of noise and vibration.

**Steve Mitchell:** I do not have much to add to my written evidence on the subject. I am happy to summarise that evidence briefly, to refresh members' memories.

**The Convener:** There is no need to summarise written evidence. Unless you have something to add about where we stand, perhaps you would like to rest for the moment and to take questions from Mr McKie and Dr Wyllie.

**Alastair McKie:** The group of objections concerns four properties. Will you give your professional opinion of the noise and vibration impacts that the Waverley railway will have on

each property? Is mitigation intended and, if so, will it bring the noise levels within the acceptable limits that are set out in the policy statement that you gave earlier in evidence?

**Steve Mitchell:** I will start with the properties of Dr Wyllie and of Mr and Mrs Combe, which are similar—they are numbers 5 and 6 Westfield Bank. As we have heard, those properties are very close to the proposed railway, so they would—in the absence of mitigation—be exposed to very high noise levels. We have heard other people refer to a noise barrier, which is one of the mitigation measures to which we are committed.

I will add to one or two points that have been made. The height of 2.6m will be above the top of the rail, so the barrier will be a little higher above local ground level—perhaps getting on towards 3m—depending on the depth of the rail and the ballast underneath the rail. That is subject to the detailed design, which I know frustrates objectors, who want to know the detailed design now. However, as far as I can tell, that will be the barrier's approximate height. That is not an elegant solution to such a noise problem but, my calculations suggest that with such a screen we can meet the noise and vibration policy targets that we have set ourselves.

As for vibration, this might be slightly surprising, but I think that the targets that we have set ourselves would be met with a standard form of rail and track form, by which I mean a continuously welded rail that has no joints, with a good depth of ballast underneath. However, I suspect that the location will be examined carefully during the detailed design.

If I were designing the railway now and I had been given the noise and vibration policy targets as my brief and my contractual requirement, I would look carefully; I might well modify the track directly opposite the properties in question. The objectors' evidence gives us examples of how that can be done, either by a mat under the ballast or by adjusting the rail fixing. Various methods for reducing vibration in railway land are invisible unless one looks carefully. I am confident that we can meet the vibration standards through such mitigation measures, if they need to be implemented through the detailed design.

We have a solution to noise and vibration to meet the targets that we have set ourselves and to avoid what I believe would be unacceptable noise and vibration impacts.

**Alastair McKie:** We will move on to 9 Strawberry Bank and the former property of Ms Taylor.

**Steve Mitchell:** Number 9 Strawberry Bank is the property of David Flynn and is further north than Dr Wyllie's property. At that point, the railway

begins to drop into a cutting. I was a little surprised at the depth of the cutting there when I had a look to confirm the dimensions last week. As a result of the cutting, I believe that Mr Flynn's property will benefit from some screening, but that may well need to be supplemented with a noise barrier that follows through, subject to the detailed design. There is certainly a solution that would work effectively there.

I move on to Ms Lea Taylor's property, which is on the other side of the railway.

**Alastair McKie:** Before you do that, will you say what is the distance between the rail line and 9 Strawberry Bank?

**Steve Mitchell:** The distance is approximately 30m; 9 Strawberry Bank is set back some distance. We are unlikely to need to provide specific screening there, but the opportunity exists if necessary to meet the clear targets that we have set ourselves, as I explained.

**Alastair McKie:** Mr Mitchell was going to advise us about Ms Taylor's property, which is on the other side of the track.

**Steve Mitchell:** The property is on the other side of the track and is almost opposite the properties that we have been discussing. I was just looking up the distance before I was asked about that, but I cannot lay my hands on the information that I want. I think that the distance is approximately 20m or 25m back from the alignment.

15:30

**Andrew McCracken:** The distance is 20m.

**Steve Mitchell:** Thank you very much.

As we heard, trains will not be travelling at anywhere near their full speed—they would travel at about 45mph, which is around half their full speed. The calculations that we have done suggest that we would not necessarily need to add any noise screening in that location, but the opportunity exists to do so if we need to. The property is certainly far enough away that there would not be any vibration effects.

**Alastair McKie:** That ends my questioning of the witness.

**The Convener:** Mr Mitchell, I want to ask about something before I ask Dr Wyllie to come in. You seem to be saying that you understand at least some, if not all, of the concerns that exist, particularly those of Dr Wyllie. I think that you also said—I am sure that you will correct me if I am wrong—that you see a case for additional vibration mitigation measures on the track. Are you giving an assurance that there will be additional vibration

mitigation measures and additional bedding on the track?

**Steve Mitchell:** Yes. The assurance that I give is that we will comply with our policy, which I outlined earlier. Our policy is that we will use all practicable measures to reduce vibration to the targets that we have set. In this case, practicable measures can be taken to meet those targets, which will happen as a result of the implementation of our policy.

**The Convener:** I confess that I have a difficulty. We have heard that much more could and will be done with respect to planting and you have said today that much more can be done about vibration. Why have Dr Wyllie and his family had to go through a lot of worry and why have they had to spend such a long time on the matter? No such mitigation measures were proposed when we made our visit last week. I wonder why it has taken so long for you to come before us and say, "Yes, they have concerns, which we are looking at."

**Steve Mitchell:** I cannot go back over things because I do not know the details of all the consultations that Douglas Muir had with Dr Wyllie in the period in question. However, we have said in the environmental statement that we would meet the noise and vibration level requirements. The noise and vibration policy document is new—it dates from December—but it simply summarises the measures to which we committed ourselves in the environmental statement. I appreciate that this is frustrating, but because the railway has not been designed, we do not know the exact details of those measures. However, we know that we are committed to the values that we have set ourselves, and my professional judgment is that we can meet those targets and that we will meet them through implementing our policy.

**The Convener:** Thank you. Do you want to say anything, Dr Wyllie?

**Dr Wyllie:** I am a little bit confused and hope that you will bear with me as my thought process unfolds. What are the noise estimates at Westfield Bank?

**Steve Mitchell:** The night-time  $L_{Aeq}$  would be somewhere between 50dB and 55dB, which should be seen against the 45dB target that we discussed earlier.

**Dr Wyllie:** Where do those figures appear?

**Steve Mitchell:** They are not reported in any of the documents because we have gone straight to designing the mitigation, which several people touched on earlier. It is clear that we will not build the section of railway in question without mitigation. We have made a clear commitment to



that mitigation. The only important noise levels are those with mitigation.

**Dr Wyllie:** There is something that I do not understand. At what point do you decide how much mitigation is needed? I am not an engineer. Once a track is built, you will think from your engineering experience that putting in a sound barrier will allow you to mitigate noise levels and that some track form will mitigate vibration levels, but noise and vibration are experienced only when the train line becomes operational. At that point, it is a bit late to be putting in mitigation. Today's news has come as something of a surprise because in your response to our written evidence, you dismissed the suggestions that we made for resilient bearings. Are you now saying that you will put in track form and the equivalent of resilient bearings specifically at sites that are as close to the line as the Westfield Bank properties, or are you saying that the mitigation that you propose would meet your criteria, which is different?

**Steve Mitchell:** I am saying the second of those things. The design of the track and the noise barrier will meet the targets that we have set ourselves. I think that your concern is that you do not know whether we can predict that correctly and get it right. I have two things to say about that.

I said earlier with regard to vibration that if I was doing the design, I would take a precautionary approach. I would look carefully at the full information about the ground type, the foundation details that Dr Wyllie mentioned in evidence—although we want to know more about that—and the precise track that is proposed. We would then take a precautionary approach. I might include resilient track form, although it might not be needed to meet the targets precisely, and I would want to be extremely confident that that would happen. The reason is that if I got it wrong, I would be sued because the track would, at the commissioning stage when we measured the levels, have to be ripped up and replaced. The policy would require that.

On our ability to predict, this is not the first time that such measurement has been done. In December, my team commissioned noise-level tests on the Docklands light railway in east London where a similar approach was taken—although it is an elevated light rail rather than a ground-running heavy rail. We predicted the noise levels and designed a sequence of noise barriers. If one rides that railway, one will see lots of noise barriers of various dimensions, heights and lengths. In all cases the noise levels that were measured with the trains in service met the targets that we set ourselves. We use science that works with a sensible level of engineering caution behind it, if you like, and I am confident that the designers will get it right.

The railway does not exist yet, so we cannot prove any of that, but the noise will be designed in the same way that other aspects of the railway will be designed. The policy document is important because it makes it unambiguously clear what the targets will be and what the design will have to achieve.

**Dr Wyllie:** I appreciate that your document states what you aim to achieve, but as you correctly pointed out, there is concern among residents about whether you can achieve that.

You gave an analogy earlier about the age of children and a teacher in class—we could not tell what the age of the teacher was, which equated to the peak noise level. If I drop my pen on the desk in a quiet room, it makes more of a noise impression than if there had been background conversation. At night, noises will occur as trains pass and there will be children sleeping in close proximity, but you admitted that the noise level was difficult to quantify because there are peaks as trains pass. The calculation is skewed towards greatly underestimating the peak noise.

**Steve Mitchell:** No. We can predict the peak noise in the same way that we can predict the equivalent noise level; indeed, that is required under the policy. We must achieve a peak target value of 82dB. When we do the calculations, it transpires that if we meet the equivalent levels, we also meet the maximum level—that is just how the numbers pan out. However, of course we can predict the noise level for the peak as well as for the equivalent level. We simply go out and measure trains in different conditions, do an empirical analysis of that and put it into a model for a particular property.

**Dr Wyllie:** I do not want to go into detail about absolute decibels but, in the context of noise, I would like to raise the issue of the resiting of Eskbank station. You mentioned that trains would not be travelling at maximum speed but would be travelling at an average of about 45mph. However, because of the nature of the locality and its proximity to the station, trains at that location will be braking and accelerating. Are braking and acceleration taken into account in your model? They obviously generate noise. If a car is travelling at a steady 45mph or is accelerating to 45mph, there will be a different amount of noise.

**Steve Mitchell:** Yes, they are taken into account.

**Dr Wyllie:** Has the fact that the station has now been moved to the south also been taken into account?

**Steve Mitchell:** You are right to say that moving the station will increase the train speed and therefore the train noise level, slightly. I have to say that that has not been built into the

calculations because, as you know, the noise barrier dimension that we have been talking about today was published some months ago. It is possible that the noise level could increase slightly, but it would not be by a great deal. In fact, that rather proves my point about having the detailed design. I cannot tell you the precise dimensions of the barrier until the design is detailed. I appreciate how frustrating that is. If the station should move by 5m, the noise barrier might move in height by a few millimetres; I am not sure by how much, but it would be a very small amount. What I can tell you is that we will be targeting the levels in the noise and vibration policy, which I think can be achieved at your location, so you can expect—and, I hope, have confidence, although that is perhaps too strong a word—that we can achieve a night time equivalent noise level of 45dB and a day time equivalent noise level of 55dB.

I would like to mention one other point, which you illustrated earlier when you dropped your pen to show that a noise is more obtrusive in a quiet area. That is indeed the case, and when I was in the area of your property last week I was quite surprised by some of the noise from the industrial area, which I had not noticed before.

**Dr Wyllie:** Have you visited it at night?

**Steve Mitchell:** No, I have not been there at night. I was there during the day time.

**Dr Wyllie:** I hope that you will take my word for it when I say that it is generally a very quiet area at night.

**Steve Mitchell:** I would not like to judge. Of course, you spend a lot of your time there and I have been there only briefly, but I point out that there are other intermittent noises in the area.

**The Convener:** Are you concluding your questions, Dr Wyllie?

**Dr Wyllie:** No. I have another question about noise, because I am not entirely convinced that, in all the material provided by the promoter, noise from freight operation on the line has been ruled out.

**The Convener:** Have you ruled out noise from freight operation on the line?

**Steve Mitchell:** Ruled out?

**Dr Wyllie:** Have you indicated what the noise levels might be if freight were to run on the line?

**Steve Mitchell:** No, I have not, because my understanding is that there is no intention to run freight on the line and no facility for a freight depot. The outline design does not accommodate freight, and I have been told—although I cannot give evidence on the subject—that there is no demand in the marketplace for freight on the line, so I have not made noise predictions for freight.

**Dr Wyllie:** I still want clarification on freight, because we have always had—

**The Convener:** We do not have a proposal before us for a railway line that runs freight.

**Dr Wyllie:** Right.

**The Convener:** Is there a final point that you wish to make before I invite members of the committee to question the witnesses?

**Dr Wyllie:** No. I am fine. Thank you.

**Gordon Jackson:** Mr Mitchell, you told us that you have confidence in your prediction that the noise and vibration levels will be within the tolerable limits. Please do not think that I doubt your ability or integrity, but most of us are fiercely sceptical about confident predictions by construction experts. We work in this building, so we understand that.

**Steve Mitchell:** I have not said that I know how much it will cost.

**Gordon Jackson:** I want to follow up on Dr Wyllie's point. How will the levels be monitored in the future? You make your prediction and then the railway comes, but how will it be monitored? Let us say that we spend a lot of money and build a railway. What happens if you run it—after all, I presume that you cannot run a train along a line until the line itself is built—and you find that the figures are not right? Do you simply rip everything up? That sounds pretty drastic to me.

15:45

**Steve Mitchell:** You do not simply start running trains. A lengthy commissioning exercise has to take place first.

**Gordon Jackson:** Sure, but that exercise will have to involve a train. I am saying that to test the figures you will need to have a completed railway line. I am not suggesting that fare-paying passengers will be involved. What happens if, when you test the line, the situation is worse than you thought?

**Steve Mitchell:** There will be a lengthy commissioning phase to test out all the systems, including the signalling and so on. Moreover, as our policy statement makes clear, we will carry out a noise and vibration commissioning exercise. The commissioning stages last several months: certainly, in the case of the Docklands light railway, which I referred to earlier, commissioning lasted several months—I do not know exactly how many. At the beginning of the process, my team was out measuring the noise and vibration levels and checking that they were in compliance. I have already said that paragraph 16 of the noise and vibration policy—I think that I have the right number this time—sets out the public commitment

in that respect and makes it clear that we are required to monitor levels and check that they comply.

**Gordon Jackson:** Okay. I know that you think that it will not be possible, but do I understand you to say that if you run the train during the commissioning phase and—heaven forbid—there happens to be more vibration and noise in Dr Wyllie's bedroom than your figures suggest, the line will get ripped up? Will the train not run? What will happen?

**Steve Mitchell:** Sitting here, I do not expect to have to deal with that situation.

**Gordon Jackson:** But I am asking you as an expert to tell me what would happen in that situation.

**Steve Mitchell:** I can tell you what happened when an organisation was commissioned to work on the vibration levels on the recently constructed tramway in Nottingham, because it shows that the policies and commitments bite. At one point, an unfortunate crossover between the tracks produced more vibration than was expected, and the solution was to introduce a 10mph speed restriction on the tramway. I am not saying that we will introduce speed restrictions if the designers get things wrong, but that example makes it clear that the policies are real and are enforced.

I should also point out that the technology is not new. We are not pushing the boundaries of design. Nowadays, noise barriers are a routine requirement and are commonly used for railways and roads. The fact that one can measure the dimensions of many barriers has made the science of predicting these matters rather straightforward. I am completely confident that the barrier can be designed to do the job.

The track form issue can be approached in a similar way. There are many railways to collect data from and properties to monitor, and I am confident that it can be addressed. As I said earlier, I am sure that there will be a design margin.

**Gordon Jackson:** In all probability, you are right. However, do I take it that if, perchance, the figures do not work out and the noise and vibration are not kept within tolerable levels, the policies are so strict that the railway will not be able to run?

**Steve Mitchell:** A solution would need to be found to get the levels down. However, I cannot tell you what it would be. I mentioned one example of a rather severe speed restriction and referred earlier to the possibility of lifting the track.

**Gordon Jackson:** Someone appears to be whispering in my ear.

**The Convener:** Margaret Smith would like to ask a question on this matter.

**Margaret Smith:** Mr Mitchell, I might have got this wrong, but I think that you said that you have based the noise and vibration limits on statutory obligations in England and Wales. Those obligations are not statutory in Scotland, but out of the goodness of your heart you have included them. Is that right or wrong?

**Steve Mitchell:** That is right. There are no statutory obligations in Scotland, and the policy commits to English and Welsh statutory obligations. However, I should point out that that applies only to noise insulation. The noise levels in that respect are rather high, which is why I described them as unacceptable.

**Margaret Smith:** You gave the example of Nottingham, which we discussed previously—I was wearing my constituency hat—in relation to the tramlines in Edinburgh. I have some knowledge of that example and I concur with what you said. Bearing in mind that, as you said, there is a different legislative set-up in respect of noise and vibration and noise insulation in England from that in Scotland, the fact that such a solution has been enforced in England does not necessarily mean that it would be enforced under the different regime in Scotland.

**Steve Mitchell:** I see your point. The statutory regime in England and Wales applies only to noise insulation, which is a small part of our armoury against noise.

**The Convener:** Has Gordon Jackson held on to his thought?

**Gordon Jackson:** I do not know what Dr Wyllie is worried about, but if I was in his position and lived near the railway I would worry about my property being structurally affected by this kind of vibration. Would you undertake structural surveys of properties prior to construction and monitor the situation thereafter?

**Steve Mitchell:** Yes. Section 13 of the code of construction practice discusses the subject. In the case of the Wyllies, we would do that.

**Gordon Jackson:** You would have a structural survey done before you started work and would monitor the situation?

**Steve Mitchell:** Yes.

**Gordon Jackson:** And if the monitoring showed that there was damage you would take responsibility for it?

**Steve Mitchell:** Yes. If we got it wrong we would have the records to show that there was damage.

**Gordon Jackson:** And you would take responsibility for the damage?

**Steve Mitchell:** Yes.

**Gordon Jackson:** It was not a trick question.

**Steve Mitchell:** I think so, yes.

**The Convener:** Your reputation goes before you, Mr Jackson.

Do any other members of the committee have questions? If not, does Mr McKie have any questions?

**Alastair McKie:** I have none at this stage.

**The Convener:** We will move on to reduction in property value. Alison Gorlov will give evidence. Do you wish to make a brief statement on where we currently are on the issue?

**Alison Gorlov:** Yes. May I pick up on structural surveys, which were mentioned in the previous question and have a bearing on property values? The committee might wonder, having heard about the position with regard to the obligation to provide noise insulation, what it is that ties the authorised undertaker to the obligation to do structural surveys. That provision is contained in section 12.

I will now turn to property values proper. As I have said to the committee previously, the bill applies the compensation code, which contains the rules related to compulsory purchase and compensation that apply to compulsory purchase generally throughout Scotland. The issues with regard to land values are covered in that.

Perhaps I ought to pick up on a couple of issues. One concerns the effect of the running of the railway. One of the issues for Dr and Mrs Wyllie is clearly the impact of the railway once it is running. No land of theirs is being taken. Rules in the compensation code cover the situation in which land is not taken from a landowner but, because of the operation of the works, physical factors reduce the value of the land. That is a compensatable event under the Land Compensation Act 1973.

The other issue is blight. Dr Wyllie mentions in his written evidence that from our paper it looks to him as if the statutory blight rules apply to his property. The answer—I hope that the misunderstanding is not due to a lack of clarity in the paper—is that that is not the case. In lay terms, blight is an effect that people notice that has an effect on one's property, but that is not what statutory blight is all about. Statutory blight is much more restricted. As the committee will have seen from our paper, it applies only to certain categories of property. In particular, the property has to be subject to compulsory purchase. The Wyllies' house is not, therefore, caught by the statutory blight provisions, because none of their property is being compulsorily acquired. In relation to the Wyllies, I am afraid that that is the simple position with regard to the way the compensation code applies to blight.

**The Convener:** I think Mr Jackson wants to ask a question.

**Gordon Jackson:** No.

**The Convener:** Stop waving at me, then.

**Gordon Jackson:** I am sorry; I just fidget a lot.

**Margaret Smith:** You should never go to an auction.

**Gordon Jackson:** I am interested in this subject and will ask questions later.

**The Convener:** Mr McKie, do you want to ask any questions of Mrs Gorlov?

**Alastair McKie:** No, we are resting on our written evidence and what has been said already.

**The Convener:** Dr Wyllie, do you have any questions for Mrs Gorlov on the reduction in property value?

**Dr Wyllie:** I have several.

Mrs Gorlov, could you tell me the status of Scottish Borders Council's advance purchase scheme?

**Alison Gorlov:** I can tell you that it has not yet been approved by the Scottish Executive and that it cannot be implemented until that happens. I am not the witness who can give you first-hand details of the position that has been reached with the Scottish Executive or how long it is since it first saw the scheme, as I was not responsible for submitting it; those instructing me were. There are people in this room who can assist you with that matter.

**Dr Wyllie:** Convener, may I ask for a representative to answer questions in relation to this issue? It is pertinent to a letter that we received from Turner and Townsend on Friday. I indicated to Fergus Cochrane, the clerk, that we had received that letter.

**The Convener:** We do not have any members of the Scottish Executive before us, so we cannot say what the status is in relation to the Scottish Executive.

**Dr Wyllie:** I meant a representative of Scottish Borders Council.

**The Convener:** You are being invited to ask questions of the witnesses you have before you.

**Alison Gorlov:** I beg your pardon, I wonder if—

**Dr Wyllie:** Since June 2002, we have been asking representatives of the promoter questions about the scheme. To be brief, on Friday we received from a representative of Turner and Townsend a letter that gave a valuation of our property. They followed that up with a phone call to ensure that we had received the letter and to

explain that the valuation of our property was for budgetary purposes only. We are left rather confused as to why our property is subject to some budgetary preparation when we have not been told of any voluntary purchase scheme pertaining to it. That is why I asked what the status of the scheme was.

**Alison Gorlov:** I can explain that. I will be pulled up if I go adrift, of course. Not all of what I have to say is first-hand information.

The acquisition of property that is outside our limits, and therefore not subject to compulsory purchase, would have to be dealt with by means of what is called a voluntary purchase scheme, which would have to be approved by the Executive. There are established formulae for such schemes, and a formula was drafted and put to the Executive a considerable time ago. The Executive has not approved a voluntary purchase scheme.

A valuation is, nonetheless, relevant because one of the issues to think about is how much it will cost to implement such a scheme. Therefore, one of the things that one could do—and it has been done in this case—is take a view on properties that might be covered by a scheme if there were one, and determine the value of those properties to get some idea of how much it would cost to implement a scheme.

I think that that is the sort of process that has been behind the valuation of Dr Wyllie's property. However, I do not know where that sits in relation to a timetable for the approval of a voluntary purchase scheme. Without fear of contradiction, I can say that Scottish Borders Council does not know either. The matter is entirely for the Executive.

**Dr Wyllie:** Can you indicate to us how many properties are being considered for such a scheme?

**Alison Gorlov:** I am afraid that I cannot. I do not know the figure.

**The Convener:** I crave your indulgence, Dr Wyllie. There will be a short suspension, because you have raised issues that concern a number of committee members. If you bear with us, we will see whether it is possible to have your specific question answered.

16:00

*Meeting suspended.*

16:05

*On resuming—*

**The Convener:** I thank everybody for their patience and indulgence. Dr Wyllie asked a

pertinent question, but there is simply nobody here who can fully answer it. I think, and the committee agrees, that he has a right to know the answer. I ask Bruce Rutherford of Scottish Borders Council to make a short statement and we will see where we go from there.

**BRUCE RUTHERFORD** *took the oath.*

**The Convener:** Thank you for coming out of the public gallery and into the body of the kirk, Mr Rutherford.

**Alastair McKie:** Good afternoon, Mr Rutherford. There are two draft policies in play, but neither of them has been published or adopted. The first is the advance purchase scheme. Will you confirm that that scheme will apply only when land that was to be subject to a CPO under the bill anyway is purchased in advance of its requirement for the railway scheme?

**Bruce Rutherford (Scottish Borders Council):** That is correct.

**Alastair McKie:** Do you agree that the voluntary purchase scheme will apply when property will not be acquired under the bill but it is the promoter's view that the property will be so adversely affected that it intends to acquire it?

**Bruce Rutherford:** That is correct.

**Alastair McKie:** Do you agree that you are awaiting a response from the Executive on the adoption and publication of those policies?

**Bruce Rutherford:** We are awaiting responses from the Executive.

**Alastair McKie:** Is that because the Executive is the principal funder?

**Bruce Rutherford:** It is the principal funder of the scheme.

**Alastair McKie:** Thank you.

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

**Gordon Jackson:** I put on the record that a voluntary purchase scheme seems to me to be entirely sensible. For a variety of reasons, with which I will not bore people, people in such situations should have the opportunity to sell if they want to. How long has the Executive been considering the matter?

**Bruce Rutherford:** We have been in dialogue with the Executive for a considerable time.

**Gordon Jackson:** Can I get that in the non-Irish version—that is, in years and months?

**Bruce Rutherford:** We have had dialogue with the Executive on and off for about two years.

**Gordon Jackson:** You might not want to commit yourself, but do you think that you are

close to getting an answer to this not hugely complex question? I know that there is complexity, but—

**Bruce Rutherford:** The advance purchase—

**Gordon Jackson:** I do not mean the advance purchase scheme. I am interested in the other one.

**Bruce Rutherford:** The voluntary purchase scheme is extremely complicated. The choice of criteria will affect the Waverley railway scheme, but it might also have national implications. At present, there is no voluntary purchase scheme across Scotland. I can understand why the Executive is looking to formulate a policy that will apply not only to our scheme but to other schemes equally.

**Gordon Jackson:** Part of me fully understands the complexity, but I cannot help feeling that this is not rocket science. If there was a will, people could get it done. Do you think that the timescale is such that we are getting near to a solution?

**Bruce Rutherford:** That is an extremely difficult question for me to answer, considering that we have been hanging on for the considerable time that I mentioned.

**Gordon Jackson:** I think that your answer is, "Ask the Executive."

**Bruce Rutherford:** The matter is being reviewed and we are working as positively as we can towards getting a solution.

**The Convener:** Obviously, this is a matter of concern to the committee at this stage of a very important bill that has the support of the Executive. We need answers, so I suggest that we write to the Executive asking it what its timescale for the scheme is. Secondly, I suggest that we reserve the right to call members of the Executive before us to answer questions that we may have.

**Members indicated agreement.**

**The Convener:** Okay. Thank you very much, Mr Rutherford.

It seems to me that we have exhausted all the questions on property value until such time as we get a response from the Executive. Dr Wyllie, are you happy to let the committee pursue the matter for you?

**Dr Wyllie:** Yes.

**The Convener:** Thank you.

Mr McKie, do you have any questions for your witnesses on the topic of general property values?

**Alastair McKie:** I have none.

**The Convener:** Thank you.

We will now hear evidence on pollution. The witness for the promoter is Steve Purnell. Mr Purnell, I remind you that you are still under oath. I understand that group 11 has chosen not to pursue the issue through oral evidence. Before I invite Mr McKie to question you, perhaps you would give the committee a brief outline of how matters stand.

**Steve Purnell:** I need only be brief. The issue of pollution in its broadest sense came up in objections from Mr Flynn and Ms Taylor. It has come up—although this is by no means to belittle the subject—almost in passing in their objections. We have given responses to their objections and we have nothing further to add on the subject.

**The Convener:** Mr McKie, do you have any questions?

**Alastair McKie:** I have none. We are resting on the written information.

**The Convener:** As I see that no committee member has questions for Mr Purnell on the question of pollution, I thank him for attending.

Dr Wyllie will give us evidence on safety, loss of amenity and privacy, noise and vibration, and the reduction in property value. I suggest that we deal with those topics en bloc.

DR DAVID WYLLIE *made a solemn affirmation.*

**The Convener:** Dr Wyllie, I invite you to give the committee a brief outline of where you consider matters to stand. I note that you do not have a questioner, so I ask you to cover most of your points in your opening statement. Mr McKie and members of the committee will then ask questions.

**Dr Wyllie:** Thank you for the opportunity to provide the committee with oral evidence. I assure the committee that I would rather not be here today. Despite the fact that we have had meetings with the promoter since June 2002—14 months before the bill was submitted—we do not feel that it is acceptable to put a railway in such close proximity to properties.

The properties in our group, particularly those at Westfield Bank, were not included in the original environmental statement. The four issues that pertain to the properties arise from the fact that each of them is at the end of a cul-de-sac and will be located close to a railway, particularly so in the case of the properties at Westfield Bank. It is fair to say that neither of the home owners at Westfield Bank would have bought properties in such close proximity to a railway, so to introduce one poses a considerable safety risk.

The committee has heard from Mr Mitchell about noise and vibration, which he considers can be mitigated. As the home owners who will have to live with the problem, we are still greatly concerned about whether that will be achieved.

Our objection also related to privacy. The fact that trains will pass in close proximity every 15 minutes will affect our privacy and cause a loss of amenity in our gardens, which will result in a reduction in the value of our property.

16:15

**The Convener:** Thank you very much. You will have the opportunity to make a further statement at the end of the meeting. In the meantime, Mr McKie, do you have any questions on safety for Dr Wyllie?

**Alastair McKie:** I do. Good afternoon, Dr Wyllie. Do you accept that Her Majesty's railway inspectorate, or its successor, will take into account all relevant matters to ensure that if a railway is constructed and operated at the proposed location, it will be as safe as it can be, albeit that risk cannot be ruled out entirely?

**Dr Wyllie:** I assume that it would be as safe as it could be—nothing else would be acceptable. However, as you admit, it will introduce a risk that does not exist at present.

**Alastair McKie:** Do you agree that nothing can be 100 per cent safe?

**Dr Wyllie:** I am 100 per cent sure that a train will not demolish my house tonight.

**Alastair McKie:** The promoter will rest on its evidence that the railway will have to be approved by HMRI.

**The Convener:** Thank you for that, Mr McKie. Does the committee have any questions for Dr Wyllie on safety?

**Members:** No.

**The Convener:** Mr McKie, do you have any questions for Dr Wyllie on loss of amenity and privacy?

**Alastair McKie:** Yes. Dr Wyllie, do you support the promoter's offer on planting in your garden to ameliorate the impact—I am sorry; I will rephrase the question. Do you support the promoter's offer on planting, as discussed in Ms Oxley's evidence?

**Dr Wyllie:** I want to pick up what you said about planting "in" the garden, which is what Ms Oxley said. That is not what we requested. We requested planting between our property and the noise barrier, in the strip of land with which the committee is familiar following its site visit. Ms Oxley was correct to say that there were conifers in our garden, but they stretch for only a third of its length. It is regrettable that I did not plant them along its entire length.

**Alastair McKie:** Your position is that you would support the proposed planting.

**Dr Wyllie:** I would support it as long as it was ensured that it did not interfere with or compromise the foundations of the property or its structure.

**Alastair McKie:** Do you support the promoter's position on the moving of the pedestrian bridge?

**Dr Wyllie:** Yes.

**Alastair McKie:** Thank you. I have no further questions on amenity.

**Mr Brocklebank:** I have a few brief questions. Will you remind us when the houses were built? I think that I asked you that when we came to visit your property.

**Dr Wyllie:** They began to be built at Easter 1999. We moved into our house in November 1999 and the group as a whole was completed by December 2000.

**Mr Brocklebank:** Is it not a fact that the railway line was first mooted prior to then?

**Dr Wyllie:** The railway line may have been mooted prior to the building of the properties. When we moved to the property from London, we asked specifically about the reinstatement of a railway. We received two letters—I recall that one of them was from the builder's solicitor and the other was from the British Railways Board, as it was at the time. It stated that the board had no interest in the line. Because we were not familiar with the area and no property search for any of the properties in the area threw up the line as a proposed route, we were unaware that this was on-going or being mooted.

**Mr Brocklebank:** I suppose that the final question is whether you think that those who carried out your property search correctly advised you.

**Dr Wyllie:** My understanding is that the property search searched plans that were in place. Because no plan had been submitted, I think that it is correct to say that one would not have been thrown up in a property search.

**The Convener:** Mr McKie, do you have any questions for Dr Wyllie on noise and vibration?

**Alastair McKie:** I do, but could I just ask a follow-up question?

**The Convener:** Certainly.

**Alastair McKie:** Dr Wyllie, was the property search that was undertaken in respect of your house done by a private search company, through your solicitor, or was the council just asked to produce a property inquiry certificate?

**Dr Wyllie:** I could not tell you how it was undertaken. I am not sure how it works.

**Alastair McKie:** As a result of the advice on which you relied in purchasing your property, are you taking any action against your solicitor or any other party who so advised you?

**Dr Wyllie:** Not at present.

**Alastair McKie:** Are you contemplating doing that?

**Dr Wyllie:** It is not in my immediate contemplation to do that.

**Alastair McKie:** That is fine.

On the issue of noise and vibration, do you agree that the promoter has adopted reasonable and accepted standards and, indeed, best practice in designing a scheme that gives a commitment that the residual noise at your property and at the properties of the other objectors whom you represent will meet the required standard of 55dB during the day and less than 45dB at night?

**Dr Wyllie:** The promoter has stated that that is what it will achieve.

**Alastair McKie:** And you have no information on which to challenge that.

**Dr Wyllie:** Again, I do not have the information to say that that will be achieved. As Mr Jackson pointed out, until the testing occurs it is unclear whether that can be achieved. My point is also that those measurements are extremely misleading. I appreciate that they are weighted averages, but they do not take into account the intense period of noise that can cause disturbance. People can be receptive to such periods of high noise. A weighted average value can be very misleading.

**Alastair McKie:** Two points emerge. I think that we have agreed that the promoter has given a commitment to meet the standards to which I referred.

**Dr Wyllie:** The promoter has given a commitment, but I am still genuinely unclear as to how it proposes to achieve that in terms of the track form. Such detail might appear at the next stage, but what concerns us at this stage is the lack of detail.

**Alastair McKie:** Nevertheless, the commitment has been given. Although you perhaps disagree with what they will mean in practice, do you agree that the standards that the promoter has chosen to apply are the same standards that are used up and down the United Kingdom to achieve acceptable levels of noise and vibration?

**Dr Wyllie:** That is what the promoter has stated. I cannot dispute that. If that is the standard throughout the UK, I accept that what the promoter has stated is true.

**Alastair McKie:** Mr Mitchell suggested a pre-construction and post-construction survey at your property. Would you welcome that proposal?

**Dr Wyllie:** I would have welcomed that two years ago.

**Alastair McKie:** That finishes my questions on that point.

**The Convener:** Thank you, Mr McKie. No committee member wishes to ask anything of Dr Wyllie, so the only outstanding area is reduction in property value. Mr McKie, do you want to question Dr Wyllie on that, given that we have undertaken to write to the Executive on the matter?

**Alastair McKie:** I will not cross-examine on that point.

**Gordon Jackson:** I am particularly interested in this area. I am interested in how we can mitigate your situation, Dr Wyllie. We are not necessarily in the business of stopping a railway company, but we are trying to mitigate effects. Although I do not want to tie you down commercially, I take it that a voluntary purchase scheme would interest you. Should we follow that idea up?

**Dr Wyllie:** That idea would interest us very much. As I said, we mentioned it in June 2002 to representatives of the promoter, who said that it would be considered. We have received no written documentation to indicate its progression through the Executive, nor has it been indicated to us that our properties would be considered under such a scheme. Perhaps the fact that we got our property valued indicates that it may be considered, but I have had nothing to say, "If the scheme goes ahead, your properties will be considered"—until today, that is, when the promoter acknowledged that the proximity of the railway will have a severe impact on properties such as those at Westfield Bank.

**Gordon Jackson:** I know that you told us about this, but perhaps you would remind us: am I right in saying that you got a letter telling you that your property had been valued and that you then got a phone call to explain the letter? What explanation was given to you in the phone call?

**Dr Wyllie:** My wife was at home on Friday, and she phoned me to say that we had received a letter. She read me the contents of the letter. I then received a phone call from Mr Nicholas Fletcher of the Leeds-based company Turner and Townsend, primarily to ask whether we had received the letter. I said that we had and he was concerned that I would put too much store on it. I asked him why it had been sent to me. We knew that our property had been valued in December. However, that was done so that the Scottish Borders Council could put together a budget for such a scheme. We had never been told that our property would be included and I still do not know whether it will be.



**Gordon Jackson:** No one can tell you that right now.

**Dr Wyllie:** The primary purpose of the valuation was to allow SBC to put together a budget.

**Gordon Jackson:** But you had not been told until today that the voluntary purchase scheme was at the Executive.

**Dr Wyllie:** We have been told for at least two years that there have been discussions about a potential voluntary purchase scheme and that negotiations about it were on-going with the Executive.

**Gordon Jackson:** You knew that much, so in a sense you knew that it was happening.

**Dr Wyllie:** We knew that SBC was proposing a scheme to the Executive, which was considering it. We did not know whether our properties were included in such a scheme. I still do not know.

**Gordon Jackson:** Take comfort that you know as much as we did.

**The Convener:** Are there any other points? Mr McKie, do you have any follow-up questions?

**Alastair McKie:** No.

**The Convener:** You now have a maximum of five minutes to make a closing statement.

**Alastair McKie:** The promoter's position is that there is no particular safety issue connected with the line. There is nothing about the design of the line, where it goes or how it is situated that suggests that it is potentially any more dangerous or represents more risk than any other line. It would, of course, be subject to the detailed approval of HMRI or its successor. We have heard evidence from Mr McCracken that he has no reason to believe that that approval from HMRI will not be forthcoming.

The promoter understands how strongly this objector feels about the more general impact. His feelings are entirely understandable. However, like any other public project that involves impacts one way or another, ultimately this one will affect somebody. Regrettable though that is, it is the promoter's view that that is the consequence of policies that promote the use of public transport and, indeed, the reopening of railways. I invite you to accept that those impacts have been properly investigated and assessed and, with mitigation, will be acceptable and in accordance with accepted standards and best practice.

16:30

**The Convener:** Dr Wyllie, if you wish to make a closing statement, you may have up to five minutes to do so.

**Dr Wyllie:** I have not prepared anything, convener. I simply want to reiterate our feeling that if the railway goes ahead, it is unacceptable to expose people who will now live in such close proximity to the line to such a safety risk. The point is that the railway line is being introduced; it is not that we purchased a property that was already adjacent to an existing railway line.

We have heard evidence that noise and vibration can be mitigated; that our privacy might be increased by additional planting; and that a voluntary purchase scheme could be introduced. However, none of the mitigation measures will make living in such close proximity to the railway line acceptable. In any case, I believe that, in the written evidence that we submitted in November, we suggested those very mitigation measures. Although we thought that the promoter had ruled them out, we have found out only today that the promoter has in fact agreed to them.

I think that I said that the measures made the situation less unacceptable. Perhaps that phrase was poorly chosen. At the meeting on 21 March 2005, Mr Jackson asked me what the promoter could do to satisfy my objection. I replied that very little could be done about the location of properties at, for example, Westfield Bank because of their proximity to the line. No amount of mitigation will make up for the fact that we will have to live within 6m of 90-tonne trains that will pass our house every 15 minutes at an average speed of 45mph. I would not ask any of the committee to live in such close proximity to a railway line. Indeed, I am sure that, if you asked yourselves whether you would choose to live there or whether you wanted your children to play in such an environment, you would reject the suggestion out of hand.

As a result, I and the other members of our group look forward to finding out more about the voluntary purchase scheme, which will at least provide some exit from a nightmare that has been going on for more than three and a half years.

**The Convener:** Dr Wyllie, I thank you for giving evidence today. That concludes the oral evidence for group 11 and, indeed, today's oral evidence-taking session. I thank all the witnesses and participants, who have helped to make the meeting run smoothly; Fiona Killen and Alastair McKie, who have been with us all day; and Bruce Rutherford, who, at the very last minute and without knowing that he would have to do so, stepped in and gave evidence.

## Stow Station

16:33

**The Convener:** Item 2 concerns the proposal to have a station at Stow. As the committee will recall, we made that recommendation in our preliminary stage report.

The paper invites the committee to consider and agree whether it continues to support further consideration of a station at Stow and outlines the subsequent procedure if we decide to take forward the proposal. I invite members' views on the matter and ask whether we agree to give further consideration to this issue.

**Christine May:** I am minded to say that we should give the issue further consideration.

**Members** *indicated agreement.*

**The Convener:** That is unanimous.

Does the committee then accept that option B, as indicated in the memorandum, should be the preferred location of the station?

**Members** *indicated agreement.*

**The Convener:** I also invite members' views on whether we should have an objection period that is shorter than the usual 60 days and, if so, how long that period might be.

**Christine May:** I suggest that the objection period should be 21 days from the day after the promoter posts the notice.

**Mr Brocklebank:** That seems appropriate. I do not think that we should delay the matter for the six weeks that we have previously given.

**Margaret Smith:** I concur with that. I guess that anyone in Stow who will be affected by this proposal is probably well aware of the situation by now. We should also bear in mind the consultation that has been going on over the past few months.

**The Convener:** I, too, agree that we should support option B as the location for the station and that we should have a 21-day objection period. I also indicate to the promoter our desire for the necessary advertisements and notification letters to be issued at the earliest opportunity and invite the clerk to timetable the committee's further consideration of this matter.

That concludes our business. I close the meeting.

*Meeting closed at 16:35.*

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