

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

Monday 30 January 2006

Session 2

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## **WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE** **3<sup>rd</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)

### **THE FOLLOWING GAVE EVIDENCE:**

Andy Coates (Environmental Resources Management Ltd)

Alison Gorlov (John Kennedy and Co)

Andrew McCracken (Scott Wilson Railways Ltd)

Ian Macpherson

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)

Marie Wilson

### **CLERK TO THE COMMITTEE**

Fergus Cochrane

### **LOCATION**

Committee Room 1



## Scottish Parliament

### Waverley Railway (Scotland) Bill Committee

*Monday 30 January 2006*

[THE CONVENER *opened the meeting at 10:36*]

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

**The Convener (Tricia Marwick):** I open the fourth consideration stage meeting of the Waverley Railway (Scotland) Bill Committee. This is our third meeting of 2006. I welcome witnesses, their representatives and members of the public.

On 28 September 2005, the Parliament agreed the general principles of the Waverley Railway (Scotland) Bill and that it should proceed as a private bill. At consideration stage, the committee considers the detail of the bill and the objections. Our job is to listen carefully to the arguments of the promoter of, and the objectors to, the bill and ultimately to decide between any competing claims. We take that task seriously. The committee is in receipt of all the written evidence submitted by the groups and the promoter. I thank all parties, in particular the objectors, and especially those who have no professional support, for all their assistance in accommodating our evidence timetable and complying with the deadlines for the submission of written evidence. We are conscious of the demands that are placed on you in that regard and we are appreciative of your efforts.

Today, we will hear oral evidence relating to six groups. I will outline the process that is broadly to be followed in hearing evidence. Every witness who has contributed fully to the written evidence process will face the same three-step process. First, he or she may be questioned by their representative; secondly, the witness may be questioned by the opposing side; and finally, the witness may be questioned again by their representative. That last step should be restricted to matters covered in cross-examination. Committee members can ask questions whenever and of whomever they wish. There is no need for witnesses to state their name, job title or any qualifications in oral evidence; we have that information in the written evidence. Written and oral evidence have the same value.

I make it clear that questions will be restricted to those issues that remain in dispute. I mentioned earlier that the Parliament has agreed in principle

that there will be a railway, so questions on the merits or otherwise of the railway are not admissible. We are concerned with the detail of the objections. The committee does not expect and will not permit documents to be circulated that we have not previously seen, unless in exceptional circumstances. If objectors or the promoter need to give us an update, they will be invited to say a few words at the commencement of their oral evidence and can do so then. Following the completion of evidence taking for each group, representatives of that group and the promoter will be offered a maximum of five minutes each to make any closing comments.

We intend to complete evidence taking in respect of the six groups today. As I indicated, we have all the written evidence before us; therefore, witnesses should refrain from repeating points that have already been made in written evidence. We recognise that today there is a mix of objectors who are represented by lay members of the public and objectors who are not represented at all. I am sure that all parties would welcome brevity and clarity in questions and answers. The use of overly technical language is discouraged. We want to ensure that fairness is shown to both the promoter and objectors. This is not a court of law and we will carry out our proceedings in a more informal manner. The procedures that we will follow will have a degree of flexibility, to take account of the backgrounds of the witnesses and their representatives. All parties are required to act respectfully to one another and, indeed, to the committee.

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

For those objectors who are following our proceedings, I state for the record that should they reach an agreement with the promoter leading to the withdrawal of their objection, they must inform the committee. A letter to the committee clerk stating that they are withdrawing is sufficient. The committee will then give no further consideration to the objection.

I again urge parties, especially the promoter, to maximise efforts to enter into open and constructive dialogue, with a view to reaching agreements that lead to the withdrawal of objections. It is the strong and continuing desire of the committee that all efforts should be made to reach agreements. Further to that point, the promoter should pay heed to the use of plain English and minimise the use of legalistic and

technical language when corresponding with objectors. It is vital that the issues can be clearly understood by objectors, so that they know exactly where matters stand.

I inform all witnesses that, once they have taken the oath or made the affirmation, the effect of that will apply throughout the proceedings. For example, witnesses for the promoter who have previously appeared are still under oath today.

Before we deal with the first group of objections, I note that Margaret Smith was unfortunately ill last week and was unable to attend the committee's meeting. In line with rule 9A.5.6 of standing orders, at that meeting I sought and received from the objectors who gave oral evidence and the promoter agreement that they were content for her either to view a recording of the meeting or to read the *Official Report*, thereby allowing her to participate in future consideration of the objections. I invite Margaret Smith to confirm that she has read a copy of the *Official Report* of the committee meeting of 23 January 2006.

**Margaret Smith (Edinburgh West) (LD):** I confirm that I have read the *Official Report* of the meeting. I apologise to the committee again for my non-attendance.

**The Convener:** Thank you.

During our oral evidence-taking sessions, reference has been made to the proposal for a voluntary purchase scheme that the promoter submitted in 2003. That proposal is still being considered by the Scottish Executive. At its meeting of 16 January, the committee stated that it would seek urgent clarification from the Executive of where matters stood, and I wrote to the relevant minister on the issue. The Executive has stated that it is not yet in a position to confirm support for such a scheme. The committee shares the disappointment and frustration of those objectors who are justifiably anxious to know whether the scheme will go ahead and whether they will be eligible for it.

We have considered the matter carefully. Of course, it would have been extremely beneficial if the decision on whether to support a voluntary purchase scheme had been made before now, and certainly before the committee started its consideration of objections. Clarification of the position would have assisted us, and it would certainly have assisted objectors, some of whom may have chosen not to pursue their objections, which would have allowed us to make swifter progress. We are particularly aware of the desire for speedy progress to be made with the bill, so that all parties know where they stand. Despite what has happened, the committee will continue to work to the timetable that it has set for considering objections. We hope that we and objectors will not

be hampered by the lack of a decision on what is a most important issue that will have a bearing on the lives of some objectors.

I and other members of the committee have given an undertaking to objectors to monitor the issue carefully and to seek to progress matters with the Executive as quickly as possible. We reserve the right to reconsider whether to rearrange future meetings until such time as the Executive has made a decision. We are, of course, aware of the adverse impact that that could have on completing proceedings on the bill, which it was our intention to do before the Parliament's summer recess in July. I hope that those concerned will take note of my comments.

I ask everyone to ensure that all mobile phones and pagers are switched off.

We move to consideration of the evidence in respect of group 26. I welcome Alastair McKie, who will ask questions today on behalf of the promoter. Group 26 relates to objections from residents of Harvieston Villas. I welcome Ian Macpherson and Marie Wilson, who will ask questions on behalf of the group. We will deal first with the acquisition of land and buildings. The witnesses for the promoter are Douglas Muir and Andrew McCracken.

Mr McKie, would you like to invite one of your witnesses to give a brief outline of where matters stand on the issue and then to question Mr Muir and Mr McCracken?

10:45

**Alastair McKie (Counsel for the Promoter):** Good morning, convener, members and others. It would be useful if members were aware that we have lodged plans. I am holding up a book of plans that deals with optioneering and the final layout for this group of objectors. I refer members to plans 1 and 2 for group 26. There is also an excerpt from the proposals map of the adopted Midlothian local plan, which shows the various allocations of housing land in and around Gorebridge. I believe that an explanation of each of the housing proposals has been circulated, setting out what they contain and how big they are.

Good morning, Mr Muir. Will you explain to the committee the impact of the railway at this location? What consultation has there been between the promoter and the objector group?

**Douglas Muir (Midlothian Council):** At a very early stage, we had discussions with the residents of Harvieston Villas about a possible alignment—or realignment—of the railway that would push it further into the bank behind the properties so that about half of the properties could have stayed

where they are. However, the impact on those properties would still have been very severe. In discussion with the residents, it was decided that we would extend the limits of deviation to take in all the properties, which would allow the promoter to have a park-and-ride site at the station, while following the alignment that makes more sense. Mr McCracken can provide details of the alignment, if you wish.

**Alastair McKie:** Has there been regular contact between you and the objectors?

**Douglas Muir:** Yes. We have had a number of meetings with the group of objectors. The elected spokesman was Mrs Wilson, and we have kept in fairly regular contact with each other.

**Alastair McKie:** I will pose some questions to Mr McCracken, because that will be useful. Mr McCracken, I refer you to plans 1 and 2 for group 26. Please turn to plan 1 to begin with. Will you describe what the plan shows? It appears to show an alternative alignment.

**Andrew McCracken (Scott Wilson Railways Ltd):** Yes. Plan 1 for group 26 shows two alignments, a red alignment and an orange alignment. I want to follow up on Mr Muir's comments. In early consultation, we realised that the proposed alignment would have a big impact on Harvieston Villas, so we considered an alternative, which is shown in orange on the plan.

There are several engineering constraints. There are bridges at either end of the location, which are marked as bridge 25 on the left and bridge 26 on the right. Effectively, the bridges act as constraints on horizontal alignment. I think that the committee has visited the location, so members will know that there is fairly steep banking to the rear of the properties, which limits the extent to which we can push the alignment into the banking. We pursued the option of seeking an alternative alignment and came up with evaluation criteria that focused primarily on engineering compliance with Network Rail and Her Majesty's railway inspectorate standards.

The problem is that we have a station platform at this location and that HMRI's rules on the matter are fairly stringent. It insists that there must be a relatively straight or regular curve through a platform. I draw the committee's attention to the orange drawing of the platform. Members will see that there is a fairly tight radius on which we must create a kind of reverse curve towards the right-hand side of the platform. That is non-compliant with standards and fails to meet the threshold criteria. For that reason, our options are very limited. Unfortunately, the orange alignment fails to comply with standards.

**Alastair McKie:** I refer you to plan 2. A car park is shown where the properties currently are. Can

you explain the functionality of the car park with the station?

**Andrew McCracken:** To support the business case for the service, we need to have a park-and-ride facility here. The topography and features of Gorebridge mean that options are fairly limited. To maximise patronage, we need the car park to be as close to the station as possible. The possibilities are limited in the area, and the Harvieston Villas site offers the best option for a station car park. Given the alignment constraints and the limited options for a station, it was decided that we would develop the site as a park-and-ride facility.

**Alastair McKie:** I have a question for Mr Muir about the four properties that are shown on the left-hand side of the development as we look at the drawing. At any stage, were there proposals to investigate the possibility of saving those properties but not the others? If so, was that discussed with the objector group?

**Douglas Muir:** Yes. At an early stage, we thought that we could squeeze the railway behind those properties, but it would have been close to them. In the early discussions with the objector group, it was decided that either all the properties would go or the railway would not happen. Since then, we have worked on that basis.

**Alastair McKie:** Is it correct that the properties that might have been saved would have had a railway platform on one side and a car park on the other?

**Douglas Muir:** That is correct.

**Alastair McKie:** Would that be unacceptable in your view?

**Douglas Muir:** I would have thought so.

**The Convener:** Mr Macpherson, do you have any questions for Mr Muir or Mr McCracken on land acquisition?

**Ian Macpherson:** The only question is about the voluntary purchase scheme, which was mentioned earlier. Our understanding is that any payments would amount to only 90 per cent of the value of the properties. Will you clarify what the scheme entails and give clear guidance on the figures that will be involved?

**Alison Gorlov (John Kennedy and Co):** I will answer that. I reassure you that your understanding is not correct. First, as the convener says, we do not have an advance purchase scheme in place. However, assuming that the bill goes ahead and it contains compulsory purchase powers in respect of Harvieston Villas, the authorised undertaker will be absolutely obliged to pay full market value for all the properties. That value will ignore any reduction

that would result from the railway scheme. The figure of 90 per cent that you mention relates, I think, to the amount that has to be paid in advance of agreeing a final price. That is a procedural matter. The price for the houses will be the full market price.

**The Convener:** Do committee members have any questions for the witnesses on the issue?

**Christine May (Central Fife) (Lab):** My question relates to the answer that Mrs Gorlov just gave. Should the bill be passed, what would be the timetable for resolving the buy-out or relocation of the Harvieston Villas residents?

**Alison Gorlov:** I am afraid that I cannot answer that, but Mr Muir might be able to help, as the issue obviously depends on the availability of funding.

**Douglas Muir:** We are in discussion with the Scottish Executive on the construction programme for the scheme, with which the resolution of the matter will tie in closely. When the bill receives royal assent, the promoter will have the powers to buy out the properties, which at present it does not have.

**Christine May:** Can you go any further than that? Would the buy-out be towards the beginning of the process or later on?

**Douglas Muir:** The main funder is the Scottish Executive. Assuming that the funds come from it, there is no reason why the buy-out could not happen at an early stage. The advance purchase scheme will take that into account. We are confident that the scheme will be in place fairly soon. We have discussed the issue with the Harvieston Villas residents. One family has already expressed an interest in having more details on the advance purchase scheme should it be introduced.

**Mr Ted Brocklebank (Mid Scotland and Fife) (Con):** Where do matters stand on identifying an alternative housing site for the Harvieston Villas residents? What specific assistance can and will the promoter offer to the residents?

**Douglas Muir:** At one of our early meetings with the residents, they asked whether the promoter could provide alternative accommodation that was roughly similar to the present accommodation. Since then, we have tried to identify sites. The local plan kicked in during the process. We have provided a map that shows the sites that will arise in Gorebridge in the coming years. However, in each case, the sites are pretty large and range from about 60 to 80 houses to up to 400 houses. Harvieston Villas is an exclusive, small development near the centre of Gorebridge—it is surrounded by trees and is secluded and pleasant. On a site of 400 houses, it would be difficult to

provide something roughly equivalent to what the residents have at present.

As the residents do not want to move into a large 400-house development, we have looked for something a bit smaller. One or two sites that Midlothian Council owns might have been suitable. However, one was at completely the opposite end of Gorebridge and was not very attractive. We have narrowed the choice down to one windfall site. A developer has submitted a planning application for the site and has indicated willingness to allocate eight houses in the development to the Harvieston Villas residents, should they wish that. The promoter's problem is that it has no power over the developer. We cannot insist that it complete the houses by a certain date. We would have to try to tie that up with the developer and the residents. We are making all possible progress on the matter, but the proposal is going through the planning process.

**Mr Brocklebank:** Is that site identified on the map of possible sites with which you provided the committee? There are six sites shown on the map.

**Douglas Muir:** Indeed. It is a windfall site, so it was not in the local plan. We highlighted it on the map—it is called Robertson Bank. We are currently in discussions about that site.

**Mr Brocklebank:** Have you had discussions with the residents about the site?

**Douglas Muir:** Yes.

**The Convener:** Are there any difficulties with the Robertson Bank site?

**Douglas Muir:** Yes. It is fairly tricky in planning terms. It is on a steep hill and there is a former scrapyard, so there are contamination issues. Also, problems with access arise—the awkward access on to Lady Brae would need improvement. We will try to resolve those issues with the developer, but the main difficulty will be timing. Even if the developer gets planning consent, it will have five years in which to make a start on the site. Although the council would have to grant planning consent, we could not insist that the housing be completed by a certain date. We must consider that timing issue further, although there are several possible ways of getting round it. For instance, in discussion with the contractor on the Waverley project, we might be able to delay taking ownership of the Harvieston Villas site until the houses are ready. We will explore the various possibilities.

**The Convener:** As there are no further questions for the witnesses on that issue, we now turn to loss of amenity, on which the promoter's witness is Douglas Muir. Mr McKie, will you invite Mr Muir to give a brief outline of where matters stand on the issue and then question him?



**Alastair McKie:** The issue relates principally to the loss of the properties under the scheme. We have covered that loss, so we will simply rest on the evidence that has been given.

**The Convener:** Mr Macpherson, do you have any questions for Mr Muir on loss of amenity?

**Ian Macpherson:** Yes; one or two. We have already suffered for five years while waiting for the railway scheme to be approved. Mr Muir has mentioned that houses will be built by 2010. Does that mean that we will have to suffer for another five years?

**Douglas Muir:** I suppose that you may have to wait until then to move out. However, the residents will have a bit more certainty if the bill is passed and royal assent is granted. At least you will not have uncertainty hanging over you about whether the scheme will happen. After the scheme is approved, the uncertainty will be about the date on which the move occurs. That is a bit less uncertain than what you have suffered to date. You have had five years of not knowing whether the scheme will go ahead, which I agree has been difficult for you.

11:00

**Ian Macpherson:** Will the promoter give an assurance that the level of compensation will be such that the residents of Harvieston Villas will be able to afford the new housing or other properties similar to the ones in which they currently live?

**Alison Gorlov:** A set of rules governs not only what should be paid but what can be paid. As I said, the price that will be paid for the houses is the full market value. It is worth emphasising that it is the market value that would be paid in an arm's-length transaction between a willing buyer and a willing seller. It is not a forced sale value; it ignores any reduction in value due to the railway scheme.

The rules also require a raft of other associated payments to be made, which are outlined in our compensation paper. The payments are for disturbance, which essentially covers items such as removal costs and extra expenses associated with moving into a new property, and home loss, which is basically compensation for the hassle and pain of having to move house. I recommend that you read the paper. It would not be right for me to read it out, but it sets out those details in broad and fairly readable terms. That is what the authorised undertaker will be obliged to pay. There is no scope for paying over and above what the rules require; it is public money that is being spent by a public sector body, so that cannot be done. I do not think that the promoter could give the assurance that you seek.

I think that it is correct to say that all the planned houses could be described as affordable houses.

**Douglas Muir:** Not all, but some.

**Alison Gorlov:** I do not know exactly what that means in respect of the price, but it will be less than the sort of price that you might have been quoted.

**The Convener:** Have you finished your questions, Mr Macpherson?

**Ian Macpherson:** Yes.

**The Convener:** I am struggling to work out timescales. When would the promoter need the houses in Harvieston Villas for development? Do you have a plan B if you cannot come up with a suitable site for the residents of Harvieston Villas?

**Douglas Muir:** The programme of works is really to do with construction. Under the normal arrangements, the entire site would be handed over to the contractor when he was ready to start on site. That would give the contractor free access to tackle the job in the most effective way. Because there is not yet a contractor on board, that process will follow on from royal assent. I cannot give an exact date for when a contractor would be on site.

We could buy up the properties at any time between royal assent and the contractor going on site. We are certainly looking into the possibility of the promoter providing alternative housing, but there is no requirement on the promoter to do that. We will attempt to do that if we can, although it is fairly unheard of—I am not aware of that having been done in any other schemes. The proposals are groundbreaking, as usually in such cases the promoter would buy out the houses, hand over a cheque and that would be it. We sympathise with the residents and we are trying to arrange some kind of deal that would soften the blow. However, the promoter does not have powers over the matter. We do not have powers to buy up houses and ground, other than houses and ground that are within the limits of deviation for the scheme. We are caught between a rock and a hard place in trying to find alternative housing, but we will do it if we can.

Plan B would be to sit down with the contractor and try to arrange a programme of works that would allow an overlap before access is required to the part of the site on which the houses are located.

**The Convener:** I was trying to establish whether, once the contractor is on site, the residents of Harvieston Villas would be required to move out lock, stock and barrel even though no housing was available for them. You are saying that there may be a possibility that they could be there for a wee bit longer while new houses are built or sites are found.

**Douglas Muir:** That remains a possibility. We would have to build that into the contract with the contractor. The main areas of work to which the contractor needs access are the major structures; he probably would not need access to this area on day one. We might be able to limit his access and retain part of the site for the housing for a period of time.

**Mr Brocklebank:** I will come back on one matter. You may have explained the point, but I would like clarification. The Robertson Bank site, which will have a small number of houses, appears to be the site that might be acceptable for the residents. The residents will be given full market value for their properties when they go, but there is no way in which you can influence the building contractor—whoever he happens to be—who builds the houses on the Robertson Bank site, so there might be a differential between the sum for the market value of the houses that is given to the residents and the price of the new houses that are built at Robertson Bank. From what you are saying, I take it that there is no way in which you can do anything about that differential.

**Alison Gorlov:** I am saying that no assurances can be given in that respect, because no obvious and direct way to deal with the matter is associated with the compensation scheme. We are talking about the promoter doing a commercial deal, if it can, with the developer. I emphasise that I have had nothing to do with the discussions with the developer, so I do not speak for the promoter when I say this, but it occurred to me this morning that there might be scope for the commercial discussions to have some impact on the differential. I do not think that I ought to go into how that might be achieved, because I have no instructions and it would be speculation on my part—I have no idea what figures might be involved. Commercial negotiations are, by their nature, horse-trading, so there could be scope to address the issue there. However, the scope would be limited and it would not be possible to guarantee that the differential would be bridged.

**Margaret Smith:** I have a question for Mr Muir. Is there any scope for the council to buy the Robertson Bank site from the developer? The council would then have greater authority over when houses might be built there and the price of the houses.

**Douglas Muir:** I suppose that that is a possibility, although I am not sure on what ground the council could buy the land.

**Margaret Smith:** Councils buy bits of land all the time.

**Douglas Muir:** Yes, they do. If the developer is willing to sell, it might be possible, but you will be

aware that if he is not and we have to go through a compulsory purchase order process, that can take a long time.

**Margaret Smith:** Have you actively investigated whether the developer is willing to sell you the site?

**Douglas Muir:** Not as yet. The discussions that we have had with the developer have been about what he wants to do. The developer has expressed a willingness to discuss specifications for the housing that is built. Potentially, he is willing to build eight houses of a roughly similar standard to the existing houses. One would therefore hope that the cost would be roughly similar.

**Margaret Smith:** But surely from the point of view of the committee and the residents, it would be better for them to know that the land was owned by the council and have confidence that it would be developed in tandem with what is going on with their homes. That would be preferable to the residents being reliant on another developer deciding when it suited it to build the houses, given that it might have constraints on its finances or be involved in other developments. If the council were able to acquire the land, it would be for the council to have the houses built as a matter of urgency to deal with the problem that you have—or rather the problem that the residents of Harvieston Villas have.

**Douglas Muir:** Yes, I take your point. The council's difficulty at the moment is that it has a planning application in front of it, which it has to determine. The council might be able to do what you suggest, but it is not particularly a property developer.

The other unfortunate thing about the site is that it is on a steep slope. The location that the residents of Harvieston Villas would like is at the top of the hill, which is the furthest away part, so the whole site would have to be developed to get to where the houses for the residents would be. The council would have to be prepared to develop up to about 30 houses, if that is what the planning department eventually decides is the appropriate number for the site. I could not say whether the council would be willing to take on a 30-house development at the moment, but I will certainly go back and ask that question.

**The Convener:** Mr McKie, do you have any follow-up questions for the witness on the issue?

**Alastair McKie:** I do not.

**The Convener:** I now turn to the impact of the railway on the value of the objectors' properties, on which the promoter's witness is Alison Gorlov. I ask Mr McKie to invite the witness to give a brief outline of where matters stand on that issue and then to question her.

**Alastair McKie:** The matter has already been covered in evidence-in-chief.

**The Convener:** Mr Macpherson, do you have any questions for Mrs Gorlov on the impact on the value of the properties?

**Ian Macpherson:** Yes. We have not been able to move because of the railway. All local people know that the railway is coming and I believe that the value of the properties has been restricted because of that. How will we be compensated for that?

**Alison Gorlov:** As I said, the price of the house must be the market price, ignoring any devaluation that has resulted from the railway scheme. In valuing the site, valuers will apply that formula. The railway has been planned for a long time and it will be for you to agree with the promoter's valuer whether the price properly reflects what the market value ought to be, completely discounting any reduction in value that might have accrued over the years. That is a matter of expert valuers agreeing what the price ought to be.

If the promoter puts a price to you and you do not accept it, I assume that you will get advice of your own. If the parties cannot agree, the procedure is to get the Lands Tribunal for Scotland to decide the price.

First, the price ought not to take any account of any devaluation that resulted from the scheme. Secondly, if you did not agree it, got advice of your own and still could not agree on a price, you would go to the Lands Tribunal.

**The Convener:** Mr McKie, do you have any follow-up questions for the witness on the issue?

**Alastair McKie:** I do not.

**The Convener:** I now turn to impact on health, on which the promoter's witness is again Alison Gorlov. I ask Mr McKie to invite the witness to give a brief outline of where matters stand on the issue and then to question her.

**Alastair McKie:** Mrs Gorlov has already confirmed that the objectors would qualify for a home-loss payment, which is specifically devised to give payment to a claimant who suffers personal upset, discomfort and inconvenience as a result of the compulsory acquisition of their property. Therefore, I believe that the matter is covered, but Mrs Gorlov can answer any questions that the objectors have.

**The Convener:** Mrs Wilson, do you have any questions for Mrs Gorlov on the impact on health?

**Marie Wilson:** We appreciate that the process is lengthy, but we wonder whether there will be any other compensation because of the unavoidable delays and people not being properly informed.

**Alison Gorlov:** Not because of the delays themselves, I am afraid.

**Marie Wilson:** So we will just have to sit tight. Is that what happens?

**Alison Gorlov:** Unfortunately, it is. Everybody has great sympathy for you. The rules are what they are and, if it is any comfort—which it will not be—they apply to every compulsory purchase everywhere. We have simply applied them to the scheme.

**Christine May:** Will the promoter's witness confirm the level of payment under the home-loss scheme? Is this a statutory scheme?

11:15

**Alison Gorlov:** Yes, it is a statutory scheme.

**Christine May:** Are you aware of what the level of payment is?

**Alison Gorlov:** I am not.

**Christine May:** Is it capped at a maximum level?

**Alastair McKie:** The level is set out in paragraph 40 of the policy paper. I believe that it is 10 per cent of the market value of the property, up to a maximum of £15,000, with a minimum of £1,500 at prevailing rates.

**The Convener:** Does Mrs Wilson have any further questions?

**Marie Wilson:** No.

**The Convener:** Does Mr McKie have any further questions on this topic?

**Alastair McKie:** I have none.

**The Convener:** We will now change witnesses. I invite Ian Macpherson and Marie Wilson to take their places at the witness table.

IAN MACPHERSON and MARIE WILSON took the oath.

**The Convener:** As Mr Macpherson does not have a questioner on the topic of acquisition of land and buildings, could he say whether he accepts the promoter's evidence on where matters stand?

**Ian Macpherson:** It has been very difficult for us over the period. We are not being kept fully informed of what is going on all the time. We have had to request meetings with the promoter. The difficulty for us is that we cannot see where we will end up. I know that the railway has to go through the area, but we cannot see how any level of compensation will compensate us for the loss of our homes, our community and what that entails. The cost of any new housing that is being built is in excess of what we can afford. Who would want

to extend mortgages to us at our time of life? We are still in a quandary as to what is going to happen to us.

**The Convener:** Does Mr McKie have any questions for Mr Macpherson on acquisition of land and buildings?

**Alastair McKie:** I do not, but I would like to extend the promoter's sympathies to these objectors.

**Margaret Smith:** What is the objector's view on Robertson Bank as a potential site for alternative housing?

**Ian Macpherson:** If the site were screened so that we would have a similar situation to where we are now, we would probably not have many objections. Given the layout of the site, it would appear that the eight houses that are being offered to Harvieston Villas residents are on a lower level and, as such, would be overlooked by other houses. That is not our current situation.

**The Convener:** Will you outline where matters stand on loss of amenity?

**Ian Macpherson:** Our loss of amenity relates to what I have just said. We have a unique situation that is bordered by trees. In effect, we have a village green in front of the properties, where nothing else can be built and which children use extensively. We do not see how we can be put back in such a situation.

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

**Alastair McKie:** I do not.

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

**Christine May:** Have Mr Macpherson and Mrs Wilson looked independently at other locations? If you have seen properties that might be suitable, what has been the price differential?

**Ian Macpherson:** For the past five years, we have looked at properties on the internet. Unfortunately, to obtain anything that is remotely similar to what we have—to find traditionally built housing that is of the same quality, has larger rooms than the average in new-build properties and is in such a situation—nothing less than £50,000 more than our current property valuation would be needed. That is where the problem lies.

**Christine May:** Are you referring to the valuation that would apply if the railway never existed?

**Ian Macpherson:** I refer to our understanding of the current valuation.

**The Convener:** Will you outline where matters stand on the impact on property values?

**Ian Macpherson:** Properties in the area are selling for considerably more than the values that have been set on our properties by lay surveyors whom we have approached for an indication. I still believe that the values have been depressed because of local knowledge that the railway will be built.

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

**Alastair McKie:** Mr Macpherson, do you appreciate that, as Ms Gorlov said, the valuation must exclude the negative impact of the scheme? That point needs to be taken into account.

**Ian Macpherson:** Yes.

**Mr Brocklebank:** You have heard Mr Muir's explanation of what might happen at the Robertson Bank site and that eight properties might be built there as part of that. Without putting words in his mouth, I think that he said that the properties would be similarly built, so their values might be expected to be roughly in line with what your properties were worth. Do you accept his assurances? Does that give you any comfort?

**Ian Macpherson:** That gives some comfort but, given the logistics of that site, such properties would be overlooked by other properties.

**Mr Brocklebank:** If the screening that you described were put in, that might alleviate the situation.

**Ian Macpherson:** Yes, it would.

**The Convener:** How would you describe the level of consultation and communication between you and the promoter? Do you feel that you have been well served for communication?

**Ian Macpherson:** We have not been well served at all. We have found out most information from the newspapers or the radio. When we have had meetings for which we asked, we have not had satisfactory answers to our questions. The reason that has been given for that is that the process is new and nobody knows what is going on.

**The Convener:** Do you feel that communication has been clear?

**Ian Macpherson:** When we have had communication, it has been clear.

**The Convener:** Mrs Wilson, do you want to add anything about communication with the promoter?

**Marie Wilson:** I will comment not on communication as such but on the timescale. Because the promoter had not notified people along the line, we had to sit in limbo for another huge whack of time. That was the result of somebody doing their job wrongly and that

probably should not have happened. I know that people can be blamed, but you must appreciate that our lives are on hold because of that. That added a lot of time.

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

**Alastair McKie:** I do not.

**The Convener:** Mrs Wilson, will you outline where matters stand with the impact on health?

**Marie Wilson:** The impact of the railway will destroy not only our homes, but our vibrant community. All the residents look after and support one another. One resident's husband has had a stroke, so he needs a bit more attention. She can call on neighbours to sit with him; if she nips to the shop, we check that he is okay; and we help her with things that he helped her with before. She will lose all that, which is a big worry for her.

The community will be broken up, which means added stress and strain for householders. If the railway must open, we would like it sooner rather than later. We appreciate that fairness must be achieved, but will the compulsory purchase put us back in our current position, with our community spirit? Will any of that be taken on board?

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

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

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

**Members:** No.

**The Convener:** Mr Macpherson and Mrs Wilson, do you have any further comments to make in response to the questions that you were asked on the various issues?

**Ian Macpherson** *indicated disagreement.*

**Marie Wilson:** No.

**The Convener:** Mr McKie, you now have a maximum of five minutes to make a closing statement.

**Alastair McKie:** The promoter understands how strongly the objectors feel about the threatened loss of their homes, but that is a consequence of policies that support public transport and in particular new railway schemes. You will recall from the evidence of Mr Muir and Mr McCracken that there are no feasible alternative alignments to prevent the properties from being lost. The possibility of retaining four properties was considered, but the objectors as a group preferred that all the properties should be acquired.

The objectors will be entitled to compensation, as set out in the promoter's policy paper, which will include the open-market value of their

properties, disregarding any negative effects of the scheme. They will also be entitled to home-loss payments and their disturbance costs—their costs of moving—will be fully met, too. The promoter will endeavour to reach a negotiated settlement with the objectors on the level of compensation but, if the matter cannot be agreed, it will ultimately be determined by the Lands Tribunal for Scotland. As the objectors' properties lie within the limits of deviation, they may qualify for an advance-purchase scheme, if that is adopted. Until the Executive pronounces on that policy, I can say no more on that.

As for the availability of suitable properties in Gorebridge, I refer you to the proposals map from the Midlothian Council local plan, which shows several housing allocations and, in particular, 1,000 properties that will come forward. Mr Muir has said that affordable housing policies will be applied to some of those allocated sites. The windfall site at Robertson Bank might prove to be a suitable alternative to the objectors.

The committee has properly identified the practical difficulties in matching a housing developer's aspirations with the objectors' housing needs. Unfortunately, the promoter has no powers to acquire the land through the bill. However, the promoter will continue to consult the objectors and the developers. Mr Muir has given the assurance that he will go back to the council committee to have a further think about that. He has also said that synchronising the construction programme with the need for the properties will be considered carefully with the contractor, if the bill is passed.

**The Convener:** Mr Macpherson, you now have a maximum of five minutes in which to make a closing statement.

**Ian Macpherson:** As previously stated, we appreciate the need for the railway. However, I feel that the process as it stands has distinctly disadvantaged us. It has been said that future programmes will run more quickly, but that does not help us. The Land Compensation (Scotland) Act 1973 gives a maximum home-loss payment of 10 per cent of a property's value. In 2000, that figure was upgraded in the rest of the United Kingdom—especially in England—so that there is now a home-loss payment of 35 per cent. With such a level of compensation, we might have been in a position to withdraw our objection by now.

**The Convener:** I thank Mr Macpherson and Mrs Wilson, whose community the committee visited a few weeks ago, for coming to the meeting to give evidence. I think that I speak for all committee members when I say that we sympathise with you and that we urge the promoter to redouble its efforts to try to reach an accommodation with the objectors so that their small but vibrant and important community can be retained.

Group 31 has withdrawn, so we will move on to deal with group 27. Before we do, I propose that we suspend the meeting for five minutes.

11:31

*Meeting suspended.*

11:38

*On resuming—*

**The Convener:** Welcome back, everybody. Douglas Muir, Andrew McCracken, Alison Gorlov and Sam Oxley are now at the table.

Our second group today is group 27, which will deal with the objections from Tony Stovin, Mr David Swift and Mrs Lynn Swift. The objectors have chosen to rest on their written evidence.

Douglas Muir and Andrew McCracken are the witnesses for the promoter on the acquisition of land. Mr McKie, do you want to invite one of your witnesses to give a brief outline of where matters stand with respect to the acquisition of land, and then to question Mr Muir and Mr McCracken?

**Alastair McKie:** I will do so, convener.

It may be useful if committee members have before them plan 3, which is entitled "Group 27" and shows the respective locations of Mr Stovin's and Mr Swift's properties.

Mr Muir, will you give us an update on the proposals that the promoter has put to Mr Stovin in view of his objections to the bill?

**Douglas Muir:** Certainly. We have met Mr Stovin, who has a couple of concerns that mainly relate to his MOT business and how it operates. He requires certain areas in front and to the side of his property for parking and MOT testing. As yet, we have been unable to give him a satisfactory answer on that because we do not have the level of detailed design that is required, but we have been back to the site and we are working on it. We are now pretty confident that we will have an engineering solution that will allow Mr Stovin to use all the areas that he requires, in which case he will be satisfied. We hope to resolve that within the next 10 to 14 days.

**Alastair McKie:** One of Mr Stovin's central concerns was the loss of access. Will his access be lost?

**Douglas Muir:** No, we will maintain his access at all times. He is particularly concerned about an area in front of his garage, but we can maintain access to that.

**Alastair McKie:** That is all, convener.

**The Convener:** Thank you, Mr McKie. You have also covered the issue of access.

Do members have any questions?

**Gordon Jackson (Glasgow Govan) (Lab):** Was there ever an alternative to taking the land? Was an alternative alignment rejected that would not have affected the land?

**Andrew McCracken:** Not really. Once we decided on the location of the station, there was a need to take plots 387 and 392. The current access is non-compliant from a highways point of view because of visibility, so once we decided on the location of the station car park we had to take the land to address the visibility problem.

**Gordon Jackson:** Thank you.

**Christine May:** What impact will the scheme have on Mr Stovin's business and what account have you taken of that?

**Douglas Muir:** Effectively, the biggest impact on Mr Stovin would arise if we could not maintain an area of about 2m to 3m in width in front of his garage door. That would effectively mean that he could lose his MOT testing certificate. However, we are confident that we can move the kerb line out so that he can retain that area.

**Christine May:** What is your plan B if you cannot do that?

**Douglas Muir:** There is not one, because we are sure that we can do it. It is really just a case of completing the engineering drawings to demonstrate that.

**Christine May:** Thank you.

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

**Alastair McKie:** I do not, convener.

**The Convener:** We turn to the impact on the viability and expansion of Mr Stovin's business. The witnesses for the promoter are Douglas Muir, Andrew McCracken and Alison Gorlov. Mr McKie, would you invite one of your witnesses to give a brief outline of where matters stand on the issue, and then question Mr Muir, Mr McCracken and Mrs Gorlov?

**Alastair McKie:** The objector maintains that he has purchased an area of ground for a car park. How will the objector's expansion proposals be impacted by the scheme?

**Douglas Muir:** The area that Mr Stovin has purchased for parking is shown as plot 389 on plan 3. At our most recent meeting with Mr Stovin we agreed that we would not take all that area. We require one small area for access, and he is quite happy with that. Given that we will give him an assurance on that basis, he is quite content on that point.

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

**The Convener:** As members have no questions, Mr McKie, you have five minutes to make any closing statement.

**Alastair McKie:** I have none, convener. The impact on the value of property and marketability is clearly a matter for the compensation paper, so I have nothing to add.

**The Convener:** Thank you. That concludes the oral evidence for group 27. I will allow a few moments for the witnesses to change over.

The objections in group 28 have been withdrawn, so there is no need for us to consider them further.

We move on to group 29, our third group of the day, which relates to Paul and Christine Baxter's objection. Mr and Mrs Baxter have chosen to rest on their written evidence. The witnesses to be seated at the table are Douglas Muir, Andrew McCracken, Steve Purnell and Andy Coates.

ANDY COATES *made a solemn affirmation.*

**The Convener:** The witness for the promoter on the acquisition of land is Douglas Muir. Mr McKie, would you like to invite your witness to give a brief outline of where matters stand on the issue, and then question him?

11:45

**Alastair McKie:** Mr Muir, it will be helpful if you have before you plans 1 and 2 for group 29. Please update the committee on where matters stand with the objector, and say whether any proposal has been put to the objector about reducing the area of ground that might be required for a construction compound at plot 499.

**Douglas Muir:** The objector was concerned about the potential use of plot 499 as a construction compound. The promoter has work to do on the bridge marked OB41 on plan 1; there is quite a substantial amount of damage to some of the masonry and brickwork. We intended to have a compound beside the bridge that would allow us to do that work. However, in discussions with the objector, we have agreed that we will restrict our compound area to plots 495 and 497 and only a small amount of plot 499, which is shown on plan 2 as being in the immediate vicinity of the bridge. That will allow us to do the required work to the structure.

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

**The Convener:** As there are no questions, I turn to the impact of the railway on access to the objector's property, particularly via the bridge crossing. The witnesses for the promoter on this issue are Douglas Muir, Andrew McCracken and Steve Purnell.

Mr McKie, would you like to invite one of your witnesses to give a brief outline of where matters stand on the issue, and then question Mr Muir, Mr McCracken and Mr Purnell?

**Alastair McKie:** My witness will be Mr McCracken.

Good morning, Mr McCracken. Could you confirm the purpose of the access and the types of vehicles that are likely to be used, and say whether any damage will be made good?

**Andrew McCracken:** As Mr Muir pointed out, we have some work to do to the bridge, so we intend to take vehicular access from the B6367, shown on plan 1, along the side of plot 496.

On the size of plant, there is no requirement for a crane, so the vehicles will probably be vans and Hiab-type vehicles. As was stated previously in the construction code of practice, any damage to the track will be made good by the contractor during the works, before it is handed back.

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

**The Convener:** What commitment can you give that will satisfy Mr and Mrs Baxter's concerns about the bridge access?

**Andrew McCracken:** Mr Muir is keen to answer that.

**Douglas Muir:** The objector's main concern is about large vehicles crossing the bridge. The plan shows that, just before the bridge, the road takes quite a sharp right-hand bend. It goes down a fairly steep hill at that point, then heads off in a different direction up towards Mr Baxter's property. The main concern is that if we take large vehicles down that narrow part of the track and across the bridge to reach plot 499, they might get stuck on the bridge. Mr Baxter has experienced that in the past, and has had difficulty getting into and out of his property. However, he is quite happy that that will not occur, because instead of taking access to plot 499, we are taking everything off the road at plot 495. The only access to the bridge that we will require will be for small bits of plant, such as dumper trucks, to do the repairs to the bridge. Mr Baxter is quite content with that.

**The Convener:** What does the phrase "minimise disturbance" mean in reality for Mr and Mrs Baxter? For how long will the disturbance last?

**Steve Purnell (Environmental Resources Management Ltd):** Are you quoting the phrase "minimise disturbance" from the response that Mr Muir just gave, Mrs Marwick?

**The Convener:** I was quoting paragraph 8 of the promoter's response to group 29.

**Steve Purnell:** That relates to the code of construction practice. The code is a very prescriptive document, which we have discussed at previous meetings. The aim is to ensure that, wherever possible, there are no adverse residual impacts. If there is disturbance to, for example, a road surface, it will be reinstated. Measures relating to all the other impacts, which are perhaps more transient in nature, such as dust or noise being generated throughout construction, are brought into line to be in accordance with the standards that prevail at the time.

The code of construction practice does not in any way excuse the contractor from meeting all legal requirements. In other words, the contractor must fully comply with not only what we initially set out and advise should be done, but all requirements with respect to disturbance to water courses or emissions of dust. We expect that, inevitably, a scheme of this nature will give rise to some noticeable impacts. For example, people will be aware of vehicles moving around and so on. However, work is designed to be done in such a way that it does not become a nuisance or intolerable to people who live nearby.

**The Convener:** You say:

"The Promoter has made provision to minimise disturbance through a Code of Construction Practice".

You go on to use the phrase "wherever possible", which seems an awful lot more woolly than committing to the code of construction practice. Is it your intention that the code of construction practice will be adhered to fully, and that any deviations will not find favour with the promoter?

**Steve Purnell:** That is absolutely correct. The local planning authorities will be obliged to monitor construction to ensure that everything that is set out in the code is fully complied with.

**The Convener:** I was going to ask about ensuring that the code is being complied with. Do you have procedures in place to ensure that the promoter monitors the contractor?

**Steve Purnell:** Mr Muir might be able to amplify this, but my understanding is that in exactly the same way as the local planning authority is required to monitor disturbance as a condition of planning permission, it will be required to monitor this scheme in relation to the code of construction practice.

**The Convener:** I was hoping that you were going to say that you would be better than the local authority at monitoring deviations from the code of practice. Do I take it that it is your intention to do that carefully, to minimise disruption?

**Steve Purnell:** It is. There is plenty evidence of such undertakings in schemes of this size and nature, which shows that the code of construction

practice has teeth and generally works in these circumstances.

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

**Alastair McKie:** I do not.

**The Convener:** On loss of amenity and habitat, the witness for the promoter is Andy Coates. Mr McKie, would you like to invite your witness to give a brief outline of where matters stand on this issue and then question him?

**Alastair McKie:** Mr Coates, will you please provide us with your professional opinion on the potential habitat impact of the scheme at this particular location?

**Andy Coates (Environmental Resources Management Ltd):** In general, the route corridor along the access near Cowbraehill is well vegetated, in much the same way as it would have been when the railway operated along the route in the past. The former track bed along there is largely open in many areas, although some shelter-belt planting has taken place and there has been colonisation in some areas. However, much of the habitat interest lies in areas adjacent to the areas that will be affected, which are mainly along the track bed. There is one area where some landslip has occurred and where some slope stabilisation works are likely to be required. The extent of that work will be informed by further ground investigation works. While that may necessitate the loss of some habitat in the area, much of that will be away from areas of important habitat value. The promoter is committed to retaining as much habitat as possible in that area and, in order to achieve that, to incorporating the mitigation measures that are set out in the environmental statement and the code of construction practice.

**Alastair McKie:** That is all, convener.

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

Do members have any questions on amenity and habitat?

**Members:** No.

**The Convener:** On the impact of construction traffic on drainage, the witness for the promoter is Steve Purnell. Mr McKie, would you like to invite your witness to give a brief outline of where matters stand on that issue and then question Mr Purnell?

**Alastair McKie:** Mr Purnell, will you comment on how the potential impacts will be minimised, presumably through the code of construction practice?

**Steve Purnell:** A specific part of the code of construction practice refers to potential impacts on



all services and infrastructure. The code points to ensuring that any infrastructure—drainage and sewerage and so on—is inspected before construction starts. All efforts will be made to ensure that no impacts occur to such services during construction. If there is any damage, that will be made good. That is set out clearly in the code.

**The Convener:** Mr McKie?

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

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

**Christine May:** I understand what the code of construction practice says; indeed, you have described it well. However, those of us who are familiar with heavy construction in rural areas know how quickly land can be turned into a boggy mess. All that is needed is one downpour, plus some extremely heavy lorries or other vehicular movements, to make a complete mess of drainage and so on. How quickly will the code of construction practice and the monitoring procedures be able to react to such sudden changes in conditions, which could conceivably have a significant impact on drainage?

**Steve Purnell:** My experience of the implementation of codes of construction practice—which I admit is more in and around London—is that the existence of the telephone hotline, which is described in the code, enables all local residents and others to be on the phone immediately to the contractor or their representative. If the local planning authorities adhere to the code, my experience is that a rapid response is made—generally on the same day. We fully expect that to be the case for this scheme.

**Christine May:** I recognise that that is the case if site supervisors are good and well trained. The committee's report may wish to say something about ensuring that site supervision is of the highest possible quality, so that the outcome is as you describe, rather than, as has been my experience, matters being allowed to move along for a few days, leading to extreme frustration on the part of those who complain.

**Steve Purnell:** Local planning authorities have quoted to me examples of schemes in which a code has not been in place. In such cases, matters have readily got out of hand. However, with such a strictly worded code, which can only improve in future—we may wish to add other things to it—the situation should be better than the one that you describe.

12:00

**The Convener:** When you talk about things that you might like to add to the code, does that

include a response time or response rate for complaints?

**Steve Purnell:** I do not think that that is included explicitly in the code.

**The Convener:** It is not. I am asking you whether you would like to add it to the code.

**Steve Purnell:** We could well add something of that nature, but I look to Mr Muir for guidance.

**Douglas Muir:** A reporter could have a look at that—we are happy to do that.

**The Convener:** It seems to me that there is no point in having a hotline to complain if the complaints are not followed up quickly. Perhaps it would answer some of our concerns if you were to add to best practice by stating a response time by which you will get back to people who have genuine complaints.

Mr McKie, do you have any follow-up questions?

**Alastair McKie:** I do not.

**The Convener:** Thank you. I will allow a few minutes for witnesses to change over. The new witnesses will be Alison Gorlov, Steve Mitchell and Steve Purnell.

We turn now to the impact of the railway on noise. The witnesses for the promoter on this issue are Steve Mitchell and Steve Purnell. Mr McKie, I ask you to invite one of your witnesses to give a brief outline of where matters stand on this issue and then to question Mr Mitchell and Mr Purnell.

**Alastair McKie:** Good morning, Mr Mitchell. For the committee's benefit, will you confirm the position with regard to the potential noise impact on the objectors' property, if you have assessed it, and the distance from the property to the railway line?

**Steve Mitchell (Environmental Resources Management Ltd):** The property is about 100m from the railway, as the objectors clarify in their final statement to us. Their concern is to do with noise perhaps not so much at the property as on the rest of the land. Noise at the property will be well below the targets that we have set ourselves about which I have spoken to the committee before.

Noise levels in the fields and open land much closer to the railway will be higher and will cause some disturbance as a train rushes past. We have spoken before about the need for people to raise their voice if they are walking across the field and talking to somebody next to them as a train passes. I cannot add much more to that other than to say that I am not aware of any particular leisure activities or use of the land immediately next to the railway that would be particularly sensitive to

noise. Using that land would be rather like using land next to a road when a car goes by—it would be a similar experience and there would be several seconds of noise. In other words, the rest of the land is not particularly sensitive to noise and so does not warrant any particular assessment.

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

Mr Purnell, the issue for the objectors is the level of pollution from operating trains and track maintenance activity. Can you confirm your evidence on those issues?

**Steve Purnell:** Certainly.

I would like to give the committee a little bit of background. In the United Kingdom generally, the rail sector, as part of transport overall, contributes less than 1 per cent of all emissions. Transport appraisal guidance in England and Scotland suggests that, generally speaking, air quality issues can be scoped out for a new railway proposal. Rail schemes, by their very nature, tend to lead to a level of modal shift, which brings down levels of car traffic, which, in turn, can have a beneficial impact on air quality.

In the case of the Waverley railway scheme, any incidence of exposure to a pollutant from the railway will be very brief indeed—it will be from a train passing by, which will happen four times an hour. The emissions from such a train would have to be extremely high to affect the overall concentration of pollutants in an area. For that reason, we set out in the environmental statement and in my evidence that air pollution will not be an issue for operational trains.

**Alastair McKie:** Thank you, Mr Purnell. That concludes my questioning, convener.

**The Convener:** Do members have any questions on noise and pollution?

**Christine May:** Mr and Mrs Baxter have expressed a desire for the planting of a belt of trees for screening purposes. What is your intention in relation to that desire?

**Steve Mitchell:** I gather from Mr Muir that the suggestion was discussed late last week, and Mr Baxter has confirmed that he would welcome that. I think that I am right in saying that the promoter is optimistic about being able to oblige. I would not say that a belt of trees will provide any noise benefit, although I accept that it may provide some psychological benefit. I do not think that a row of trees will lower the actual noise levels, but there is evidence that people get some comfort if the line of sight to a noise source is screened.

**Christine May:** That is consistent with evidence that we heard in previous sessions.

**The Convener:** Mr McKie, do you have any questions for your witness on noise and pollution?

**Alastair McKie:** I do not, convener.

**The Convener:** The witness for the promoter on the issue of impact on value of property is Alison Gorlov. Mr McKie, would you like to invite Mrs Gorlov to give a brief outline of where matters stand on the issue and to question her?

**Alastair McKie:** Convener, my intention is that the promoter will simply rest on the existing compensation policy paper without rehearsing it.

**The Convener:** I see that members have no questions for the witness on this issue.

Mr McKie, you have a maximum of five minutes to make any closing statements.

**Alastair McKie:** I simply rest on the oral and written evidence that has been given, convener.

**The Convener:** That concludes the oral evidence for group 29. I will allow a few moments for witnesses to change over. The witnesses who will be seated at the table for group 30 are Douglas Muir, Andrew McCracken and Alison Gorlov.

I say to witnesses and committee members that it is not my intention to break for lunch. I am going to press on in the hope and anticipation that we can finish as soon as possible and that lunch will not be delayed too long.

We move on to group 30, which is our fourth group today. The group relates to the objections from Dr and Mrs Wightman, Mr and Mrs Douglas, and Mr Radford. The objectors have chosen to rest on their written evidence.

The witnesses for the promoter on the acquisition of land and buildings, specifically in relation to Mr Radford's objection, are Douglas Muir and Andrew McCracken. Mr McKie, would you like to invite one of your witnesses to give a brief outline of where matters stand on this issue and to question Mr Muir and Mr McCracken?

**Alastair McKie:** I would, convener.

Mr Muir, it would be helpful if you could have plans 1 and 2 for group 30—the before and after plans—in front of you. With reference to those plans, will you update the committee on how matters currently rest with the objector?

**Douglas Muir:** When I last spoke to the objector, he said that he was much more relaxed given the assurances that he had received from the promoter about the acquisition of land. Originally, we intended to take a fairly substantial amount of his garden, which is shown as plot 426 on plan 1 for group 30. Subsequently, we agreed with him that we will take no more than a 1m strip at the boundary of his garden and the railway in order to put in a small retaining wall that will be required. There was an old sleeper wall when the

railway was there before that needs to be replaced. Mr Radford seems to be fairly satisfied with that. He is a landscape gardener and he uses his garden to bring on plants. As we are not removing his greenhouses and so on, he is fairly satisfied.

**Alastair McKie:** Please look at plan 2, specifically at the key in the top right-hand corner. May we agree that the proposal to limit the land take to a 1m strip applies to plots 423 and 424 as well as plot 426?

**Douglas Muir:** That is correct.

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

**The Convener:** Do committee members have any questions for the witnesses on this issue?

**Mr Brocklebank:** As I understand it, Dr and Mrs Wightman appear to be content on the land acquisition point, but Mr Radford is not happy about it. Is that the case? What are the outstanding issues for Mr Radford?

**Douglas Muir:** When I last spoke to him, his words were that he is much more relaxed about the issue, although unfortunately he has not withdrawn his objection—his objection still stands. We have undertaken not to take the ground that he currently uses to bring on plants for his business.

**Mr Brocklebank:** What is the nature of his current objection if you have given him that undertaking?

**Douglas Muir:** It is hard for me to say.

**Mr Brocklebank:** I see. Thank you.

**The Convener:** Mr McKie, do you have any further questions for Mr Muir or Mr McCracken on this issue?

**Alastair McKie:** I do not, convener.

**The Convener:** I now turn to the impact on the value of property, and the impact of the railway on the value of Mr Radford's property. The witness for the promoter on this issue is Alison Gorlov. Mr McKie, would you invite your witness to give a brief outline of where matters stand on the issue and then question Mrs Gorlov?

**Alastair McKie:** The promoter rests on its existing position, on the application of the construction code by the bill.

**The Convener:** Thank you. As there are no questions from committee members, I will allow a few moments for the witnesses to change over. The witnesses who should be seated at the table for the next topic, which is noise and vibration, are Steve Mitchell, Steve Purnell, Sam Oxley and Andrew McCracken.

Mr McKie, would you invite your witness to give a brief outline of where matters stand on the issue of noise and vibration and then question Mr Mitchell?

**Alastair McKie:** Mr Mitchell, will you confirm the position regarding noise and vibration at these particular properties?

**Steve Mitchell:** Will you clarify which properties I should summarise the position on? They will include the Granary and Granary Cottage, but would you like me to talk about—

**Alastair McKie:** I think that this concerns all the properties. My understanding is that Dr and Mrs Wightman do not wish to pursue the issue of noise during the construction phase, but all of the objectors have indicated that there is an issue with noise.

12:15

**Steve Mitchell:** The Granary and Granary Cottage are roughly 15m from the railway, which will be twin-tracked at this location. Train speed will be about 60 mph at the most. Without any noise mitigation, those properties are clearly in line for noise impact. As you know, they are lower than the railway, but they have windows, including those in the converted attics, that are roughly at the same level as the railway. A need for noise mitigation there has already been identified.

In the absence of such noise mitigation, the peak noise levels could be up to about 80dB. At this stage, we envisage a noise barrier being constructed that will run past those properties, roughly 1.5m above the top of the rail, providing 9dB or 10dB of attenuation to the upper floors and more to the lower floors. That would bring the peak noise level down to about 70dB or 71dB.

The night-time noise level, as an equivalent level, will be brought down to about 41dB as opposed to the target of 45dB that we have set ourselves. We believe that with a noise screen we have a technical solution to attenuate the noise. Clearly, we will have to take measures that fit into the landscape as best we can. Miss Oxley can inform the committee about that.

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

**The Convener:** Do members have any questions on noise and vibration?

**Mr Brocklebank:** How have the objectors reacted to the proposal to erect a screen at the top of the bank?

**Steve Mitchell:** They are concerned about the view and we need to be sensitive to that. The promoter has talked extensively about it to them. The existing blue slatted fence is between 1m and 1.5m high, approximately—I do not have the

precise dimensions. The noise barrier would be pretty much in the same place but perhaps 1ft or 2ft higher. In that sense, it would be more obtrusive. However, the objector welcomes the offer to plant vegetation on the noise barrier as best we can.

**Mr Brocklebank:** Will the plantings be on the housing side of the screen so that householders will not have to look at a bare barrier from their back windows?

**Sam Oxley (Environmental Resources Management Ltd):** Given the absence of space and the fact that the objector wants to maintain as much of his garden for cultivation as possible, it is best to commit to planting, say, climbers to break the view and soften the whole structure rather than something that would take up more space, say a hedgerow.

**Mr Brocklebank:** Presumably that has been discussed with the objector.

**Sam Oxley:** Various options have been loosely discussed. I understand from Douglas Muir that we will continue negotiations with the objector until we can come up with an arrangement for that location that will satisfy him.

**The Convener:** Does Mr McKie have any follow-up questions for the witnesses?

**Alastair McKie:** My question concerns 2 Standpretty Cottages, the property of Mr and Mrs Douglas, which is also shown on the plan.

**Steve Mitchell:** The reason for my hesitancy before is that I understand from Mr Muir that they intend to withdraw their objection. However, in the absence of that withdrawal, let me summarise the situation. Standpretty Cottages are about 30m or so from the railway on the uphill side. As such, they benefit from much natural screening because the railway is cut into the ground. Consequently, the noise predictions there are well below the targets to which we referred earlier. To give some idea, the night-time noise level will be about 35dB instead of the target of 45dB. We are not really expecting a noise impact at that location. Clearly, they will be aware of the railway and will hear trains. However, we expect the noise level to be well within the impact standards.

**Margaret Smith:** I want to ask about 2 Standpretty Cottages. The concern that Mr and Mrs Douglas had was about noise and vibration. They stated:

"We would ... like some assurance that there will not be any time limitation to our rights to either compensation or repair if damage should occur".

Their remarks relate to the instability of the banking. Will somebody say what those time limitations are, if they exist?

**Andrew McCracken:** Do you mean for the duration of construction?

**Margaret Smith:** Mr and Mr Douglas have said:

"We remain concerned about the stability of the banking beneath our garage".

The committee has visited the site; if the property were mine, I would have the same concerns they have. They stated:

"We would ... like some assurance that there will not be any time limitation to our rights to either compensation or repair if damage should occur in the future due to instability of the bank exacerbated by vibration of trains."

**Andrew McCracken:** I think that, having consulted the objectors, Mr Muir has given a commitment to having an early stability check of the slope. We have committed ourselves to carrying out a full survey and stability analysis during the design stage, following royal assent, to provide comfort to the objectors that the slope will be stable.

**Margaret Smith:** You have not answered my question. I appreciate what you have said—I am not saying that it is not good—but, for the sake of argument, let us say that you give the objectors an assurance that is based on the findings of that study and then something happens in 10 years' time. Will there be a time limitation on the assurance?

**Alastair McKie:** I would like to assist, if I may, although obviously I am not giving evidence. Under the bill, the safeguarding of works may be carried out at any time up to five years after the works commence. If something happened that was the operator's responsibility, the operator would clearly owe a duty to the owner of the adjoining land.

**Margaret Smith:** But that duty would last for only five years.

**Alastair McKie:** The five-year period is in the bill, but I am talking about the common law.

**The Convener:** Thank you for that. I take it that you do not have any follow-up questions, Mr McKie.

**Alastair McKie:** I do not.

**The Convener:** Many thanks.

We now turn to air pollution and the impact on health at Mr Radford's property. Steve Purnell is the witness for the promoter on that issue. Mr McKie, do you want to invite your witness to give a brief outline of where matters stand on the issue and then to question him?

**Alastair McKie:** Mr Purnell, the issues seem to be air pollution—on which I think that you have already given evidence—and leachates, or materials that leak into watercourses. Will you

speaking about that matter and how it will be mitigated under the scheme?

**Steve Purnell:** Certainly. Mr Radford's concerns related to construction and operation of the railway. I have two points to make about its construction. We have described in the environmental statement what the potential impacts of dust might be and how they will be mitigated through the code of construction practice. I think that Mr Radford may have picked up on the potential unmitigated impacts. I assure the committee that the impacts that we have described are mitigated impacts as a result of commitments from the promoter.

Railway operations have historically been quite contaminating, principally because trains tended to slop out fuel in the past. They were quite poorly designed and left a lot of fuel and other contaminants in the ground. However, the trains that have been proposed for the Waverley railway scheme will be of a very modern design and the issue of leakage certainly does not apply. The potential for fuel being deposited in the ground is extremely slim. Therefore, we do not believe that contaminants leaching into Mr Radford's property will be an issue.

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

**The Convener:** Do members have any questions to ask on that issue?

**Members:** No.

**The Convener:** On visual impact and loss of amenity, the witnesses for the promoter are Sam Oxley and Steve Purnell. Mr McKie, will you invite one of your witnesses to give a brief outline of where matters stand on the issue and then question Ms Oxley and Mr Purnell?

**Alastair McKie:** Ms Oxley, on the matter of visual impact, will there be any vegetation loss and consequent replanting as a result of the scheme?

**Sam Oxley:** On the far side of the railway from the property, there will be vegetation loss from a narrow strip, which will be required to create a cut slope to create the platform for the railway. The strip of land is relatively narrow and falls within the land that is required to be taken for the scheme. The more mature woodland that is further away from the railway will remain.

**Margaret Smith:** Ms Oxley has already touched on issues to do with consultation with objectors on the type of planting that is to be undertaken. However, I seek assurances that engagement and consultation with the objectors will happen. Could somebody also clarify whether the track at the point behind the Granary and Granary Cottage is to be single or dual track? If it is to be dual track, will that have an impact on the mitigation and planting measures that can be put in place under Network Rail guidelines?

**Sam Oxley:** The track is to be dual, so the land take will be wider, which means that less land will be available for planting. I suspect that, in this instance, the majority of the planting will be along the fence, to screen the noise fence. There may be scope for planting on the cut slope, if we can plant far enough from the rails and in accordance with the guidance. Because the corridor is already relatively well vegetated, the chances are that the work will be more about the careful removal of vegetation—so that we do not take or damage more than is required for the scheme—than about large areas of replanting.

**Margaret Smith:** That is partly because the line is to be dual track. If the proposal had been for single track, you would have had more options for planting on your, rather than the objectors', land.

**Sam Oxley:** It may have been possible to move the noise fence further away from the objectors' property boundary and therefore to have some land between the two fences.

**Margaret Smith:** How will you consult the various objectors in the group?

**Sam Oxley:** Douglas Muir has been active in consulting the objectors. It is my understanding that we will continue in that vein until we come up with a proposal with which they agree.

**The Convener:** Mr McKie, do you have any follow-up questions on the topic?

**Alastair McKie:** For clarification, I will put a point to Mr Mitchell that might be in the committee's mind. For the avoidance of doubt, when you carried out your noise and vibration assessments, did you take into account the fact that the line at this location is to be dual track?

**Steve Mitchell:** Yes. That makes it slightly harder to get the noise screening that we would like, because the far track might be 2dB or 3dB noisier than the close track. However, that was accounted for in the figures that I read out earlier.

**The Convener:** We now turn to the impact on business and services for Mr Radford, on which the witness for the promoter is Alison Gorlov. Mr McKie, will you invite your witness to give a brief outline of where matters stand on the issue and then question her?

**Alastair McKie:** The promoter intends to rest on the compensation policy paper. Members will be aware that it is now the promoter's intention to limit the land take to a 1m strip. The objection related to a landscape gardening business and I believe that, because of the land-take reduction, the buildings that are used in connection with that business will no longer be affected.

**The Convener:** Do members have any questions for Mrs Gorlov on this issue?

**Members:** No.

**The Convener:** Mr McKie, I take it that you have no further questions for Mrs Gorlov.

**Alastair McKie:** I have just one point of clarification. I am reminded that when I referred earlier to the construction code of practice and compensation, I meant to refer to the compulsory purchase policy paper. I thought that I did, but apparently I did not.

12:30

**The Convener:** That is okay. It is getting to us all, Mr McKie. You have up to five minutes to make a closing statement, if you so wish.

**Alastair McKie:** I do not wish to do so.

**The Convener:** In that case, we move on to group 36, our sixth group today, which relates to the objection from Lord Borthwick. The objector has chosen to rest on his objection. On the subject of the acquisition of land, the witness for the promoter is Alison Gorlov. Mr McKie, would you like to invite Mrs Gorlov to give a brief outline of where matters stand on this issue and then question her?

**Alastair McKie:** Thank you, convener. I believe that this objector's position relates to the issue of compulsory purchase, which I think I have adequately covered, and to the operation of what are termed the Crichel Down rules, which are before the committee. On that basis, I simply rest on the promoter's written evidence.

**The Convener:** Thank you for that. Do members have any questions?

**Members:** No.

**The Convener:** Mr McKie, you have a maximum of five minutes to make a closing statement, if you so wish.

**Alastair McKie:** We simply rest on our existing evidence.

**The Convener:** Thank you. That concludes oral evidence for group 36.

The final group is group 40 and relates to the objection from Mr and Mrs Barnett. The objectors have chosen to rest on their written evidence. Dealing first with the impact on the value of the property, the witnesses for the promoter are Alison Gorlov and Bill Sandland. Mr McKie, would you like to invite one of your witnesses to give a brief outline of where matters stand on this issue and then question Mrs Gorlov and Mr Sandland?

**Alastair McKie:** The promoter's intention is simply to rest on its existing compulsory purchase policy paper.

**The Convener:** Thank you, Mr McKie. Do members have any questions for the witnesses?

**Gordon Jackson:** I presume, Mrs Gorlov, that if somebody ends up with property that is worth more, they just get to keep it—if people score, they win. I remember that this objection involves a man who has a bit coming to him—his garden is being made bigger. I presume that, if property ends up being worth more, that is just somebody's good fortune.

**Alison Gorlov:** Well, yes.

**The Convener:** I take it that you are resting there, Mr Jackson.

**Gordon Jackson:** I am, thank you.

**The Convener:** Okay. Mr McKie, do you have any follow-up questions for the witnesses on this topic?

**Alastair McKie:** I do not.

**The Convener:** I now turn to the issue of noise. The witness for the promoter is Steve Mitchell. Mr McKie, would you like to invite Mr Mitchell to give a brief outline of where matters stand on this issue and then question him?

**Alastair McKie:** Mr Mitchell, can you confirm how noise will be controlled during construction of the extension of the B709 to the A7? I think that that is the main issue for these objectors.

**Steve Mitchell:** Yes, noise vibration during construction is the remaining issue, as the objectors' clarification evidence states.

I return to the code of construction practice. I will briefly summarise chapter 4 of the code, which deals with noise and hours of working. There is a restriction on the normal hours of working and there are noise limits. There is a requirement to comply with British standard 5228, which is quite prescriptive about methods of minimising noise. We also added five or six specific points about the maintenance of equipment. For example, permanent equipment will be put in noise enclosures and mufflers will be fitted to pneumatic breakers. The code contains specific requirements that the contractor will be contractually required to follow.

The construction work will be relatively close to the property—perhaps 20m or 30m away—and I suspect that there will be some disturbance, but the code of construction practice will minimise that as far as possible.

**The Convener:** Do members have any questions for Mr Mitchell on the subject of noise?

**Gordon Jackson:** How far is the house from the track?

**Steve Mitchell:** I would not like to say. It is a long way—perhaps 100m. However, the roadworks in the vicinity—

**Gordon Jackson:** So it is only the road that is relevant to noise. The track is not relevant.

**Steve Mitchell:** Yes. It is the new road link from the junction that the objector is concerned about.

**Christine May:** From your recollection of the site, can you confirm that the current configuration of the road is a bend going up a hill and that there is quite a lot of low-gear noise from lorries and so on?

**Steve Mitchell:** Yes. My recollection is that it is on the brow of a hill, but there is a hill as one comes up to the junction. The piece of road that will be removed so that the landowner has all his land in one piece is perhaps guilty of producing such noise. Of course, that piece of road will be taken away, so in that respect there could be a slight gain. On the other hand, the new link road will take traffic that would otherwise have been generated in the village of Heriot, so that might increase noise levels a little.

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

**Alastair McKie:** No.

**The Convener:** I turn to pollution. The witness for the promoter is Steve Purnell. Mr McKie, will you invite your witness to give a brief outline of where matters stand on the issue and then question Mr Purnell?

**Alastair McKie:** Mr Purnell, the objector is concerned about the potential pollution effects that might result from the construction works and from traffic on the extension of the B709 to the A7. Will you confirm your evidence on those issues?

**Steve Purnell:** Certainly. The construction of the new link will be dealt with in exactly the same way as the construction of the rest of the scheme. In other words, the same constraints and standards will be applied to minimise disruption and make good any damage. With respect to air quality during the operation of the new link, our evidence is that there is likely to be a small worsening of air quality for the residents but that it will not be significant. The road will not have particularly heavy traffic and there will be some modal transfer to rail, which will lead to a local improvement in emissions.

**Alastair McKie:** Thank you.

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

**Members:** No.

**The Convener:** Mr McKie, I take it that you have no follow-up questions for Mr Purnell.

**Alastair McKie:** I do not.

**The Convener:** Thank you. I will allow a few moments for the witnesses to change over. The

witnesses to be seated at the table are Bruce Rutherford and Sam Oxley.

On risk of crime, the promoter's witness is Bruce Rutherford. Mr McKie, please invite your witness to outline briefly where matters stand on this issue.

**Alastair McKie:** Good afternoon, Mr Rutherford. Will you confirm your understanding of the objectors' concerns about the risk of crime? Have you and the police investigated whether there is regular criminal activity in Heriot?

**Bruce Rutherford (Scottish Borders Council):** In discussion with Mr Sandland, Mr Barnett suggested that the close proximity of the new access route to the A7 would increase the incidence of vandalism and crime in the Heriot area. However, the local police have indicated to us that no crime has been recorded in Heriot in the past year. As a result, we have no reason to suspect that the crime rate will be any worse because of the new road directly in front of Mr Barnett's property.

**The Convener:** Do members have any questions on this matter? Mr Jackson, do you want to ask about crime?

**Gordon Jackson:** No.

**Margaret Smith:** The promoter's written evidence says:

"Lothian and Borders Police have advised the Promoter that they have no crime reports for vandalism ... between 1 January 2004 and 24 November 2005."

Is that not getting on for close to two years?

**Bruce Rutherford:** That is correct.

**Margaret Smith:** Thank you.

**The Convener:** Mr McKie, I take it that you do not have any follow-up questions on crime for Mr Rutherford.

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

**The Convener:** On loss of privacy, the witness for the promoter is Sam Oxley. Mr McKie, please invite your witness briefly to outline where matters stand on the issue.

**Alastair McKie:** Ms Oxley, could you confirm the position regarding the objectors' concerns, which centre on the impact of road junctions? You might also wish to comment on the fact that Mr Barnett has been given an additional piece of land that will join his two properties.

**Sam Oxley:** The original objection related primarily to the loss of an old hedge, which provides the house with some privacy and a large, overhanging buffer against the wind and weather. I understand that the hedge will remain. In fact, the landowner will be given additional land, which currently comprises the existing road, to allow him

to connect his property to the area of land—his garden—on the far side of the road.

The landowner was also concerned about the potential loss of a grapevine on that land. Again, that feature will be retained.

**Alastair McKie:** Thank you.

**The Convener:** Have you finished, Mr McKie?

**Alastair McKie:** Yes.

**The Convener:** Do committee members have any questions for Ms Oxley?

**Members:** No.

**The Convener:** Mr McKie, I take it that you have no follow-up questions for Ms Oxley.

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

**The Convener:** Mr McKie, you have a maximum of five minutes in which to make a closing statement.

**Alastair McKie:** The promoter rests on its written and oral evidence.

**The Convener:** Thank you. That concludes the oral evidence for group 40 and, indeed, our oral evidence taking for today. I thank all witnesses and participants for helping with the smooth running of the meeting. We really appreciate their assistance. The committee will meet again on Monday 27 February in committee room 1 at Holyrood.

*Meeting closed at 12:44.*



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