

WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE

Monday 27 February 2006

Session 2

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WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE

5th 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:

Graham Allison

Robin Bull

Peter Caunt

Andrew Coates (Environmental Resources Management Ltd)

Ian Forbes (Scottish Borders Council)

John Forshaw (Scott Wilson Railways Ltd)

Helen Foster

Alison Gorlov (John Kennedy and Co)

Melanie Lawrie

Neil MacKay (Scottish Borders Council)

Andrew McCracken (Scott Wilson Railways Ltd)

Steve Mitchell (Environmental Resources Management Ltd)

Scott Murray

Sayrah Ohara

Felix Otton

Sam Oxley (Environmental Resources Management Ltd)

Steve Purnell (Environmental Resources Management Ltd)

Andrew Rosher (AL Rosher Ltd)

Bruce Rutherford (Scottish Borders Council)

Bill Sandland (Scottish Borders Council)

Fiona Stephen (Anderson Strathern)

Darren Watt

CLERK TO THE COMMITTEE

Fergus Cochrane

LOCATION

Committee Room 2

Scottish Parliament

Waverley Railway (Scotland) Bill Committee

Monday 27 February 2006

[THE CONVENER *opened the meeting at 10:31*]

Item in Private

The Convener (Tricia Marwick): Good morning. I welcome witnesses, their representatives and members of the public to the sixth consideration stage meeting of the Waverley Railway (Scotland) Bill Committee. This is our fifth meeting in 2006 and our fourth oral evidence-taking meeting.

On 28 September 2005, the Parliament agreed to the bill's general principles and agreed that it should proceed as a private bill. During the consideration stage, the committee considers the detail of the bill and objections. Our job, which we take very seriously, is to listen carefully to the arguments that are put forward by the promoter of and objectors to the bill and ultimately to decide between any competing claims.

The committee has received all the written evidence that the groups of objectors and the promoter have submitted. I thank all parties and, in particular, the objectors—especially those who have, shall we say, no professional support—for all their assistance in accommodating our evidence timetable and for complying with the deadlines for submitting written evidence. We are aware of the demands that are placed on you in that regard and appreciate your efforts.

Today we will hear oral evidence on seven groups. Broadly, every witness that 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 final step should be restricted to matters that have been covered in cross-examination. The committee can, of course, ask questions whenever and of whomever it wishes—and will probably do so.

Witnesses do not need to state their name, job title or qualifications, because we have that information in the written evidence. Written and oral evidence have the same value.

We have a full agenda today and the committee will greatly appreciate the assistance of all participants in making progress through it. I remind

everyone to restrict themselves to necessary questions on issues that remain in dispute. Witnesses should refrain from repeating points that they have made in their written evidence, which members have before them. Questions and answers should be to the point, and the use of overtechnical language is discouraged.

As the Parliament has agreed in principle that there will be a railway, questions on the merits or otherwise of the railway are inadmissible. We are now concerned about the detail of objections. The committee does not expect—and will, except in exceptional circumstances, not permit—documents to be circulated that it has not previously seen. If objectors or the promoter need to give us an update, they shall be invited to say a few words at the commencement of their oral evidence. Both parties will be offered a maximum five minutes each in which to make any closing comments.

We wish to ensure that fairness is shown to the promoter and the objectors. This is not a court of law and we will conduct our proceedings in a more informal manner with some flexibility to take account of the backgrounds of the witnesses and their representatives. We expect all parties to act respectfully to one another and to the committee.

Members of the public are, of course, welcome to watch our proceedings. Equally 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 we would appreciate everyone's co-operation in ensuring that business is conducted properly.

Should objectors who are following our proceedings reach an agreement with the promoter that leads to the withdrawal of their objection, they must inform the committee. A letter to our clerk stating that they are withdrawing will be sufficient. We will then give no further consideration to that objection.

Again, I urge all parties, particularly the promoter, to maximise their efforts in entering into open and constructive dialogue with a view to reaching agreements and ensuring that objections are withdrawn. Our strong and continuing desire is to ensure that every effort is made to reach agreements. I understand in that respect that agreement has been reached with groups 33 and 35, which were to be considered today.

I inform all witnesses that once they have taken the oath or made an affirmation, the effect will apply throughout the proceedings. Finally, I ask everyone to ensure that all mobile phones and pagers are switched off.

Under agenda item 1, I invite the committee to agree to take in private item 3 to allow us to

consider a private paper on the committee's approach to the further consideration of preliminary stage issues. It is normal practice for matters such as the identification of witnesses and timetabling issues to be discussed in private. However, the committee's decisions will be publicly recorded in our minutes. Are members agreed?

Members *indicated agreement.*

Waverley Railway (Scotland) Bill: Consideration Stage

10:35

The Convener: We move to agenda item 2, which is consideration of oral evidence in respect of objections to the bill. I welcome Alastair McKie, who will ask questions on behalf of the promoter. Before dealing with specific objections, the committee has some general questions for the promoter about the draft code of construction practice and planning. The witnesses for the promoter are Steve Purnell and Sam Oxley.

Alastair McKie (Counsel for the Promoter): Convener, if the questions concern the enforceability of the construction code, it may be useful for Alison Gorlov to join the group, as I understand that there have been recent communications.

The Convener: I would be happy for her to do so.

Alastair McKie: Could Mr Bruce Rutherford, who will be involved in the construction of the project should it proceed, also join the group?

The Convener: Certainly. Do members have any questions for the witnesses?

Christine May (Central Fife) (Lab): Good morning. My question, which is to Mr Purnell, concerns the application of the code of construction practice. Have you given any consideration to the hours of operation? As you are aware, many of those who will be affected are farmers. Farming is one profession that does not stick to office hours. An 8 am project start is of no use to a farmer who may have to get access to a field at 4 or 5 o'clock in the morning. What consideration have you given to that matter?

Steve Purnell (Environmental Resources Management Ltd): That is a very interesting point. We have generally set out in the code of construction practice that we would expect, as you say, the more normal working hours to be adhered to for this type of construction project, except when there are extraordinary activities that cannot be physically undertaken during normal working hours. We have not specified any alteration to those hours because of particular activities that could take place along the route.

However, as I hope the committee will be aware, the code of construction practice is continually in a state of update. You raised a similar point with me several weeks ago about the response time for complaints. That will find its way into the code. If there are specific issues that we can be made more aware of in detail, I expect that the promoter would be happy to incorporate them into the code

of construction practice. I suggest, however, that it is an issue for Mr Rutherford to refer to in detail.

Christine May: I will raise one further point to which the most appropriate person can respond. You said that construction activities would be expected to take place during normal working hours. However, my question was more from the point of view of those who could be affected by the project, particularly farmers. If machinery was left in a location where it might block a gate during, say, the lambing season, harvest or planting time, an 8 am hotline start would be of no use in helping to resolve that. What consideration have you given to a case in which a farmer might need urgent access to, say, animals in distress? How might you arrange matters to ensure emergency access?

Steve Purnell: I appear to have misinterpreted your earlier question.

On that question, the code of construction practice will ensure that there will be no adverse impact on people's everyday activities and that access will be maintained at all times for people who live and work in the area. As a result, the contractors on the project will be required to configure their machinery and working methods in such a way as to ensure that they do not prevent people from accessing particular activities in an emergency. That requirement is set in various places in the code of construction practice, particularly in chapter 2, which refers specifically to access.

If, after the code has been reviewed—and of course the local planning authorities have to examine it in detail—the decision is that it does not contain enough detail on that point, we can set out in part 2 specific local factors that must be taken into account to allow us to identify unique places along the route where people might have specific requirements that can be written into the code. Indeed, a number of such local factors have already been listed.

Christine May: I hate to pursue the matter, but you are talking about normal operating circumstances. I know from experience that, for example, a machine can break down and perforce must be left where it is overnight. That could cause problems for farmers. When you review the code of construction practice, it might be worth thinking about how such individuals might be able to make emergency contact in circumstances that we cannot anticipate at the moment but which I am fairly sure will arise during construction.

Steve Purnell: I understand your point, and I am certain that it would be entirely possible to ensure that people are able to make emergency contact outside normal working hours.

The Convener: Mr Purnell mentioned the

committee meeting of 30 January, at which I asked about response times for people who contacted the hotline to make complaints. What action has been taken to include a target response time in the code of construction practice?

Steve Purnell: We expect to pick up all the points that have been raised at the committee meetings—including the point that Christine May has just made—and to update the entire document to cover them. We will also pick up specific local concerns that we can include in part 2 of the code; indeed, we have already done that in our consultations with some concerned local residents.

The code has not yet been adjusted with regard to the point about response times that was made a couple of weeks ago; however, all the points will be picked up in the completely revised document, which will be subject to further detailed review.

The Convener: So you guarantee that all the points that the committee has raised will be acted on and included in the new code of construction practice.

Steve Purnell: I fully expect that to happen.

The Convener: What remedy will people have if the promoter does not comply with the revised code by, for example, failing to clear mud off the road or barricading an entrance?

Bruce Rutherford (Scottish Borders Council): In that respect, the local authority always has a fallback position in the shape of the Roads (Scotland) Act 1984, which requires mud to be cleaned off any road. We will ensure not only that supervisory staff are engaged in the main contracts for the Waverley corridor, but that we have the back-up and support of local authority staff in Midlothian and Borders. Such a fallback position will ensure that the contractors comply with the current laws of the land, which cover problems such as mud on the road.

Margaret Smith (Edinburgh West) (LD): You have had to deal with the question of how to tell people about the project's progress. What will be the process for raising non-compliance issues and how will it be publicised? How will people know their rights and find out how to raise any such issues?

10:45

Bruce Rutherford: You are moving forward quite a bit in the process and asking us to give a commitment about something even though there is a lot of talking to be done between individuals along the length of the route and in the local authorities. One of the things that we envisage is that, through the forthcoming discussions with objectors and the 400 or so landowners along the

length of the corridor, other issues will be raised with which we would like to comply. If there are any issues that we have an immediate answer to, we will address them in that way. If there is an issue that is difficult to resolve, we will work to the best of our ability to try to resolve it. I cannot think of anything that might be unresolvable. We will work in co-operation with others over the next few months to ensure that the work that will be done along the Waverley corridor has as little impact on those communities as possible.

Margaret Smith: Far be it from me to suggest that anyone should rely on the press for anything, but it might be an idea to raise some of those issues through the local press. Would you do that?

Bruce Rutherford: Throughout the project, we have used all the forms of the media—including television, radio and the newsletters that we produce—to communicate to people how they can best go about their business. We have also tried to take on board the communities' views in relation to how to resolve problems. However, this is a big project and we must consider how best to communicate with people. In the future, we might have to ensure that people are aware not only of the construction sites, but of issues such as traffic management—we will have to give people early warning of where activities are likely to take place. We will communicate with people by television and radio at any particular time.

Margaret Smith: You intimated that the code is an evolving document and that, as you continue to have discussions with people, issues will continue to crop up. The committee is looking for a guarantee that any changes that are made to the code will not lessen or diminish the contractors' responsibilities that are set out in the version that we have seen, but will, if anything, increase them.

Steve Purnell: We take that point entirely. The promoter will submit a set of conditions that will tie down the specific points in the code of construction practice. That would mean that, at the very minimum, all the standards that are set out in the environmental statement and, subsequently, in the code of construction practice will be adhered to and will be included in the contractual terms of the contractor who is contracted to undertake the work. That was an effective means of ensuring that the code was adhered to during the building of the channel tunnel rail link in the south-east of England and is also being applied to the current London crossrail scheme.

Margaret Smith: What would the timetable be for that? You talked about submitting further conditions to allay any fears that the committee might have. Would that be done within the committee process or would it be done after that time, once the bill has passed through Parliament?

Alison Gorlov (John Kennedy and Co): It might be useful if I were to answer that question.

As the committee has heard, the COCP is an evolving document. It is a sort of living instrument that operates throughout the life of the project. The changes that are made to it will be the result of the practical experience of the authorised undertaker and of members of the public. The current draft is the baseline, but it will be changed as part of an evolutionary process. The object of the changes will be to improve the document.

As the committee has just heard, there will be minimum environmental requirements, to adopt the channel tunnel rail link terminology. The baseline will be what is in the environmental statement at the moment, which will be built on as we go forward. Implementation will be subject to the overall supervision of the two local authorities. Our paper on the COCP sets out a framework for delivering what is in it. I am bound to say that some of that framework is not subscribed to by some of the environmental regulators and we are examining alternative ways of how to deal with that.

Mr Ted Brocklebank (Mid Scotland and Fife (Con): I want to move us on to the specific subject of planting along the railway line and screening. At various evidence-taking sessions, Sam Oxley has talked about the requirement to plant using native species. What is the promoter's policy on the planting of native species and who is consulted on it?

Sam Oxley (Environmental Resources Management Ltd): With schemes that are largely in the countryside, such as the Waverley project, we would usually always plant native species. My main experience is on road contracts, in which there is always a contractual requirement to plant native species of local provenance. I expect that the same condition would apply to the Waverley scheme, except perhaps in the more urban areas, where some ornamental species could be planted if landowners felt that they wanted a particular variety in their locality.

We would usually talk to Scottish Natural Heritage about species selection. Such discussions have been a feature of the process so far, but as we would expect SNH to sign off the landscape design and the planting mixes, the dialogue will continue until we reach an agreement.

Mr Brocklebank: Humour me. What kind of species are we talking about?

Sam Oxley: Species such as hawthorn, blackthorn, rowan, birch, ash, oak and—to include an evergreen component—some Scots pine and holly.

Mr Brocklebank: Okay. I understand that Midlothian Council and Scottish Borders Council have local biodiversity action plans. What consideration has the promoter given to ensuring that those plans are taken into account in the planting?

Sam Oxley: We would work with the ecologists for the scheme to ensure that the landscape planting met those local biodiversity objectives. The local biodiversity action plans list the species that are appropriate for the area. Sometimes they identify priority species for particular habitats. We would work closely with Andy Coates, who is the ecological witness.

The Convener: Mr McKie, do you wish to ask your witnesses any questions on the topics that we have just covered?

Alastair McKie: I do not.

The Convener: We start with groups 32 and 63. The committee proposes to deal with both groups at the same time because the issues, which arise from the objections of residents at Falahill Cottages, are largely the same. The objectors in group 32 have chosen to rest on their written evidence, but Helen Foster will ask questions on behalf of group 63. I welcome Ms Foster, whom we met at our recent site visit, to the meeting.

We will deal first with access, impact on services, maintenance of roads, safety and increased traffic. The witnesses for the promoter are Bruce Rutherford, Andrew McCracken, Steve Purnell and John Forshaw.

JOHN FORSHAW *made a solemn affirmation.*

The Convener: Mr McKie, will you invite one of your witnesses to give a brief outline of where matters stand on these issues and then question Mr Purnell, Mr Rutherford, Mr McCracken and Mr Forshaw on the issues?

Alastair McKie: I invite Mr Rutherford to turn to the book of plans that was submitted to the committee. The first plan is described as the group 32 plan bill proposals. Obviously, although the plan refers to the group 32 Falahill residents, we know that group 63 is included, too. Will you explain the consultation and background to the bill proposals that resulted in the railway being realigned and the consequent and necessary realignment of the A7? Why was that introduced?

Bruce Rutherford: Two groups of objectors represent the Falahill residents: group 32 and group 63. For the sake of clarity, perhaps I should say that we refer to group 63 as the frontagers because they access the A7 from the front of their properties—group 32 access it from the rear of their properties. We have held discussions with both groups for a period of several years. Recently, we have had some very positive

meetings with both groups on an individual group basis. We met group 32 on 8 February and group 63 on 22 February. Some of the discussion has led to a resolution of issues, but other issues are still under way. We are in a period of flux.

The main driver in the discussions at the early stages of the consultation was to ensure that we avoided sandwiching the properties of both groups between the road at the front and the railway at the rear. The original alignment of the old railway track was to the rear of the properties. For us, the optimal alignment was to have the road at the front and the railway at the rear. Through consultation, we compromised our position; we wanted to avoid the sandwiching effect. We have realigned both the road and the railway line to the west—to the front of the properties. The realignment can be seen clearly in the plan: it is shown in red in front of the properties. As I said, our original scheme proposal was for a split between the road and railway at that point; it is more expensive for us to shift the railway line to the west.

The compromised alignment satisfied the residents in that it avoided the sandwich effect. As I said, that was the main driver for the change. At the time, we were going through an iterative process with the Falahill residents and we believed that that was what they sought to achieve. At a meeting on 21 August 2002, Councillor John Scott, who was then the council leader, put his personal view of the matter on the record. We have shifted away from the alignment that we thought was the optimal one. We now have a compromise position but, through consultation with the Falahill residents, we are happy to adopt it.

Alastair McKie: I move on to Mr McCracken, who will seek to interpret the plans for us. We have been discussing plan 1. Will you talk us through the plans down to plan 7? We will move on to the road issues, but will you first explain the important engineering elements of the rail line?

11:00

Andrew McCracken (Scott Wilson Railways Ltd): To pick up on Mr Rutherford's point, the feedback that the engineering team had from the consultation team was that we were not to sandwich the Falahill Cottages between road and rail. I ask the committee to look at plan 7, which shows the two options that were on the table. One was to keep the infrastructure to the front of the cottages; the other was to keep it to the rear. The option of having the infrastructure to the rear, which is shown in blue on the plan, is the option to which Councillor Scott referred as the east option. The critical point is that, with the blue option, the A7 realignment would be considerably longer than it would be with the red option. We would have to

realign the A7, pushing it behind the cottages and into the hillside. The road length required would be more than 1km, rather than 500m or 600m with the red option.

We carried out a rough costing exercise. Intuitively, the best option is to keep the railway where it was previously, as Mr Rutherford confirmed. The next best option is the red option, which would keep the works and the cost of infrastructure to acceptable limits. The blue option is the worst in terms of magnitude of works, cost and impact on the properties. For those reasons, and taking the consultation feedback on board, we chose the red option.

The Convener: While the committee is grateful to the witnesses for explaining how we reached the present situation, the fact is that we are where we are. Could we have more feedback on where we stand with the objections? The objectors are obviously concerned. I understand that meetings have taken place recently, so it would be extremely helpful to the committee to find out about the outcome of those negotiations and any matters that are outstanding.

Alastair McKie: That is a matter for Mr Rutherford. I assumed that the committee wished to hear about option B. If group 63 is not—

Helen Foster: The alternative option that group 63 proposed, which was also the one that John Scott proposed, was the alignment to the east. That is still our preferred option. However, as you say, convener, discussions have continued in the past few weeks, particularly on 1 and 22 February, in which new possibilities were raised on access. We would like to discuss those issues today.

Alastair McKie: I was trying to cover all the matters that relate to the objections. Shortly after dealing with the option B issue, I intended to deal with the access arrangements for the individual properties, but I thought that the issue would be useful as background for the committee. In fact, it may still be an issue for the group 63 objectors, which is why I asked Mr McCracken to explain what the difficulties and constraints were with option B and to compare it to the bill alignment.

The Convener: You can continue for a wee while, but I remind you that the committee is anxious to deal with the outstanding objections.

Alastair McKie: Understood. Mr McCracken, while we have plan 7 in front of us, will you say what the cost of option B would be, given that you have told us that it would involve a kilometre of realignment for the A7?

Andrew McCracken: The main chunks of work under the blue option would be earthworks and road construction. As soon as we go offline, the costs ramp up considerably. To give a crude

costing, accommodating the additional length that would be required for the blue option would cost in the order of £1.6 million for additional earthworks and in the order of £350,000 for additional roadworks.

Alastair McKie: Thank you, Mr McCracken. I now direct you to plan 2, which indicates some proposals for landscaping. We will move through the plans very quickly, if we can.

Andrew McCracken: Plan 2 covers two issues. Group 32 objectors have raised concerns about the realignment of the horizontal and vertical position of the A7. The top of the drawing shows a section that confirms that the A7 will be back on its current horizontal and vertical alignments in front of property number 3, which is Mr Rae's property, I believe.

There have been some concerns about the visual impact of trains passing. The plans show that there will be some width between the A7 and the proposed railway to create what we call a false cutting, which will offer some visual protection. There will also be some planting; Sam Oxley could discuss that later. I hope that that will satisfy the objectors.

Group 32 objectors have expressed concerns about construction access along the rear track. We recently discussed that with the group and we can provide for their concerns within the code of construction practice. Plan 3 shows that we can create a physical barrier that will separate the residents from the construction traffic. That barrier is represented by the red line on the plan.

Plan 4 is similar to plan 2. It shows a section in front of the Inglis property—4 Falahill Cottages—and I do not think that anything too different from plan 2 is shown on plan 4. However, we can confirm that the A7 will be back on its line and level by the time it reaches the front of that property. We can also create a false cutting for visual impact.

I think that group 63 objectors were referring to plan 5. In recent discussions with that group, Mr Rutherford tabled a drawing that shows that we are trying to come up with satisfactory vehicular access. The grey part of the drawing shows the existing track that goes to the rear of the properties; we are committed to upgrading that track to an adoptable standard that Scottish Borders Council will accept. We will then create a new access road to join the current A7 alignment. We will provide some parking for the residents and a turning circle for service vehicles. I believe that the drawing was tabled fairly recently and that it received a reasonably warm reception.

Alastair McKie: It might be useful if Mr Rutherford could confirm his understanding of the reception of that plan.

Bruce Rutherford: The two groups with which we have had discussions seem to be quite satisfied with the direction that we are taking. There are one or two issues about the ownership of the property and securing the land so that we can implement the plan. Two different landowners are involved. Mr Kibble owns the field that the new access road will go through. We have discussed the plans with him and we believe that he is heading towards an agreement to sell us that land. The ownership of the lane is in Lord Borthwick's tenure. Early discussions with him lead us to believe that we should get a positive outcome. However, the final agreements have still to be put in place.

Alastair McKie: Mr McCracken, will you move on to plan 6?

Andrew McCracken: Plan 6 demonstrates that before we came up with the option that is shown on plan 5, we tried to come up with alternative access to numbers 1 and 2 Falahill Cottages. It was a basic ramp access. The objectors were concerned about the steepness of the access so that has now been ruled out and superseded by what is shown on plan 5.

Alastair McKie: Thank you.

I have a question for Mr Forshaw. Please look at plan 8, Mr Forshaw. The objectors have some concerns about road safety. Please speak to plan 8 for the committee's benefit and explain in engineering terms how the road will be developed and how safety will be implemented in its design.

John Forshaw (Scott Wilson Railways Ltd): Given that we are putting the railway line to the west of the cottages, it has to cross the A7 at some point. We have managed to realign the section of the A7 that lies to the north of the cottages. There will be an over-bridge railway crossing offline from the existing road, so that will assist construction.

The road has been designed in accordance with the "Design Manual for Roads and Bridges", which is the national standard for trunk road design. That was considered appropriate for the A7, which was previously a trunk road, but which is now detrunked and the responsibility of Scottish Borders Council. In particular, standard TD9/93 on highway link design in the "Design Manual for Roads and Bridges" has been employed. The road has been designed in accordance with the desirable minimum standards. Highway link design operates on the basis of standards, relaxations and departures. I confirm that that part of the road has been designed in accordance with those standards.

There is one point where relaxation is required to aid visibility and that is on the north approach to the over-bridge crossing. However, moving further

south, the approach to the cottages will be fully compliant and desirable visibility will be provided. That is considerably better than the existing situation. The existing road is fairly sinuous and there is quite a dip in the carriageway before the cottages that provides very poor visibility on the approach to the cottages of the order of fewer than 100m—it is about 90m—whereas with the new proposal we will get 215m.

Alastair McKie: Is it your evidence that this new section of road will be compliant with modern standards, albeit that a relaxation will be required, as you said?

John Forshaw: Yes.

Alastair McKie: Is it your evidence that the new road will be safer than the current one?

John Forshaw: I would say so, yes. The principles of design to desirable standards are well established and will produce a safer road than the current one.

Alastair McKie: The objectors appear to have concerns that the straightening of the road might cause vehicles to speed up. Will you confirm what the speed limit is at the location and whether any form of road markings could be put on the road to deter people from going beyond the speed limit?

John Forshaw: The speed limit is 60mph. We have designed the road in accordance with 100kph, which is the metric equivalent. We consider the road to be safer because there will be better visibility. However, to address the concerns of the residents, there is no reason why we could not put a "slow" marking on the road. Other matters can be addressed once the detailed design proposals emerge, such as other road markings and road signs, if considered appropriate.

Alastair McKie: Would the provision of a road safety audit apply to that road section?

John Forshaw: It would.

Alastair McKie: Will you describe how a road safety audit applies to a new road such as this?

John Forshaw: Scottish Borders Council is the roads authority for that road and it would apply the road safety audit procedures. The audit falls into four stages. Stage 1 is carried out at the preliminary design stage and Scottish Borders Council was involved in the development of the designs that are in front of us today. It carried out design and safety reviews.

Stage 2 would be carried out nearing completion of the detailed design and before any works were built on site. It would be carried out by an independent audit team, possibly from Scottish Borders Council.

The stage 3 audit would be carried out nearing completion of construction and before the road opened to traffic. At that stage, the audit team would carry out a site visit together with the roads authority and the police would usually be involved as well. Sometimes that audit also involves a night-time audit, more so where there is lighting or illuminated signs.

Stage 4 in the safety audit procedure is a review that would be carried out well after opening the road. It might look at the accident statistics after three years to ensure that everything is okay.

Alastair McKie: Thank you, Mr Forshaw.

As regards application of the code of construction practice, the promoter will simply rest on the evidence given by Mr Purnell that the code will be enforced and the promoter will ensure that services will be maintained.

The Convener: Ms Foster, do you have any questions for the witnesses on access, impact on services, maintenance of road safety and increased traffic?

11:15

Helen Foster: First, on access, we are indeed now looking at the plan that we sent to the committee a few weeks ago, which came out of a meeting that we had with the promoter on 1 February. We have some questions about that and, as Bruce Rutherford said, there are some negotiations still to be undertaken with the landowners concerned. Has any further progress been made with those negotiations?

The Convener: Will you confirm that you are talking about plan 5 and group 63?

Helen Foster: Yes. That is correct.

Bruce Rutherford: I will confirm for the committee what I told Helen Foster when we met last week. Mr Kibble has agreed in principle to the purchase of the land in his field; all that we need to do is to sort out the terms and conditions. There was to be a meeting with Lord Borthwick at the end of last week. We had a meeting with his agent, who said that he wanted to take the matter forward with his client. We wrote to them and said that we would like to get involved in the purchase of the lane to the rear of the cottages. There will be a question mark over the negotiation until we engage with them directly, sit down and put the agreement in place, but the early indications are more positive than negative.

Helen Foster: We welcome that. Can you tell us the timescale within which the negotiations might be concluded or is that unknown?

Bruce Rutherford: We are trying to get it finished as quickly as we can so that we can reassure you that the agreement will go ahead.

Helen Foster: Will it be a few weeks or a few months?

Bruce Rutherford: A few weeks.

Helen Foster: Okay. If agreement is reached by negotiation with those two landowners, are there any further steps to be taken, given that the land is outwith that which is identified in the bill, or will that be the process completed?

Bruce Rutherford: As you say, the land is outwith that specified in the bill. The situation has changed because we want temporary occupation along the lane, so we propose to purchase the land under a private agreement between the council and the landowners.

Helen Foster: We discussed whether Scottish Borders Council will adopt the track and what is involved in that. Can you confirm whether it will adopt the track? Last Wednesday you said that it was looking good, but that is not a confirmation.

Bruce Rutherford: I would prefer to go public in a month's time, once the final negotiations with the landowners are complete. However, my colleagues at the council have suggested that we will adopt the track if the landowners agree to that.

Helen Foster: Okay. I should confirm that we talked about street lighting, which we do not require and which the residents do not want. Will you confirm exactly what responsibilities the council would fulfil? We assume that the council will maintain the road surface, mend potholes, cut verges and maintain drainage, but is there anything else? Is anything missing from that list that we should be aware of?

Bruce Rutherford: The road will be single track—possibly with passing places, although we need to bottom that out—and it will receive the same treatment that any other road with the same classification receives. You have asked whether winter maintenance will take place. The road would not be snow ploughed but, as we have told the residents already, we will probably put either grit bins or deposits of salt at the end of the lane. I believe that there is a similar arrangement at the moment.

Helen Foster: I confess that we have some reservations about that. The householders who will use the road, but do not use it at the moment, currently use the A7, which is fully gritted and snow ploughed in the winter. There will therefore be a loss of amenity for those householders. We understand that the road will be a low priority because it will be an exceptionally minor road, but we would welcome any possibility that every second or third gritting lorry that will go past

anyway would make a short, two or three-minute detour to grit the track. That would be helpful, particularly for the elderly residents in their 90s who cannot use the grit bins. That is beyond somebody of that age.

Bruce Rutherford: I know from my previous life in winter maintenance that you are asking the impossible. Lorries would end up going up every single track on which a few people lived. I am being frank. A group of residents is doing well to get a salt deposit at the end of the road, and we will certainly ensure that that happens.

Helen Foster: Okay. We appreciate your frankness.

On access during the construction phase, the code of construction practice states that access to properties

“will be maintained for residents at all times”,

but it does not say anything about access to public transport. We would have access to our properties if the road should be closed for any reason during the construction phase, but what about access to public transport for those who depend on it? I raised that matter with you last Wednesday, but I want to raise it again.

Bruce Rutherford: I know that you see a problem with public transport, but I do not. Currently, residents go to the near side or the other side of the road, stick out their hand and the bus will stop. I see no reason why they cannot do so in the future. However, if construction work is being carried out in the near vicinity of the houses, we must ensure that a section is put aside on which buses can stop safely.

We said in earlier evidence that, over the years, we would secure bus services for everyone in the Waverley corridor, not only for the residents of Falahill, and we have recently enhanced the bus service. The X95 service is now half-hourly rather than hourly, and the residents have welcomed the doubling of the service.

Helen Foster: I accept what you say in respect of the A7's new alignment and access to bus services, but I am still concerned and want to press the point. How would residents access the bus service if the A7 should be closed for any reason during the construction phase? There will be major construction at Falahill. I am still not clear about what would happen.

Bruce Rutherford: The A7 is a strategic route in the Borders, and we would insist that a temporary loop was put in place while the bridge was being constructed. Perhaps Andy McCracken can say something about that. I do not envisage the A7 ever being closed for any period. Traffic might be momentarily halted on the road in order to get lifting equipment in or whatever—perhaps

Andy McCracken can foresee other circumstances when that would happen—but I suggest that the A7 will never be closed for any period that denies people access to the public transport service as it stands.

Andrew McCracken: I confirm what Bruce Rutherford says. We envisage the A7 being open at all times.

Helen Foster: That is helpful.

On access, what would the promoter's position be if negotiations with the landowners to acquire the new land failed for any unforeseen reason?

Bruce Rutherford: That is a difficult question. We have tried our best to get ramp access to house numbers 1 and 2—we thought that that was the solution for people to get access to their properties. However, you were not keen on it, so we considered and suggested an alternative.

I would be extremely disappointed if we could not conclude the negotiations and deliver what is sought; indeed, I do not know what I would do if that could not be delivered. I cannot give a quick answer to your question—I would have to go away and think about the matter again. We have tried twice to provide a solution to the problem and I hope that the second solution will be successful.

Helen Foster: We like and support the solution that has been provided, but we are concerned that the promoter cannot confirm that things can go ahead at the moment and we want to ensure that we understand the consequences if, for any reason, the negotiations should fail.

The Convener: Do members of the committee have any questions for the witnesses? I am thinking about safety in particular.

Gordon Jackson (Glasgow Govan) (Lab): I had questions, but they have all been asked.

Margaret Smith: There still seems to be a difference of opinion about safety and visibility, which Mr Forshaw mentioned. Will you give us a little more information about safety and visibility and about any speed reduction measures that you have in mind for the location during and after construction?

John Forshaw: I cannot speak about the case during construction, as those proposals would be developed by the contractor who is appointed to undertake the works. On the permanent works, I said earlier that visibility is currently very poor on the southbound approach to the cottages—it is at 90m—and the road geometry is also poor on the approach. The new alignment brings vastly improved geometry with better visibility, so I would say that it will be safer than at the moment.

Margaret Smith: The objectors seem to be concerned that the raising of the road to form a

bridge would mean that the current bend in the road would be replaced with a summit, which they think would restrict visibility. Is that not the case?

John Forshaw: I touched on that earlier. On the approach to the bridge, travelling south, the parapet will restrict visibility but, up at the top of the crest, there would be full visibility on the approach to the cottages. That complies with the standards that we are trying to achieve.

Margaret Smith: Am I right in thinking that you did not mention any involvement of the police in your road safety audit until about stage 3 or 4 of the audit?

John Forshaw: It was stage 3.

Margaret Smith: What involvement have the police had so far in any discussions about the different routes and what part do they still have to play in the audit?

John Forshaw: I have not been involved in any consultations with the police. I do not know whether anybody else can inform you on that.

Bruce Rutherford: I certainly met the police during one of our consultations. A request was made for a "slow" sign, which has now been put in place on the back of those consultations. The road management group meeting between the police and Scottish Borders Council includes a standing item on Falahill. The police know about the scheme and I have spoken to them about it in detail, so they are aware of the problems, the issues and the residents' feelings on safety. They also have an historical interest not only in the area outside Falahill, but in the A7 over its length, so they know all the individual issues. We have a continuing discussion with the police in the development of not only the solutions for Falahill but any other interface where the road is changed along the Waverley corridor.

Margaret Smith: Do you have an indication whether the police have any difficulty with your solution that we have seen in plan 5?

Bruce Rutherford: They have never expressed a strong view on whether it is good, bad or indifferent. We would normally bring them in at a later stage, as Mr Forshaw said.

Christine May: Mr Forshaw, I will pick up on one point that you made. You said that road safety and speed limits during construction would be a matter for the contractor. Will you confirm that, in letting such a contract, the promoter would expect those matters to be dealt with in any contractual proposal?

John Forshaw: Yes. There are established standards and guidelines for that. The traffic signs manual is the document that is usually referred to, and the contractor would be required to comply

with that fully. Any plans would need to be passed to the promoter, who is supervising the works, for reviewing before works start.

Christine May: Would that include temporary speed reductions and the promotion of the necessary orders?

John Forshaw: Yes.

Steve Purnell: There is a specific clause in the code of construction practice that says that no works can be carried out unless the appropriate safety measures have been put in place in advance.

Christine May: Would there be sufficient time to promote the traffic order to reduce temporarily the speed limit? I understand that such orders take six months.

Bruce Rutherford: I am not aware of that.

The Convener: Ms Foster, do you have any other questions?

Helen Foster: I have some further questions about safety, specifically about visibility. At the meeting that we had with the promoter on 1 February, all members of group 63 came away with a strong impression that visibility would be improved for drivers already on the A7, but would be decreased for those of us exiting on to the A7 from our driveways. That would be caused largely by the parapet on the new road bridge over the railway. There was considerable confusion over the safe distance from that parapet for an exit, and how high the parapet would be. Our concern is that although a driver may see us, if we do not see them and pull out, they still have nowhere to go. Therefore, we will be in a dangerous situation. Can you comment on that?

11:30

John Forshaw: Under the new proposals, two accesses will be retained from Falahill Cottages on to the A7—at the middle and at the south end of the cottages.

In line with the proposals, we will provide a footpath in front of the cottages to allow access between the cottages and to where there might be a stopping place for a bus. To provide that footpath, we will have to move the road out from the cottages slightly, by 3m. That will improve the visibility space for traffic emerging from the existing driveways.

Helen Foster: Yes, we understand that the pathway—which we welcome as a positive addition—will be between 1.2m and 2m in width. We understand that those are the limitations.

However, we are still concerned about the parapet on the road bridge. We understand that it

was not possible, for example, to provide a parking bay for cottages 1 and 2 because it would be too close to the parapet. We are not sure what the minimum safe distance from the parapet is in law for somebody exiting directly on to the road. Our concern is that those two driveways, as you mention, are within that safe distance and, therefore, too close.

John Forshaw: They are outwith that distance. As you can see from the plans, the road is straight when approached from those accesses and visibility standards are conformed to on the approach to them.

Helen Foster: Can you tell us what the safe distance is, as there was some confusion about that?

John Forshaw: The required standard is 215m.

Helen Foster: We understand that there will be a safety audit, but our concern is that it will happen after the bill is passed and the consideration of objections is over. We are concerned about our ability to input into the need for safety features such as different road signage, speed cameras and other mechanisms for slowing down traffic. We believe traffic will increase on the road. We are also concerned about the increased danger of overtaking on a straighter road and, therefore, cars having to pull out into a faster stream of traffic with other traffic overtaking.

John Forshaw: There is no formal means for you to input into the stage 2 road safety audit, although any comments that come forward will be considered by the promoter and will be passed on to the design team and the road safety auditor. I am not convinced that there is a need for measures to slow up traffic. It is a trunk road. It is better to inform drivers, give them good visibility and, by all means, put in a sign to warn of the junction. We have agreed to the proposal to put a "slow" sign on the road. That, together with appropriate road markings, would deter against inappropriate overtaking.

Helen Foster: Our position differs from yours. We also wish that the seasonal variations in traffic speed, largely resulting from the use of the A7 by motorbikes in the summer, would be taken into account. It is an advertised biking route and many motorbikes often travel in excess of the speed limit.

John Forshaw: If they are travelling in excess of the speed limit, then that is an enforcement matter for the police.

The Convener: As a committee we would expect the promoter to give an undertaking—at least on the record—that in future considerations the residents will be consulted. I do not think that

that would be a difficult undertaking to give at this time.

Bruce Rutherford: I am happy to give that undertaking.

The Convener: Have you finished your questions, Ms Foster?

Helen Foster: I have finished our questions about road safety and access, yes.

The Convener: And maintenance of the road?

Helen Foster: Our questions on road maintenance have been covered, now that the council has agreed to adopt the track behind the cottages.

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

Alastair McKie: I have none.

The Convener: Thank you.

On loss of amenity, the promoter's witnesses are Sam Oxley and Andrew McCracken. Mr McKie, I ask you to invite your witnesses to give a brief outline of where matters stand on loss of amenity, and then to question Ms Oxley and Mr McCracken.

Alastair McKie: I ask Ms Oxley to speak to plan 2 and plan 4, which seem to involve some form of landscaping mitigation measures in the space between the road and the rail line.

Sam Oxley: Andy McCracken touched on that earlier. Discussions have been undertaken with the residents and Bruce Rutherford about the possibility of putting some form of false cutting in the land between the railway and the road. There is adequate land available in which to do that. The intention would be to build a mound that would in effect raise the level of the ground by maybe 1m or 1.5m, which is not a great deal. We could do some planting on top of that, which would probably be quite low planting so that the residents did not lose their views of the wide countryside. Such measures would raise the sightline from the houses through to the railway. They would not mean that a view of the trains was not available, because a train is quite a big thing, but they would take out most of the view of the trains. I understand that the residents have welcomed discussions about there being a false cutting in front of their properties.

Alastair McKie: Thank you. On the impact on property values, the promoter seeks simply to rest on its existing compulsory purchase and compensation paper.

I am trying to deal with groups 32 and 63. Turning to the issues of noise and vibration, if Mr Mitchell could advise the committee—

The Convener: Mr McKie, we need to deal first with loss of amenity. If Ms Foster has any questions on that, I ask her to question witnesses now.

Helen Foster: We have welcomed the proposals by the promoter, although Ms Oxley's description was not quite my understanding of the proposals. The way in which the false cutting was explained to group 63 was, to use the promoter's words, that it would be like a ha-ha at a country house. In other words, rather than a mound in the middle, we would expect to see a gradual rise in the slope with the drop right by the railway.

We have had discussions with the promoter about the possibility of dropping the level of the railway track in the field opposite the houses at Falahill. We are particularly keen that that should happen as far as is possible, and we have been told that it will. We are still confused about the level of the proposed railway compared to the old railway track at the same north-south point. Our judgment is that what is proposed according to the plans will be a good 10ft higher than the old railway track at the same north-south point. Therefore, we cannot understand why the railway cannot be dropped further into the field. Are there any comments on that issue?

Alastair McKie: I ask Mr McCracken to deal with the engineering detail of lowering the track bed, which is what Ms Foster is talking about.

Andrew McCracken: I believe that the level of the track in the former corridor is lower than that in the current proposals, but I do not have the exact dimensions.

On what will dictate the railway's vertical position, we have to create a new crossing of the A7 to the north of the cottages. We have tried to minimise the amount of digging or road-elevation works that we will have to do to create the new grade-separated crossing point. Mr Rutherford has given a commitment that we will review the vertical alignment at the detailed design stage.

I refer to plan 1 in the booklet. Helen Foster wants the track to be lowered in front of the cottages. If we are to do that, we must consider the limits of deviation that currently bound the scheme. The green line on either side of the red alignment on the plan dictates the limits of the permanent deviation of the works. We have committed to consideration of trying to lower the track at the detailed design stage, but there is a limit to what we can do because we are fixed within the defined limits of deviation.

Helen Foster: So the defined limits of deviation apply to the amount of land that is acquired not only horizontally but vertically. We are confused, more than anything else.

Andrew McCracken: If we were to lower the railway horizontally, the footprint would, in effect, get wider, and if we were to drop the railway and retain a similar slope, the footprint would be wider. That is why the limits of deviation horizontally come into effect.

Helen Foster: We had not understood that. There is an undertaking in place to drop the railway as far as you can. Obviously, from our point of view the more earth that is put between us and the railway through the combination of the false cutting—the ha-ha or whatever it is called—and a drop in vertical alignment, the better.

Andrew McCracken: The feedback from Mr Rutherford to the engineering team is that at the detailed design stage we must consider lowering the railway as much as possible.

Helen Foster: The position with regard to visual impact for group 63 is that we would, on the basis of those assurances, be able to withdraw our objection on the ground of visual impact.

Sam Oxley: To firm up on the shape of the line, the plan has been drawn up by Andy McCracken's capable team, but it is obviously indicative in that there must be an examination of what sort of height can be achieved. My feeling is that there will be a gentle slope leading up and that the dip will be taken out in the section from the road edge. The land is all being ironed out to make it blend back into the countryside as a natural slope would. The slope will be steepened more on the railway side. That is no problem.

Helen Foster: We are as happy with that as we could be with any solution.

The Convener: Do members have any questions?

Christine May: I have a question for Ms Oxley. Can you confirm what consultation and involvement there will be with the residents on the landscape design in respect of issues such as the type, the amount and the location of planting and so forth? I am very glad that you explained what a false cutting was, because I was feeling very ignorant.

Sam Oxley: We—or Bruce Rutherford—will continue with the negotiation until the residents are happy with the shape of the cutting, as long as what they want is possible within the engineering constraints and other constraints that we must take into account. The landscape design will be drawn up in more detail, passed to the residents for approval and incorporated into the detailed landscape design drawings when they are prepared as part of the later processes for the project. We will continue to talk to the residents.

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

Alastair McKie: I would like Mr Mitchell to confirm his evidence regarding noise and vibration at the locus. Mr Mitchell, I think that we need to deal with groups 32 and 63 together.

The Convener: Before we move on to noise and vibration, we could perhaps deal with the impact on the value of properties, and compensation.

Alastair McKie: I think that I said earlier that the promoter will simply rest on the written evidence.

The Convener: In that case, does Ms Foster have any questions on property values and compensation?

11:45

Helen Foster: We do. We want clarification because there are many areas that we do not understand.

We understand that none of the cottages at Falahill will be subject to compulsory purchase. However, we are quite confused about how depreciation in our properties' prices will be measured after the railway becomes operational. For example if, after reinstatement, I found a property that had been worth the same as mine prior to reinstatement but was now worth more, would that be evidence of depreciation? How will the process work if there is to be no compulsory purchase?

Alison Gorlov: The rule is that compensation is payable if the value of the property has depreciated because of physical factors such as noise, vibration and dust. Whether that is the case is a matter of proof. If one had examples to demonstrate that there had been depreciation in value, a compensation claim could be made. As to what might amount to evidence, I cannot say. I do not mean to be at all unhelpful; I am sure that you understand that the evidence would have to be considered at the time. However, to speculate, if you had a value for your property before the work started or a valuer gave a valuation of what the value had been before the scheme and you then found that any number of similar properties were selling for significantly more than that valuation and there was nothing else to explain it, common sense would dictate that such evidence would appear to prove your case.

Helen Foster: As I said, my question was for clarification.

You mentioned the seven physical factors. We are confused about how the physical factors relate to the valuation of the property specifically. Would a particular level of additional noise trigger a devaluation of £X? We are not sure of the relationship between the physical factors and the value of the property.

Alison Gorlov: That will depend entirely on the market. One has to consider whether, factually, the physical factors have had any effect on market value. You cannot say "XdB does it" because the issue is how the market reacts to XdB.

Helen Foster: So we would have to say that because there had been a measurable change of XdB, there was evidence that a house was worth less than a comparable property.

Alison Gorlov: Yes. It would also have to be clear that the difference in price was not because something else had happened that had nothing to do with the railway.

Helen Foster: Would I be correct in thinking that the burden of proof would lie with the householder?

Alison Gorlov: Yes.

Helen Foster: We have had an undertaking from the promoter that it will cover the cost of professional fees that we incur in submitting compensation claims, despite the fact that there would be no compulsory purchase. Would that cover the cost of professional valuations?

Alison Gorlov: I cannot say with certainty whether it would, although I imagine that it would. However, that is governed by rules on which those who are concerned would, I hope, get their own legal advice. I do not want to be unhelpful, but this is an issue for the future and the relevant rules are in place. I am here to give all the assistance that I can give, but I cannot act as a legal adviser for the objectors or, indeed, for anyone other than my clients.

Helen Foster: I am sorry—perhaps I did not phrase my question clearly. We would not dream of asking you to do that. We are concerned about our lack of clarity about our right to claim for payment for the legal counsel that you are describing. It is difficult for us to consider hiring legal advisors when we do not know whether we would be able to claim for their professional fees.

Alison Gorlov: In principle, they appear to be fees for which you could claim.

Helen Foster: Thank you.

We have questions about how devaluation and depreciation are measured during the construction phase, which is of great concern to us for many reasons. We have been given to understand that, during the construction phase, which we believe will last between a year and 18 months at Falahill, we will in effect be living in the middle of a building site. Obviously, any potential purchaser would be seriously deterred by movement of heavy equipment, noise from pile-drivers and earthworks. How is depreciation measured in those

circumstances? Does it merely involve the seven physical factors again?

Alison Gorlov: The measurement would be purely on the basis of fact.

Helen Foster: The seven physical factors.

Alison Gorlov: Yes.

Helen Foster: In those circumstances during the construction phase, could a house that is not under a compulsory purchase order be considered to be blighted? We see clearly the possibility that somebody could be unable to sell their house because the disturbance would put off any potential purchaser.

Alison Gorlov: In lay terms, I can see that that is a possibility, but in legal terms, the answer is that it could not. The law on blight is restrictive and the rules that enable a landowner to require land to be purchased if it is blighted are limited to property that is subject to compulsory purchase.

Helen Foster: In our situation at Falahill, if somebody needed to move for professional reasons or whatever in the construction phase, would the promoter make provision for them?

Alison Gorlov: The circumstances that you describe are exactly those for which, in some broadly comparable infrastructure schemes, promoters have produced voluntary purchase schemes for the voluntary purchase of property that is not proposed for compulsory purchase but which would be very badly affected. Unfortunately, as you might have heard when we discussed the matter some time ago, it is not in the gift of Scottish Borders Council to decide whether such a scheme should operate. Details have been proposed to the Scottish Executive, which is considering them. Unfortunately, no commitment can be given unless the Executive approves the scheme and provides funding for it.

Helen Foster: Do we have any indication of when a decision might be forthcoming?

The Convener: The matter has been raised before and is of great concern to the committee. We have written to the Scottish Executive and we hope that when the minister appears before us, he will answer the questions.

Helen Foster: That will be extremely helpful. Thank you.

More than a year ago, we were provided with guidance that was produced by the ODPM in England. I am not quite sure what the ODPM is.

Alison Gorlov: It is the Office of the Deputy Prime Minister.

Helen Foster: Thank you. One of the guidance booklets says that if disruption and discomfort that

result from construction activities become intolerable for residents, the responsible authority may pay for reasonable temporary accommodation. Would we have recourse to that?

Alison Gorlov: Yes. The rules are exactly the same on both sides of the border and they apply to this scheme.

Helen Foster: That is extremely helpful. In such circumstances, who determines when disruption and discomfort have become intolerable? On what criteria would that be determined?

Alison Gorlov: That probably bears on the question in your response to the promoter about to whom you should make a claim. Initially, one would make a claim to the authorised undertaker, which is likely to be Scottish Borders Council, although in theory it could be another authorised undertaker. If a position on the claim is not agreed, the ultimate recourse is to the Lands Tribunal for Scotland.

Helen Foster: That is helpful. Those are all our questions on compensation.

The Convener: Thank you. Mr McKie, do you have further questions on compensation for your witness?

Alastair McKie: I do not.

The Convener: On noise and vibration, the promoter's witness is Mr Mitchell. Mr McKie, will you invite your witness to outline where matters stand on noise and vibration and then question him?

Alastair McKie: Yes. I will simply put the point that I put previously. Mr Mitchell, we are dealing with groups 32 and 63 and it would be useful if you could describe what, in your opinion, the noise and vibration effects will be for the properties in Falahill—perhaps you can also give their distances from the rail line and say whether mitigation will be required to meet the policy targets.

Steve Mitchell (Environmental Resources Management Ltd): The situation is a bit complicated in that nine properties are involved and they are near a very noisy road. The railway will be introduced on the far side of that road. I do not want to go into too much detail, unless that is asked for later on.

We measured noise levels from the road in July 2004. The closest property to the road is about 5m from the kerb and that furthest away is about 25m from the kerb. The railway will follow a similar slewing adjacent to the road, ranging from about 30m to 50m away, so clearly the railway will be much further from the properties than the road is.

We measured the ambient noise levels; perhaps I should give the committee a flavour of those.

During the day, the equivalent noise level is about 70dB and during the night it is about 60dB around midnight. We predicted the levels of train noise—the committee has heard previously about the methodology—and compared those with the noise levels from the road to ascertain whether there would be a significant difference. We found that the passage of a train past the properties every 15 minutes will not significantly elevate the current levels of noise. In terms of the numbers, the daytime noise level for the train will be about 53dB, compared with about 70dB from the road traffic. The difference is similar in the night-time. The ambient noise level from the train will be 48dB, compared with an ambient level around midnight of about 60dB from the road.

We also considered peak noise levels, which is another way of considering noise. Peak noise levels from the road traffic are between 83dB and 88dB. The predicted level from the train is between 75dB and 80dB for the range of properties. The extra distance to the railway just means that the peak level from the train will be lower than that from the noisiest of the traffic vehicles that go by over a period.

I accept that this may sound counter-intuitive, but for all the properties the railway will be significantly less noisy than the road. The additional noise will be very small. We describe it as “slight” in the environmental statement. There is no need therefore for noise mitigation under our noise and vibration policy. As it happens, the landscape band—or however we describe it—will provide a benefit in terms of noise. I am afraid that I have not quantified that because we do not rely on that as a form of mitigation for noise in this particular case.

I could touch on vibration, but I do not think that it is part of the objection and I do not think that there will be a vibration issue to concern anybody in this case.

The Convener: Do you have any questions, Mr McKie?

Alastair McKie: I do not.

The Convener: Ms Foster, do you have any questions for Mr Mitchell on noise and vibration?

Helen Foster: Yes. We want to separate the questions into two sections. The first is about noise and vibration consequent on the operation of the railway, which is what I think Mr Mitchell described. We have to say that our experience in Falahill seems to differ greatly from Mr Mitchell's test findings. We want to state our concern and our surprise that data from a single test that was taken in the summer, when the A7 is at its busiest and noisiest, appear to be being used as the sole benchmark against which to measure background noise. We note that although the further

environmental information does indeed refer to high levels of noise averaged over the measurement period, it also says that background noise levels in the absence of traffic are low. In fact, they are extremely low and that is our experience in the evening periods.

We should also state that the noise levels from traffic are seasonal. We were discussing motorbike traffic earlier.

12:00

The Convener: Do you have a question?

Helen Foster: We have some questions that relate mainly to the construction period and the points that are listed in the draft code of construction practice which states—as we have heard already today—that the normal hours of work will be between 8 o'clock in the morning and 7 o'clock in the evening, but it goes on to say that those hours of work will not apply to equipment that is required to operate continuously. Do you know whether any such equipment is likely to be used at Falahill?

Steve Mitchell: Let me tell you what I think that refers to. It refers to such things as temporary lighting, water pumps and equipment that must continue to operate to avoid things filling with water or becoming unsafe. We would have to check with Mr McCracken, but I imagine that some items would need to run over the weekends or overnight in order to keep the site safe. However, I should also say that such things are not major noise sources; they are, by their nature, things that are fixed and can be silenced. Under one of the mitigation measures that are listed in the code, they are required to be silenced.

Helen Foster: At one point, it was mentioned to us that there could be a need to use pile-drivers. Again, is there a possibility that such equipment will be required to run continuously at any point?

Steve Mitchell: I shall answer—Mr McCracken can correct me if I am wrong or can add to my answer. We have discussed the matter and I appreciate your concern. There is a need for piling around the bridge structure, and that is one of the noisiest activities that will happen, but I understand that that will be a daytime, normal-working-hours activity. Nothing will require that activity to be continued at night. Tunnelling activity might, as you can imagine, have to continue because of the concrete setting, but I understand that that is not the case with piling, which can be done during the day. Mr McCracken may want to say more about that.

Helen Foster: That was helpful. Thank you.

Steve Mitchell: I shall also respond to your comment—which almost led to a question—on the

seasonal variation in baseline noise. There may well be some seasonal variation in the traffic; I will take your word for that. It is, however, less likely that there would be variation around midnight, although you may correct me on that. During the operational phase, the road traffic, even at midnight, will be something like 7dB or 8dB noisier than we predict the train will be. It is not marginal or close. If the difference were 1dB or 2dB, I would be quite concerned about the sensitivity of the measurements, because there may be a little variation from season to season, but I do not think that it would vary by that amount. Regardless of the season, I am sure that it will remain the case that the train will not add more than about 3dB to the noise environment that you experience.

Helen Foster: It is obviously a question of perception. Our experience is that we tend not to be aware of noise from the road during the evening, although we are aware of noise during the day. Nevertheless, we recognise that the measures that we were talking about with regard to visual impact, such as the false cutting and putting the railway as deep into the field as possible, will help with noise absorption, so we are able to withdraw our objection with regard to noise and vibration in respect of the operation of the railway.

That is not the case with regard to noise and vibration that may be experienced in the construction phase. We continue to have concerns about the code of practice's statement that, in exceptional circumstances, additional or alternative working hours would be agreed in advance by the contractor and the local authority. We understand that, but we are concerned about the definition of exceptional circumstances. For example, if we were to experience a bad winter in Falahill, so that work had to stop for long periods, would that require long evening hours in the summer?

Steve Mitchell: From my experience of how such things play out during construction, I do not think that that would qualify as an exceptional circumstance. There was quite a good test case involving Euston station, where the contractor fell way behind schedule on the channel-tunnel rail link works and applied to work for 24 hours a day for six months to catch up. I am putting the matter quite simply—it was a little more complicated than that. The inspector ruled that catching up was not a justification for causing such disturbance. There are many other examples that have tested the matter. I appreciate that the wording of the code is not categorical, but you will also appreciate that there would be a need to make an exception in an emergency. We are not expecting or predicting such exceptions at this point.

Helen Foster: That was precisely the kind of clarification for which we were looking. We have various other questions. The draft code of construction practice states that, if noise levels were to exceed the limits that are identified in the code for more than 10 out of 15 consecutive working days, mitigation measures would be installed. What kind of mitigation measures would those be?

Steve Mitchell: That is for quite extreme cases, which I do not think will happen at Falahill. You will appreciate that the code will apply to all sorts of people along the route and you can imagine projects in which people are extremely close to work that generates a huge amount of noise. I do not think that that is the case here, so I do not think that that clause would kick in.

The kind of measures to which the clause refers are noise insulation measures. In this case, I do not consider that they will be necessary. There is a raft of other measures to be used before that; insulating a property against noise is a last resort. Below and over the page from the clause, a series of bullet points describe the standard requirements that must be met anyway. The further measure would be triggered only if those were to fail. I do not think that that will be the case for Falahill.

Helen Foster: We note that the draft code mentions monitoring for dust levels that would be enforced on the contractor, but we could see no mention in the draft code about the monitoring of noise and vibration levels during the construction phase. What monitoring of noise and vibration levels would be required of the contractor during that phase?

Steve Mitchell: Again, you are asking about something that will come out in the future, but the contractor is required to achieve the noise limitations in the code. In fact, if you look at the beginning of the code's provisions on noise, you will see that it does not permit much noise; it says that the contractor must do the best that it can on noise, and it gives a noise level as an absolute fallback. We do not have the methodology in front of us for how the contractor will demonstrate compliance, but the contractor will need to show that it is meeting those limits, and so will need to do some kind of monitoring to satisfy the client that that is being achieved.

Helen Foster: The only other question that we have concerns vibration. We have heard mention of pile-drivers, so we are somewhat concerned about how any possible damage to buildings would be measured and whether there would be before-and-after surveys. How would one know whether buildings had been damaged as a result of vibration?

Steve Mitchell: There is a section in the bill that talks about before-and-after surveys for exactly that purpose. It requires the owner of a property to allow access so that the undertaker can conduct such surveys, otherwise we would be in an information void. If it is perceived—once the method of working is derived and established—that there is a risk, there would need to be a survey by an independent surveyor before and after the works. There is a section in the code—I think that it is section 13—that touches on that. The independent surveyor would be able to judge whether any damage was caused by the works or something else, so the information will be available.

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

Alastair McKie: I do not, convener. However, it occurs to me that, for group 63, there is also the issue of dust pollution, on which Mr Purnell was a witness. He is not on the panel at the moment, but if the objector group wishes me to lead him, I will do so with your permission.

Helen Foster: We have only one brief query about dust pollution. We are relatively happy with what the draft code of construction practice says on that.

The Convener: Perhaps we could invite Mr Purnell up to answer that question.

Alastair McKie: Yes. I ask Mr Purnell to come forward to the panel of witnesses.

Helen Foster: I expect the answer to be no, but is it likely that any asbestos would be used or disturbed during the construction phase? Asbestos is mentioned in the draft code, and we are concerned to be absolutely sure that it is not an issue.

Steve Purnell: We cannot see any reason why asbestos should be present or used.

Helen Foster: That is fine.

The Convener: I thank all the witnesses. We will now change witnesses and ask Darren Watt and Helen Foster to give us evidence and subject themselves to questions. In the meantime, I call a short comfort break.

12:10

Meeting suspended.

12:18

On resuming—

The Convener: We shall now hear oral evidence from group 63. Group 32 has chosen to rest on its written evidence. Ms Foster has a few

questions to ask of Darren Watt, who will be the witness for group 63 on access, after which she will become a witness for the group on the remaining topics.

DARREN WATT *made a solemn affirmation.*

The Convener: I ask Ms Foster to invite the witness to give a brief outline of where matters stand on access, after which she may question him.

Helen Foster: Mr Watt, will you give a brief outline of where matters stand on access, particularly with regard to 1 and 2 Falahill Cottages, which is where there is a problem?

Darren Watt: The option of a cutting up the side of the cottages is definitely preferred, because the option of having a ramp at the back is seen as unworkable, as far as we can interpret it. The promoter's plan to provide a turning circle and parking bays at the side is extremely welcome.

Helen Foster: Several of the questions that I would have asked have been answered, one way or another, so I have only one further question for Mr Watt. If for any reason the proposed access plan cannot proceed, for instance because negotiations fail, has the promoter proposed any other access scenario, or have you thought of one, that would be acceptable to Mr Wood, who is the objector at 2 Falahill Cottages?

Darren Watt: Bruce Rutherford answered that question earlier when he said that he is unaware of any other option that could be taken if the land issue is not resolved. I guess that I am not in an excellent position to answer the question.

Helen Foster: Should the issue not be resolved, group 63 intends to go back to asking for option B, which involves routing the road and the railway to the east of the cottages, to be the preferred option. I have no more questions for Mr Watt at this point.

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

Alastair McKie: I have none.

The Convener: As committee members have no questions on access, I ask whether Ms Foster has any further questions for the witness.

Helen Foster: I do not.

The Convener: In that case, Ms Foster will become the witness for group 63 on impact on services, road maintenance and safety and increase in traffic.

HELEN FOSTER *made a solemn affirmation.*

The Convener: As Ms Foster does not have a questioner, I invite her to say whether she accepts the promoter's evidence on where matters stand.

Helen Foster: We accept the promoter's description of where matters stand on access. The proposed new access at the north end of the cottages, which would meet the A7 at the front, would work as the access provision for 1 and 2 Falahill Cottages. As we have said, there is an outstanding issue about whether the land acquisition for that option will be successful—we hope that it will be.

Most of the road safety issues have been discussed already, but we continue to have concerns about further plans that are to be made at the detailed design stage. At this stage, we are alarmed at the prospects for exiting on to the A7 elsewhere.

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

Alastair McKie: I have none.

The Convener: On loss of amenity, the witness for group 63 is Helen Foster. As Ms Foster does not have a questioner, I ask her to say whether she accepts the promoter's evidence on where matters stand.

Helen Foster: We do. As I said with regard to visual impact, if the promoter follows through on the assurances that it has given, we are happy to withdraw our objection on that point.

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

Alastair McKie: I have none.

The Convener: On the impact of the railway on the value of the objectors' properties and compensation, Ms Foster is again the witness. As Ms Foster does not have a questioner, I invite her to say whether she accepts the promoter's evidence on the matter.

Helen Foster: Again, we accept the promoter's evidence on where the issues stand. Our remaining concern is that some of those issues are still not clear and will not be resolved until a later date, which leaves us unsure of where we are.

The Convener: Mr McKie, do you have any questions for the witness on those issues?

Alastair McKie: I have none.

The Convener: On noise and vibration, the witness for group 63 is Helen Foster. As Ms Foster does not have a questioner, I invite her to say whether she accepts the promoter's evidence on the matter.

Helen Foster: We do. This morning's evidence has been extremely useful in clarifying a number of points.

The Convener: Mr McKie, do you have any questions for the witness on noise and vibration?

Alastair McKie: I do not.

The Convener: We move to dust and pollution. As Helen Foster does not have a questioner, I invite her to say whether she accepts the promoter's evidence on the matter.

Helen Foster: We do.

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

Alastair McKie: I do not.

The Convener: Ms Foster and Mr Watt, in the light of the questions that you have been asked on various topics, do you wish to make any further comments?

Helen Foster: We are happy to rest on the evidence that the committee has heard so far today.

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

Alastair McKie: My closing statement relates to groups 32 and 63. Following consultation with the people who would have been affected by the alignment that was proposed originally, the promoter decided to realign the railway to the west at the location in question. The objective was to prevent Falahill residents from being sandwiched between the alignment of the former railway and the A7. To accommodate the realignment, the A7 will have to be altered and a bridge will need to be constructed.

I will deal first with the potential for realigning the railway to the east, which is option B on plan 7. According to Mr McCracken, more than 1km of road would be required to accommodate option B and there would be a huge increase in the volume of cutting that was required. Mr McCracken estimated that the cost of that would be about £1.6 million, with £350,000 of additional work.

On road safety issues, in my submission, the evidence of Mr Forshaw is that the new road will be designed to modern highway standards. The detail is set out on plan 8. To enable the road to be brought into use, there will have to be a road safety audit, which will involve engagement with the police. Mr Rutherford has given an undertaking that there will be consultation with the Falahill group to ensure that its views are taken on board. The proposed road will achieve better visibility, as it will meet modern design standards. To satisfy the objectors further, slow markings could be put on the road.

In relation to group 63, the promoter's intentions on access to individual properties are shown on

plan 5. The promoter is pleased that the proposed access arrangements find favour with group 63 and has confirmed that the existing track will be brought up to adoptable standard, which means that it will be maintained by Scottish Borders Council once it has been constructed. Unfortunately, the promoter does not control the land that the existing track crosses, but it is entering into dialogue with Mr Kibble, who is one of the landowners—he represents group 33 and has withdrawn his objection this morning—and Lord Borthwick to facilitate matters. My recommendation is that the promoter should report to the committee on the progress of those negotiations.

On noise and vibration, I simply adopt the evidence of Mr Mitchell. On impacts during the construction phase, I adopt the evidence of the promoter. Indeed, there is a policy paper to ensure that those effects will be mitigated satisfactorily. That concludes my summing up.

The Convener: Ms Foster, you have a maximum of five minutes in which to make a closing statement on behalf of group 63.

Helen Foster: We wish to restate our position that although we welcome the new access proposal for 1 and 2 Falahill Cottages, should that not be able to proceed for any reason, we would still wish to pursue option B, which is the alignment of both the road and the railway to the east. We point out that although we accept that implementing the new proposal will be a great additional cost to the promoter, its adoption has released the promoter from having to find access possibilities for the other cottages at Falahill, whose use of the old railway track would have become problematic had the alignment of the old railway track been adopted.

On the road safety issues, our position remains as I have just stated. We are deeply concerned. We continue to be worried that decisions will be taken after the period for consideration of objections ends. Beyond that, the evidence that has been taken this morning covers all the points that we wanted to make.

12:30

The Convener: That concludes the evidence for group 63. I thank Mr Watt and Ms Foster. I hope that, on your visit to the Scottish Parliament, you have been a bit warmer than we were when we visited Falahill in January.

We will press on. I hope to have a lunch break after the next group. Group 34 relates to the objection from Scott Murray and Sayrah Ohara. I welcome them to the committee. They will ask questions based on their objections.

First, we will deal with impact on value of property and loss of amenity. The witnesses for the promoter are Alison Gorlov, Bill Sandland, Steve Purnell and Andrew Rosher. I ask Mr McKie to invite one of his witnesses to give a brief outline of where matters stand with the objection and then to question the witnesses.

Mr McKie: Mr Sandlands, will you update the committee on what you understand to be the issues surrounding the objection?

Bill Sandland (Scottish Borders Council): Certainly. The objectors—Scott Murray and Ms Ohara—live at Old Railway Cottage, the sole access to which is shown on plan 13. It is the former railway track, which runs for about 900m from the A7 to the cottage. Under the original proposal to reopen the railway with the original alignment, the cottage would have been compulsorily purchased because the sole access route to the cottage would have been required for the railway. When the alignment was moved to the west of Falahill Cottages, in consultation with the residents, Old Railway Cottage fell outside the construction limits and was no longer required.

At meetings with the objectors, they confirmed that they want their property to be purchased because they want to get away from proximity to the proposed railway. They advised us on that basis and we have included the property in a list that will be considered if a voluntary purchase scheme is approved and taken forward.

The Convener: Mr Andrew Rosher has not previously taken the oath or made a solemn affirmation, so I invite him to do so now.

MR ANDREW ROSHER *took the oath.*

The Convener: Mr McKie, please continue.

Mr McKie: Mr Rosher, the objectors make the point that they were not consulted on the promoter's decision to realign the railway to the west. They believe that they should have been consulted. Do you know whether they were consulted and, if so, when?

Andrew Rosher (AL Rosher Ltd): I can confirm that the objectors were consulted. Given that we proceeded with the alternative alignment, it is obvious that their concerns did not change things. As we pointed out in our original evidence, a number of public meetings were held in Heriot. I also visited the objectors on a number of occasions. I think that Sayrah Ohara, one of the objectors, was present at a meeting on 5 February 2003 at Falahill at which the alternative alignment was displayed and discussed.

We expressed great sympathy with their situation. Obviously, we agreed that consideration of a voluntary purchase scheme and of a future purchase would be taken forward, as Mr Sandland

pointed out. That is where we are in relation to consultation and taking the impact on the property into consideration. That is how the matter has been progressed to date.

Alastair McKie: That concludes the promoter's evidence on the issue. The promoter rests its evidence on its compensation paper. Ms Gorlov will answer any questions on loss of value.

The Convener: Thank you, Mr McKie.

Mr Murray and Ms Ohara, do you have any questions for the witnesses on the impact on the value on your property and loss of amenity?

Scott Murray: No, but we have a question on the consultation. As Mr Rosher said, he was at the house several times. At the time, we were promised compulsory purchase and then, latterly, voluntary purchase when the line was moved. We were shown the plans of the realignment only at the 11th hour, at the Falahill Cottages meeting and not at a meeting at Old Railway Cottage. That is why we feel that the consultation was not fair and right. It was not done in quite the way that Mr Rosher described it.

Obviously, the value of the property is lower than it was before the realignment. I cannot see that anyone would want to buy a house that has trains passing in front of its front windows; the trains will be a shorter distance away from the house than we are from the end of this room. I have not much more to say on the subject; it is obvious that the property will be worth less.

The Convener: Would you like to comment on the issues that Mr Murray raised, Mr Rosher?

Andrew Rosher: The meeting at Falahill was a fairly open one for residents of Falahill and Old Railway Cottage. It was very clear at the meeting that the proposed realignment was being progressed. I understand that the objectors heard about it at the 11th hour. Unfortunately, the process was such that that was the way in which the consultation at Falahill had to be progressed. We agreed that we would continue to look at Mr Murray's property in terms of a voluntary purchase scheme. That is still the case.

The Convener: Does any committee member have a question for the witnesses?

Mr Brocklebank: I understand that there is tunnelling under the objectors' property. Does the promoter have a witness who can talk about any engineering assessments that may have been made?

Alastair McKie: That will come under the next category of evidence.

Mr Brocklebank: That is fair enough. I will return to the subject then.

Gordon Jackson: Mr Sandland, one of the questions that we are asked all the time is on the voluntary purchase scheme. How near are we to having such a scheme? We will ask the minister that question, but we can also ask you.

Bill Sandland: If I knew what the minister was thinking, I would relay it to the committee. As far as I am aware, the Scottish Executive is still considering the scheme. I am not aware of any progress on the matter. That said, I returned from holiday only yesterday.

Christine May: Mr Rosher, you listened to what Mr Murray said about the consultation, the objectors' original expectation of compulsory purchase and the change that took place. Do you believe that more could have been done to keep the objectors in the loop, given that their circumstances would be materially affected by the realignment?

Andrew Rosher: I believe that we can always do more; that is the case with every project and every consultation. I am not sure how much more we could have done in this case, however. On a number of occasions, the situation was explained and I talked clearly to the objectors about it. They made it clear that they did not want the realignment—that was fine; we took that on board. They also said that they wanted to be bought out, whatever happened; we also took that on board. On a number of occasions, the objectors intimated to me that they did not want to speak about anything else; they just wanted to be bought out. That was said in a telephone conversation and, again, that was fine.

I am not sure how much more information we could have provided. We have had no further information about the voluntary purchase scheme or other purchase schemes and, to date, nothing is guaranteed. However, we gave the objectors a guarantee that we would keep them updated on the matter.

Christine May: Okay. Albeit that that was what the objectors said—I accept that they are entitled to say that and that you are entitled to believe that that is their position—did you nevertheless invite them to comment on the realignment proposals at every stage?

Andrew Rosher: I cannot say that I invited them to comment at every stage. There were two clear stages as far as I was concerned: one was to take on board the concerns of the Falahill residents; the other was to take the decision on the realignment. The objectors were informed about the decision on the realignment and it was explained at that point that it would have less of a physical impact on their property. That was why the concerns grew about the purchase of the property.

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

Alastair McKie: I have a question for Mr Sandland. What would have been the consequences for the remainder of the Falahill residents of maintaining the existing alignment of the railway as shown in group 34's evidence, which appears to show access to the property?

Bill Sandland: It would have left them sandwiched between the railway and the A7.

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

The Convener: On access, including tunnels and troughs, and impact on services, the promoter's witnesses are Bill Sandland and Andrew McCracken. Mr McKie, would you like to invite your witnesses to give a brief outline of where matters stand on those matters and then question them?

Alastair McKie: Mr Sandland, will you comment on access, including tunnels and troughs, and impact on services?

Bill Sandland: Access to Old Station Cottage will be maintained throughout construction of the works. In fact, the method of demarcation between construction traffic and what would be safe access for the residents has already been mentioned.

Perhaps Mr McCracken can give more detail about the engineering works—the tunnels and suchlike—but it is my understanding that they were provided to allow the locomotives that came up Falahill to scoop up water from a trough so that they could continue south. That involved a number of facilities such as holding tanks and overflow facilities that were fed by a burn. I see no reason why such facilities should be required for a modern railway.

Andrew McCracken: I confirm that there is no proposal for modern rolling stock to have those facilities. We do not need them to be part of the scheme.

The Convener: Do Scott Murray and Sayrah Ohara have any questions for Mr Sandland or Mr McCracken on this issue?

Scott Murray: The taking on of the water was not from the tunnels in the garden; they were discovered just before we bought the property, when somebody dug out a large area to put in trout ponds. The water was taken from outside the property. The water tanks are still in the ground, covered by concrete. Mr Sandland did not speak about the same thing.

Bill Sandland: There is no intention to interfere in any way with the tanks that are within your property.

Sayrah Ohara: That is not our concern.

Scott Murray: The concern is the distance of the tunnels from the railway line, which is nigh on the same as the distance from where I am sitting to where Alastair McKie is sitting. You do not know that they are there.

12:45

Bill Sandland: Part of the detailed design is a site investigation and an exploration under the surface of the ground. Engineering works will be put in place to ensure that the stability of the railway line and the adjacent property is maintained. Again, Mr McCracken will be able to give more details.

Andrew McCracken: At the next stage, we will have a full survey and ground investigation. For Network Rail to accept the route, we have to assess the tunnels and ensure that they are capable of taking the railway loadings. That will all be done at the detailed design stage for approval by Network Rail.

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

Alastair McKie: I have none.

Mr Brocklebank: I am still trying to get a handle on the tunnels that go under the property. Is it intended to fill them in, strengthen them or otherwise make them totally safe so that they do not impact on any activity that takes place above them?

Andrew McCracken: We must establish the purpose for which they are there. To me, tunnels mean something different; I think that these structures are probably big culverts that may carry a stream. If they carry a stream from one side of the property to another, we would have to retain that watercourse. We will assess the situation when we do the survey and will strengthen or repair the tunnels if we must.

Mr Brocklebank: Apparently, there are some holding tanks adjacent to the property about which you were not previously aware.

Andrew McCracken: I was not aware of any holding tanks.

Mr Brocklebank: I am slightly disconcerted that they exist in close proximity to the cottage. Is there any likelihood that you will discover something other than the tunnelling or the culverts?

Andrew McCracken: We may do. We have walked the entire route and examined the structures that we found. There are some 120 structures on which we have done technical reports. We were not aware of the culverts or that there may be more on the route. However, when

we do the detailed survey, we will pick up such things and deal with them.

The Convener: On noise and vibration, the promoter's witness is Steve Mitchell. Does Mr McKie have any questions for Mr Mitchell on noise and vibration?

Alastair McKie: Mr Mitchell, will you confirm in your evidence what you believe to be the noise and vibration effects of the railway on the property and whether mitigation is required? Have you visited the property recently?

Steve Mitchell: Yes, I recently visited the property to explain to Mr Murray the noise effects that he could expect from the railway. The property is about 20m from the proposed railway alignment and roughly 100m from the A7. It is a relatively peaceful setting, even though the A7 is in the background. The property was considered in an environmental statement and has been looked at since in more detail.

A noise barrier needs to be constructed at the property to reduce noise levels. In simple terms, we need a performance of about 5dB out of that noise barrier, which would require it to be 1.5m above the rails. I am happy that, with the noise barrier as shown schematically on plan 13, we can achieve the noise and vibration policy targets, despite the fact that the trains will be travelling at near enough full speed through that point. The train noise will be audible but we will achieve the targets that we consider acceptable for projects of this type.

I do not need to touch on vibration. It is not a particular concern, except to say when I recently visited Mr Murray, he tried to show me where some of the culverts were situated. They appear to be to the east of the access road, which puts them at about 20m from our proposed alignment. That may help with the question of finding unknown things. I do not think that they are particularly close to the proposed new alignment of the railway. At that distance, I would not be concerned about them from the point of view of vibration.

Alastair McKie: Thank you, Mr Mitchell.

The Convener: Do Scott Murray or Sayrah Ohara have any questions for Mr Mitchell on noise and vibration?

Scott Murray: You have been at the property recently and say that very little noise comes from the A7, because we are much lower than the road. Having a train at the front door, which will be raised 2m above the current ground level, will obviously create a great deal more noise than the A7 creates. When were the readings for the noise at our house taken?

Steve Mitchell: I accept that the noise effect for you will be greater than it will be for your

neighbours at the other end of the drive, who are much closer to the A7 and have to deal with a high level of traffic noise. As we have just discussed, the incremental effect of the railway will be quite small for them and mitigation will not be needed. Mitigation is needed for your property because the noise effect on it will be greater. That is why we are committed to providing a noise barrier there.

Strange as it may seem to you, we did not need to take readings of background noise levels at your property. Under the noise and vibration policy, once we can design train noise to below threshold values, we do not need to commit to a noise standard that relates to the background noise level. Only where the background noise level is higher do we need to design the train to be no louder than that. That may appear odd to you, but we have tried to explain it in the policy and the supporting technical guide.

Scott Murray: Does that mean that, because the property is quite quiet, it is not so important to find out what the difference will be?

Steve Mitchell: That is the case in respect of how much mitigation we need to apply. We design the railway to levels that I consider acceptable for a railway of this type. You may not consider them acceptable, but in the context of the overall scheme, precedents on other projects, planning guidance and so on, I consider the targets that we have set ourselves to be acceptable. In this case, those targets do not relate to the background noise level, so I do not need to know what that is.

The Convener: Do members have any questions for the witness?

Gordon Jackson: How far away will the noise barrier be and what will it be like?

Steve Mitchell: The barrier will be about 3m away from the tracks, so it will be about 18m away from the property. It will be about 1.5m above the top of the rail, so if we allow for the height of the track, the rail and the ballast it will be a bit more than 1.5m above the local ground level. It will almost certainly be timber faced on the property side. As I may already have indicated, there will be an absorbent middle section to stop the sound reflecting back to the train, as well as facing on the track side. Largely, the barrier will have the appearance of a timber fence.

Gordon Jackson: So it will look like a wooden fence about 18m from the property.

Steve Mitchell: Yes.

Gordon Jackson: We have discussed the culverts or tunnels. I understood what you said about where they are. However, as a layperson, I wondered whether the existence of tunnels and gaps would have an impact on vibration levels during construction and operation of the railway.

Steve Mitchell: If they were between the property and the railway, especially if they linked the two in a structural sense, they would have an impact on vibration levels. However, they do not link the two in that way. Effectively, they run from the property southwards. Mr Murray described them to me as being situated either on or to the east of the access road. I have no reason to believe that the ground between the property and the railway is unusual in terms of vibration propagation.

Andrew McCracken: If, as Mr Mitchell describes, the tunnels or culverts on plan 13 run parallel to the east side of the access track, they will not affect the operation of the railway at all. We will not have to do anything with them.

Gordon Jackson: Mr Murray looks a bit unhappy with that answer.

Scott Murray: We have been talking about culverts that we have discovered by ourselves. Nobody knows—especially not the promoter, which has not been out to do tests of any kind—how many culverts there are and in what direction they run.

Andrew McCracken: We know of 120 structures; we have found scores of culverts. However, from Mr Mitchell's description, if the culverts are away from the line and running parallel, we will not have to do anything with them. If we find more at the next stage, we will obviously deal with them.

Gordon Jackson: Are you saying that if there were culverts between the property and the railway, there would be vibration effects and you would deal with them? At the moment the issue is hypothetical, but will you check whether culverts are there? If they are there, will you deal with them?

Andrew McCracken: Yes.

Steve Mitchell: The noise and vibration policy will pick up this issue. We are not yet committed to a design that I can tell you about, but we are committed to the vibration levels in the policy. Therefore, if the design changes, we will still have to achieve the same vibration standards.

The Convener: Mr McKie, do you have further questions for your witness?

Alastair McKie: I would like to ask Mr McCracken about safety, if I may. I have no further questions on noise and vibration.

The Convener: Yes, we can now turn to safety. Mr McKie, will you invite Mr McCracken to give a brief outline on where matters stand with safety, and will you then question him?

Alastair McKie: Mr McCracken, are you aware of any particular safety issues that make the rail

line at this location any different from any other rail line in the modern network?

Andrew McCracken: There is nothing in particular. We have submitted a rail regulation policy paper, and I assure the committee and objectors that we will adopt all the technical and safety standards at this location. In previous oral evidence to Dr Wyllie, I said that severe geometries could lead to high risk, but the location in plan 13 has what an engineer would call a fairly gentle curve. From a technical and engineering point of view, nothing at the location gives me particular concern.

Alastair McKie: Will a particular type of fencing be used to separate the railway from the property?

Andrew McCracken: In previous evidence, I have mentioned the standards that would apply and the Network Rail specifications for lineside fencing. We have stated in evidence that the specification would be fairly high at this location because of the existence of the property. It would be a chain-link or palisade fence approximately 1.8m high.

The Convener: Ms Ohara, do you have any questions on safety?

Sayrah Ohara: Yes. Can you guarantee the safety of my daughter and my animals with a chain-link fence to stop a careering train or a missile?

Andrew McCracken: The fence is designed to separate the public from the railway line. Its function is to provide a barrier and to prevent encroachment or breaches of the railway boundary. It is not designed to deal with careering trains.

I can give you the comfort that we design out the risk by applying technical and safety standards to the railway alignment. Her Majesty's railway inspectorate is empowered to ensure that that is done. The fence is not designed to deal with a careering train, but the safety standards that will be adopted and the HMRI approval that is required will give you safety and comfort. Well, they may not give you comfort, but I have described our safety policy.

Sayrah Ohara: So we are not safe.

Andrew McCracken: It will be as safe as it possibly can be within the legislation.

Sayrah Ohara: But we are not safe.

Scott Murray: You are putting us in a position in which we are nowhere near as safe as we are at the moment. However, that seems to be acceptable because it has been written in.

Andrew McCracken: I understand your concerns. The only comfort that I can give you—

and I am sorry to repeat the point—is that we will apply the full standards. A rigid process is in place for railways up and down the country.

Sayrah Ohara: The gentle curve that you describe is less than 20m from the edge of our property.

Andrew McCracken: I think that it is about 22m away.

Sayrah Ohara: It is less than that.

Scott Murray: Your measurements are wrong.

Sayrah Ohara: We are closer than 20m to the gentle curve of a 90mph train.

The Convener: If there is some dispute over the distance, the promoter might wish to measure it again and report back to the committee.

Andrew McCracken: Certainly.

The Convener: Ms Ohara, do you have any further questions on safety?

Sayrah Ohara: No.

The Convener: Mr Murray?

Scott Murray: No.

The Convener: Mr McKie?

Alastair McKie: No further questions.

The Convener: We will suspend for a few minutes to allow witnesses to change over.

13:01

Meeting suspended.

13:04

On resuming—

SCOTT MURRAY and SAYRAH OHARA took the oath.

The Convener: Do the witnesses accept the promoter's evidence on where matters stand on the impact of the railway's construction on the value of property and loss of amenity?

Scott Murray: I think that the promoter agrees with us that the effect will be huge, but we are stuck in a situation in which nothing can be done. If we cannot be part of a voluntary purchase scheme, we will have to stay in a house that we cannot sell, which is worth less than it used to be. All that we can do is sit things out.

The Convener: In an ideal world, what would you like to happen?

Scott Murray: We said from the start that it was fair to build a railway line, but we did not want to stay beside it. Our previous house was right beside a railway line, so we have experienced

what that is like—that was one of the main reasons why we moved to our present house. We found a nice, quiet, idyllic spot, with no neighbours and a view of hills in every direction. Now it seems that it would be okay for a train to run at 90mph only 20m from our house. That would not be okay.

The Convener: Mr McKie, do you have questions for Mr Murray or Ms Ohara on value of property or loss of amenity?

Alastair McKie: The promoter extends sympathies to Mr Murray. This is a point that I put to Mr Sandland. If the promoter had kept to the existing railway alignment, you would have been bought out—or so it appears from the plan. Do you appreciate that the primary reason for changing the alignment was to accommodate the majority of residents in Falahill by moving the line to the west?

Scott Murray: Yes. Our house is almost a mile away from the cottages.

Alastair McKie: I appreciate the distance that is involved. In meeting the objective of not putting the majority of Falahill people between a railway and a road, the promoter moved the proposed line away from your property. That is what happened.

Scott Murray: Yes. We would have thought that we would be involved in discussions when it was known that the proposed alignment would change, but we were not involved in any way, shape or form until just before the plans were submitted to the Parliament, when we were shown the proposal about Falahill Cottages and told, "By the way, this is the new railway line proposal that will be submitted." There was no fair consultation in the lead-up to that.

I understand that it all comes down to money. It is much easier to make eight or nine people happy than it is to make one person happy. However, if cost is the issue, we are talking about buying just one cottage, which could be sold after the railway line was constructed. If that were done, we would not be facing the situation that we are. We are not talking about very much money.

Alastair McKie: You wanted the railway to be built on its existing alignment and you wanted to be bought out. Am I correct in understanding that you had a chance to make your point—albeit that you say that it came late in the day?

Scott Murray: Sorry, which point?

Alastair McKie: Your point about not agreeing with moving the alignment to the west.

Scott Murray: Are you talking about when we were shown the final drawings just before they were submitted? That was the first time that we realised that the plans had changed and the proposed line would not run along the existing

line—which would have meant that there would be compulsory purchase of our house—but would be diverted across the front field and the A7. We were shown those drawings at the 11th hour.

Alastair McKie: When you say “at the 11th hour”, when exactly do you mean?

Scott Murray: What is the date on the drawings?

Alastair McKie: I am told that the drawings were frozen in spring 2003. I think that that is roughly when the drawings were submitted to the Parliament.

Scott Murray: Mr Rosher told us that the drawings were the final proposals. He said that we should not worry, because we would be part of a voluntary purchase scheme, so at that stage we did not think that there would be a problem.

Alastair McKie: Because you knew that you were outwith the limits and you were relying on there being a voluntary purchase scheme, you did not send in a letter.

Scott Murray: Absolutely. We never felt that we were going to have to object.

Sayrah Ohara: We heard about that meeting from a neighbour. Mr Rosher did not inform us that the meeting was taking place, but we went along at the invitation of our neighbour. Mr Rosher took us aside and told us not to worry.

Alastair McKie: Thank you. That is all I have, convener.

The Convener: Ms Ohara and Mr Murray, can I take it that you are unhappy with the level of consultation that the promoter has engaged in?

Scott Murray: Yes.

The Convener: Are there any further questions?

Christine May: This is not a question for the witnesses. I would like to make a comment. In answer to my question earlier, Mr Rosher made it quite clear that the objectors’ position is that they want compulsory purchase and nothing else. Nevertheless, in such stressful and distressing circumstances, it is incumbent on bodies such as the promoter to make the extra effort to deal sensitively with such issues.

The Convener: I turn to access, including tunnels and troughs, and the impact on services. I invite Scott Murray or Sayrah Ohara to say whether they accept the promoter’s evidence on where matters stand.

Scott Murray: On access, it is proposed that the construction will take over parts of the line that comes from the A7 to our house for the heavy machinery. That track is used by children—including our children—to walk to and from the

school bus. They will be put in a very dangerous situation when the heavy plant is there. I cannot see how that can be safe.

We also have access to the A7 across the front field. That has existed since the early railway days; it was the only access to the house at the time. How will the promoter keep that access open? The promoter has never discussed that with us, even though we have mentioned it.

The Convener: Thank you. Do members have any questions for Mr Murray and Ms Ohara on the issue?

Members: No.

The Convener: Mr McKie, do you have any questions for Mr Murray and Ms Ohara on this issue?

Alastair McKie: I do not. The promoter will rest on its code of construction practice. Also, plan 3 shows the delineation barrier.

The Convener: I turn to the issue of noise and vibration. I invite Scott Murray or Sayrah Ohara to comment on whether they accept the promoter’s evidence on where matters stand.

Sayrah Ohara: We do not accept anything that the promoter says. I am glad that Mr Mitchell has had his needs filled, but the only noise that we experience at the house at the moment might be a lamb calling for its mother, or the occasional car going past. The noise level from a train going past our garden less than 20m away—at the gentle curve, the line is something like 13m from the front of our property, where my daughter rides her ponies and where our dogs are kept next to the stable—will just not be acceptable. I am sorry. There is no noise there now; it will not be acceptable when it comes. What more can I say?

The Convener: Thank you. Mr McKie, do you have any questions for Mr Murray or Ms Ohara?

Alastair McKie: I do not. The promoter rests on Mr Mitchell’s evidence.

The Convener: I move to the question of safety. I invite Scott Murray or Sayrah Ohara to say whether they accept the promoter’s evidence on where matters stand.

Sayrah Ohara: We do not.

The Convener: Would you like to elaborate on that?

Sayrah Ohara: I know that common sense cannot be defined, but our objection rests on it. How can the promoter guarantee that our three horses, our dogs, our child, her friends and our family will be safe when they are playing 13m from a train careering past at 90mph? A chain-link fence will not stop a missile that is thrown—we

know that such things happen. At the moment, my daughter has an acre and a half of safe ground within a secure perimeter. The safety of exit and access will no longer exist. I will not be able to walk her up to the school bus, because we will be walking past God knows who operating their machines God knows when. It beggars belief that these people think that that is acceptable—it is not.

13:15

The Convener: Thank you. Does Mr McKie have any questions for Mr Murray or Ms Ohara on safety?

Alastair McKie: No. The promoter is resting on the evidence of Mr McCracken.

Christine May: Do Ms Ohara and Mr Murray accept that nothing can ever be guaranteed 100 per cent safe?

Sayrah Ohara: At the moment, I can guarantee that a train will not career into my garden.

Christine May: That was going to be my next question. Do you agree that you will be less safe after the railway is built than you are now?

Sayrah Ohara: Very much so.

The Convener: Do Mr Murray and Ms Ohara have any further comments to make in the light of the questions that they have been asked on the various topics?

Scott Murray: I do not.

Sayrah Ohara: Without embarrassing myself further—no.

The Convener: Mr McKie has a maximum of five minutes in which to make a closing statement.

Alastair McKie: The promoter has sympathy for these objectors. Their primary concern appears to be that they will not be bought out as a result of the railway proposals. The decision of the promoter to realign the railway means that it will be pushed away from their property and will not run on the existing access to their property. That means that the property is outside limits and will fall to be purchased only if it qualifies under a voluntary purchase scheme. As the committee knows, that is a matter for the Executive and we will hear evidence on that at a later meeting.

It seems clear to the promoter that one of the factors that drove the decision to align the railway to the west was to prevent Falahill residents from being sandwiched between a road and a railway line. Unfortunately, a consequence of that decision is that it skews the railway away from these objectors' property, which will therefore not now lie within limits.

I take on board what Ms May said about consultation and the promoter will consider that carefully. What can be said is that when the decision was taken to realign the railway, nothing could be done for these objectors.

A safe access would be preserved under the construction code of practice. I refer the committee to plan 3, which shows a delineation barrier.

I invite the committee to accept the evidence of Mr Mitchell that the targets that are set in the noise and vibration policy paper will be observed and that a mitigation barrier will be delivered.

Obviously, the promoter takes safety very seriously. I invite the committee to accept the evidence of Mr McCracken, who I believe stated that there was no particular safety issue at this location. Nothing about the design of the line, where it goes or how it is situated suggests that it is any more dangerous or represents any more of a risk than any other line. Of course, rail safety will be enforced through Her Majesty's railway inspectorate or its successors if the railway proceeds.

The Convener: Mr Murray and Ms Ohara have a maximum of five minutes in which to make a closing statement—they can share it if they wish.

Sayrah Ohara: The cottage is our ideal home. We bought it together as a couple and we have fixed it up and made it safe. Everything that we have done in our adult life has culminated in our daughter. We will no longer have the privacy that we now enjoy. We will have people peering into our house every 15 minutes as the train passes. The upset that it will cause is just—I had my thoughts all sorted in my head and I knew exactly what I was going to say, but I do not think that I really need to say anything.

The Convener: Would Mr Murray like to add anything?

Scott Murray: No, thank you.

The Convener: I thank Mr Murray and Ms Ohara very much for coming today to give evidence. The committee has listened to what you have said and we extend to you our sympathy for the situation in which you find yourself. As Christine May said, we are disappointed about what seems to be a lack of consultation by the promoter with these objectors. We will reflect on all the issues that have been raised with us today when we come to do our report. In the meantime, I thank Ms Ohara and Mr Murray very much for coming to give us their views.

I suspend the meeting for half an hour for lunch.

13:20

Meeting suspended.

14:00

On resuming—

The Convener: Welcome back. Group 37 relates to the objection from Robin Bull. I welcome Mr Bull, who will ask questions in relation to his objection. We visited Mr Bull's home recently, and we are familiar with his situation.

Turning first to the acquisition of land, alternative alignments and access, the witnesses for the promoter are Andrew Rosher, Bill Sandland, Andrew McCracken and Andrew Coates. Mr McKie, would you like to invite one of your witnesses to give a brief outline of where matters stand on this issue? The committee will then ask questions.

Alastair McKie: Mr Sandland, I invite you to update the committee on where matters rest with Mr Bull. Can you confirm whether there has been a recent exchange of correspondence? Have you been speaking to Mr Bull in the interim?

Bill Sandland: Consultation with Mr Bull has been going on for some time, most recently on 25 October last year, when Mr Bull and I met. We distilled the objection and came up with two ways of addressing it: either buy out all the property that Mr Bull owns at the location or move the railway. We have been able very recently to confirm to Mr Bull that the promoter is prepared to buy all the property that he owns in the area. Mr Bull has received a letter to that effect.

Robin Bull: That is correct.

The Convener: Can I confirm that Mr Bull's house is Station House in Heriot? Is that the promoter's understanding? I see from the environmental statement that Mr Bull's house is referred to as Heriot Cottage.

Bill Sandland: It has been pointed out to us that the address of Mr Bull's property is 2 Heriot Way.

Robin Bull: I live in the Station House at 2 Heriot Way—it has been that for 150 years. The cottage is over the road.

The Convener: Now that we have that on the record, can we be absolutely sure that we are all talking about the same property?

Bill Sandland: Yes.

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

Alastair McKie: As matters stand, an offer has been made in principle to purchase the objector's property. There has been an exchange of correspondence, and there have recently been discussions on the matter. I believe that a resolution is very close. I can deal with the other issues now if the committee wishes—such as the loss of amenity, the built heritage and the

ecological surveys—but I think that we have covered the central issue for the committee.

The Convener: Do you have any questions for the witnesses, Mr Bull?

Robin Bull: Convener, could you please help a lay person? Am I questioning the promoter on acquisition, alternative alignments or what?

The Convener: You are questioning the promoter on the acquisition of land, alternative alignments and access. Notwithstanding what we have just heard in the witness statement, I understand that, because the details are not finalised, we need to explore some of the issues, and I wonder whether you have any questions for the witnesses on those subjects.

Robin Bull: On the acquisition of land—although I understand that this is not central to the Waverley Railway (Scotland) Bill—I was put under formal blight by Scottish Borders Council in 1998, when it issued its draft structure plan and then its actual structure plan. That was when blight started. I formally objected to the draft plan. I visited Scottish Borders Council in person.

The Convener: Will you ask a question rather than make a statement? You will have more opportunity to comment when you are a witness.

Robin Bull: I understand—I was just coming to that. Mr Sandland, will you explain why, on introduction of the bill, you undertook to compulsorily purchase part of my property, in the full knowledge that that was unlikely to be acceptable to any owner? Why was I subject to two years of uncertainty and stress, until I received only last Friday—24 February—a firm commercial offer in principle to compulsorily purchase the whole property? Why was that not provided on the bill's introduction? Why was I put through that experience?

Bill Sandland: All I can say is that I suspect that it was assumed that you would prefer to stay in the property and to have minimum disruption engineered round it. As I said, when we met on 25 October your concern became clear, certainly to me. After that, we took steps to address it.

Robin Bull: That is not the case. In the meetings that I had with Mr Rosher in 2003 and on 5 February 2004 it was made clear to him that I did not wish to stay in the property with part compulsory purchase—the purchase of my garden so that 400-tonne trains could travel through it was not acceptable. In a previous meeting in 2003, before the bill was introduced, that point was made clear to Mr Rosher, so I repeat: why was I put through that?

Bill Sandland: All I can say is that, since I became involved in your situation, we have tried to move in a direction that complies with your wishes

and concerns. Perhaps Mr Rosher can answer questions about the history.

Robin Bull: I agree that consultation has taken a step in the right direction. Since the latter part of last year, consultation has been acceptable, for which I thank you.

The Convener: Mr Rosher, do you have any comments?

Andrew Rosher: I do not recall taking away from meetings Mr Bull's sentiments on the purchase of his whole property. The sentiment that I took away was that he fundamentally opposed the railway line. If I misunderstood the situation, I apologise. Mr Bull made it clear at the meeting on 5 February 2004 that he did not want to remain in his property if the railway project were to proceed in its current state.

Gordon Jackson: I am puzzled. It is clear that the offer to purchase does not depend entirely on the Executive's scheme—that might be to do with timing and amounts. Instead, it depends on acceptance that the man's property is blighted. Mr Sandland tells us that the position was known in October. It was glaringly obvious that this one property needed to be purchased. I have never been in local government, so I ask why it took four months to tell the owner that. Even if you are right about October, it is now February. That seems an inordinate time to keep the man waiting.

Bill Sandland: That is a fair point. Until we had official approval from the Scottish Executive for the advance purchase scheme, I could not tell Mr Bull anything officially.

Gordon Jackson: You do not yet have official approval for the advance purchase scheme, but you will purchase his house whether or not that approval is obtained. Please do not confuse the two matters. Mr Bull's house will be purchased irrespective of Executive approval of the advance purchase scheme. Is that right?

Bill Sandland: If the bill is passed, that will be correct.

Gordon Jackson: That is obvious and it is true of all purchases. Mr Bull's situation has nothing to do with approval of the advance purchase scheme, which will affect people in the houses at Falahill and other places. Whether or not the advance purchase scheme proceeds, this man's property will be purchased, because it will be blighted. Why did it take four months to make that decision or to tell him of it?

Bill Sandland: We had to obtain advice to ensure that we were doing the correct thing, and so that we could evaluate the options and the correct way to proceed with public money. When we received that advice and did the evaluation, we did not hesitate to tell Mr Bull the situation.

Gordon Jackson: Was that advice from the district valuer?

Bill Sandland: Yes.

Gordon Jackson: Was the advice that the property would be blighted?

Bill Sandland: The district valuer gave us various options that could be taken, which we evaluated. We then took appropriate steps.

Gordon Jackson: So it took four months for the district valuer to go to the man's property and tell you that it would be blighted. Forgive me, but I am annoyed about the issue—I find the length of time it took to tell the man a nonsense.

Bill Sandland: In fairness, from my recollection, the district valuer did not state that it would be blighted; he said that a claim for blight might be upheld.

Gordon Jackson: That sounds like civil service speak for, "You would lose the case if you fought it." Do you think that it is okay that the process took four months?

Bill Sandland: My sympathies go to Mr Bull. I have conveyed my sympathies since I first spoke to Mr Bull about his plight. I have a lot of sympathy for him, and I have tried to move the process on as quickly as possible. I assure you that I have done so.

Christine May: Mr Rosher, I go back to your answer to Mr Bull's question about the conversation that you had in 2003. Did you visit the property and speak to Mr Bull there?

Andrew Rosher: I met Mr Bull, along with Mr and Mrs Smith, across the road at 3 Heriot Way to discuss several issues surrounding the bill process.

Christine May: Sorry, but I was trying to establish whether you have been to the property in question and seen it for yourself.

Andrew Rosher: I have seen the property.

Christine May: In that case you will know that, as we saw when we visited, the railway will be very close indeed to the window of Mr Bull's property. I am trying to be as supportive as I can but, in retrospect, do you not think that it would have been advantageous to confirm your understanding of his position in writing, so that there would be no doubt whatever about the basis on which the promoter was proceeding?

Andrew Rosher: I agree that, with hindsight, I should have confirmed my understanding in writing, which would have allowed us to sort out the difference in our understandings.

Christine May: In that case, the process might not have taken the inordinate and distressing

length of time that it has taken for the individual involved.

Andrew Rosher: There could have been greater certainty for Mr Bull.

Mr Brocklebank: We accept and understand that discussions took place in October, when Mr Sandland spoke to Mr Bull. The final offer was made in a letter of 24 or 25 February. From what has been said, I understand that the delay was due partly to a delay in the district valuer giving his advice. When did the district valuer visit Mr Bull's property?

Bill Sandland: I did not imply that there was an inordinate delay on the part of the district valuer. It was merely a case of one process following another to get to where we are. I cannot remember exactly, but I recollect that the district valuer was there at the end of last year, although I will have to confirm that.

Mr Brocklebank: Perhaps Mr Bull can remind us. I believe that the district valuer had been there only a week or two before we visited his property.

The Convener: We will need to wait until Mr Bull appears as a witness to ask him that.

Mr Brocklebank: We will maybe come back to the issue. Mr Sandland, is it your recollection that the district valuer visited the property at the end of last year?

Bill Sandland: Yes. The district valuer was asked to put a value on Mr Bull's property and to consider whether we could fairly include all his property for compulsory purchase. The district valuer came back with three options—his letter is on the record. People had to be consulted but, on the basis of that letter, a decision was made to make an offer in principle to buy all of Mr Bull's property.

The Convener: Mr Bull, do you have any further questions for the witnesses on the acquisition of land?

Robin Bull: Yes, convener. I will be brief.

Mr Rosher, you visited my house on 5 February 2004, when we had a meeting that lasted approximately 1.5 hours, during which my partner was present. Do you have minutes of that meeting, were they issued, and are notes about owners, actions and timescales attached to the said minutes?

Andrew Rosher: I have a comprehensive note of that meeting.

Robin Bull: Was that note forwarded to me for review or confirmation?

Andrew Rosher: No.

14:15

Robin Bull: So no minutes with owners, actions and timescales attached were issued as a result of that pivotal consultation meeting. I have my notes from that meeting, and I can tell you what you said. You said that the voluntary purchase scheme was being explored to take away long-term stress. You acknowledged the inadequacy of legislation and process, and on human rights issues you said that the political game rules were set out with a completely blinkered focus on the land of the old line. My notes state that you agreed that the "not a foot more than necessary" approach that was demanded by the bill's promoter was completely unworkable. You entirely agreed that the compulsory purchase of the garden, which would leave the house with trains 3m away, was ludicrous and unworkable. For the record, that is stated in my minutes of our meeting.

The Convener: There are two points, Mr Bull. First, we are not talking about the voluntary purchase scheme at the moment. Secondly, apart from your wish to put the matter on the record, I am not sure what your point is. Do you have any specific questions on acquisition? If so, please ask them rather than make statements.

Robin Bull: I apologise. I am a layperson. I am trying to demonstrate the lack of proper, basic project management skills and the loss associated with that. Solatium for that loss has yet to be agreed. I will leave it at that.

The Convener: I think, perhaps, that you wish to ask Mr Rosher whether the promoter is satisfied with the level of consultation with you and the action that has been taken.

Andrew Rosher: My only comment is that I took away from the meeting my recollections and notes. One action was to update Mr Bull on the voluntary purchase scheme. I did not do that. As far as I am concerned, there is no voluntary purchase scheme at present—it is being considered. Other matters were discussed at the meeting, including alternative alignments, and I am sure that we will move on to those. However, I admit that I did not issue minutes of the meeting.

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

Alastair McKie: I have a question for Mr Sandland. I seek to clarify the terms of the letters that he exchanged recently with Mr Bull. Am I correct to say that the promoter intends to purchase the property if the bill is passed?

Bill Sandland: Yes.

Alastair McKie: Because the property might fall within the advance purchase scheme, if the Executive incorporates it in the scheme, there is

potential for the property to be purchased in advance.

Bill Sandland: That is correct.

Margaret Smith: For clarification, will the property be purchased only if the Executive comes forward with the advance purchase scheme? I understood that that was not the case and that it would be purchased anyway.

Bill Sandland: The property has been designated for compulsory purchase but the powers will be conferred on the promoter only if royal assent is granted. Prior to that, an advance purchase scheme will be in place and we will purchase the property whenever approval is received from the Scottish Executive.

Margaret Smith: Do you mean approval for the bill?

Bill Sandland: No—approval for the advance purchase scheme. We cannot purchase the property until we have the funding to pay for it. We require confirmation from the Scottish Executive that it is prepared to fund that. As I understand it, we are very close to getting that confirmation.

Gordon Jackson: We are perhaps confusing advance purchase and voluntary purchase. Advance purchase applies to compulsory purchase properties. It is just a question of the timescale. The property is not being purchased under a voluntary purchase scheme. It is being purchased because the promoter has decided that it has to be purchased. The advance purchase kicks in as it would in the case of any other compulsory purchase property. Have I got that right?

Bill Sandland: That is correct. I apologise if I was unclear.

The Convener: Thank you for that. Next, we will deal with the impact on the value of property—

Alastair McKie: Before we move on, I point out that the committee might want to hear evidence on alternative alignments, but I have not led Mr McCracken on that point. It might be useful for me to do so.

The Convener: Yes, that might be useful. The issue relates to objections that have been made by Mr Bull. Notwithstanding the letter that has been sent by Scottish Borders Council to him with regard to purchase, we still need to address his objections. It would be extremely useful if you were to lead Mr McCracken on the issue of alignment.

Alastair McKie: Mr McCracken, in plan 17 there is a blue line showing the alignment that the objector proposes. Will you give us your opinion on any constraints that might arise or additional costs that might be incurred if that alignment were

adopted and comment on whether that moves the alignment closer to Heriot?

Andrew McCracken: We dealt with Heriot in a similar way to the way in which we dealt with Falahill. The feedback from the consultation team was that, in principle, the wider Heriot community was fairly satisfied with the current alignment that is shown in red in plan 17. However, Mr Bull had expressed some concerns about it.

The instruction that we had was to move the alignment by an offset of 50m from Mr Bull's property. The blue line in plan 17 shows where that suggested line would go. To accommodate that shift, we would have to create an off-line railway corridor of about 1.6km to tie the railway back in to its former alignment.

On constraints, when the line moves away from Mr Bull's property, it moves closer to the wider Heriot community, which is an issue. In terms of topography, the land slants upwards away from the former corridor up to a hillside. There are also several river crossings at that location. At the left of plan 17, there is an existing bridge that the residents of Falahill have requested remain open. To follow the proposed blue line, we would have to create a new bridge crossing to replace bridge OB 46. We would also have to introduce three new culvert structures over the river and tie the corridor back in to the line. There would be fairly significant earthworks to accommodate the alignment and problematic ground conditions would have to be overcome—the location is fairly wet and marshy.

When we considered the proposal, it became clear that it would result in significant additional works and would add a cost of something like £750,000 or £1 million.

Christine May: The final sentence in paragraph 2 of your written evidence says:

"The promoter can confirm that, based on the preliminary design, the minimum distance between the property and the nearest rail would be in excess of 9.7 metres".

How far is it?

Andrew McCracken: In plan 16, we confirm the distance from the railway to the property as being 9.76m, according to our current design.

Christine May: Based on the objection, I understand that the objector is set to lose the majority of his garden and access to his property, with the railway track being less than 10m from his house. How far could it be moved away within the limits of deviation?

Andrew McCracken: In plan 16, the green lines define the limits of deviation. In theory, the line could go anywhere within that green boundary line. I do not have a scale rule on me but the deviation is about 5m.

Christine May: So the track could be moved about 14.5m away from the property, staying within the limits of deviation.

Andrew McCracken: Yes.

Christine May: And the up-to-date position is, I presume, as you have reported it to us in your initial answer to Mr McKie's question.

Andrew McCracken: Yes.

Margaret Smith: How difficult would the engineering solution be for realignment, bearing in mind the marshy flood plain that you mentioned?

Andrew McCracken: We do not have detailed geographic information, but we know that the ground in that area is particularly marshy and wet. We would have to create a fairly robust engineering solution to accommodate railway loading through there. The beauty of staying on the former corridor is that it was engineered for us previously by the Victorians. Realignment could be carried out but it would be fairly expensive.

Margaret Smith: Would the limits of deviation have to be extended?

Andrew McCracken: They would have to be changed, yes.

Margaret Smith: And you would also have to replace bridge 46?

Andrew McCracken: Yes.

Margaret Smith: How much would that cost?

Andrew McCracken: Roughly £350,000. Moving the line is not just down to engineering; the whole Heriot community would be affected because we would be pushing the line towards the wider mass, if you like. That is another consideration beyond engineering.

Margaret Smith: Thank you.

The Convener: Mr McKie, do you have any further questions for the witnesses on this subject?

Alastair McKie: I do not.

The Convener: On the impact on value of property, the promoter's witnesses are Alison Gorlov and Andrew McCracken. It would perhaps be useful if Sam Oxley and Steve Purnell could join the panel too. Mr McKie, would you like to invite your witnesses to give a brief outline of where matters stand on the issue of the impact on value of property and then to question Mrs Gorlov and Mr McCracken?

Alastair McKie: The promoter will simply rest on its existing evidence. We have already heard some discussions about the valuation of the property and the promoter's intentions regarding the property.

The Convener: Thank you.

Mr Bull, do you have any questions for Mrs Gorlov and Mr McCracken on the value of property?

Robin Bull: Thank you, convener.

Mrs Gorlov, do you accept that the formal issue of the Scottish Borders Council structure plan in 1998, reserving former lines in private use for the council's interest, had an impact on my property value? Do you agree that I was put under blight at that point?

Alison Gorlov: I really could not say. I have no knowledge of the local property market or what the effect of the structure plan might have been. I am simply not equipped to answer, convener; I am sorry.

Robin Bull: It was a general question about any single large detached dwelling in the country with a large garden that is then blighted by a potential compulsory purchase order in a structure plan. In general, would that not lower the value of a property?

Alison Gorlov: I would think that that might be likely.

Robin Bull: Thank you.

The Convener: Do members have any questions on the subject?

Members: No.

The Convener: Mr McKie, do you have further questions to your witness on the subject of property value?

Alastair McKie: I do not.

The Convener: We turn to loss of amenity, including privacy and security. The witnesses for the promoter are Alison Gorlov, Andrew McCracken and Sam Oxley. Mr McKie, would you like to invite one of your witnesses to give a brief outline of where matters stand on loss of amenity, including privacy and security, and then to question Mrs Gorlov, Mr McCracken and Ms Oxley?

14:30

Alastair McKie: The promoter's position, which has been made clear, is the same as before, convener. Loss of amenity ought not to arise if the property is acquired.

The Convener: Mr Bull, do you have any questions for the witnesses on this issue?

Robin Bull: Convener, I am at a loss here. As I have not yet received a firm commercial offer from Scottish Borders Council, my objection stands. I would also like to explore questions of loss of

amenity, privacy and security to ensure that the blight that has happened since the bill was introduced never happens to anyone else. May I quickly question the promoter's witnesses on those points?

The Convener: You certainly have a right to question the witnesses on the loss of amenity, privacy and security as they relate to your property.

Robin Bull: Whom should I ask about those matters? Should I ask Ms Oxley?

The Convener: I suggest that you simply ask your question and the witness who—

Robin Bull: Mr McKie—

The Convener: You should perhaps just ask a general question.

Robin Bull: Mr McKie—

The Convener: Mr Bull, if you ask your question to the panel in general, the most appropriate person will answer it for you.

Robin Bull: I apologise. Thank you, convener.

When you drew up your plans for Heriot as submitted in the bill, did it ever cross your minds that the owner of Station House might not accept them and in fact would object to losing a garden and feel that such a loss would not be mitigated by planting some shrubs?

Alison Gorlov: I will deal with that question.

I cannot say, hand on heart, that the answer to the question is yes. However, from my recollection of being taken through the first draft of the plans, I think that the answer is yes.

The plans for where the lines went had to be approached on the basis of minimum land take for the purposes of the railway. We felt that, if it was evident that a property was going to be completely uninhabitable, it was proper to include it notwithstanding the fact that not all of the land might have to be acquired. However, under section 21 of the bill, where a property will suffer material detriment as a result of its being severed, a householder can require the rest of the property to be purchased. The lines were drawn on the map with that in mind.

The effect of producing the plans, which we have done, is to show the line where the railway needs to be and to allow the landowner—in this case, Mr Bull—the legal flexibility to require that all the land be purchased when the time comes for compulsory purchase to be made. That provision is built into the bill and will kick in when it receives royal assent and comes into force.

Robin Bull: In which case, given that the promoter understands fully that it is dealing with

lay persons who are not specialised in such fields, why did it not, at the bill's inception, start to assemble the letter that it assembled last Friday and release me from this sense of loss, stress and uncertainty?

The Convener: In fairness, the committee would also like an answer to that question. Given that the promoter knew that section 21 contained a provision that would allow Mr Bull's whole property to be purchased, why has he gone through years of difficulty and stress until the last week or so, when an offer was finally made?

Alison Gorlov: I would have to ask Mr Rosher, but he is not at the table.

First, the offer that has been made sets out the council's position and Mr Sandland has explained why the letter was not written earlier. I do not know why the rules were not explained in the meetings with Mr Bull in the way in which I have just described—I am the lawyer in the back room. That is not to duck the issue; it is regrettable if the message was not got across and one can only apologise.

Gordon Jackson: It seems to me that the problem is not the rules; the problem is with the facts. As Ms Gorlov has pointed out, the rules have always been that, under section 21, someone who has a blighted property can have compensation. The question, which Ms Gorlov perhaps cannot answer, is why it took so long to decide as a matter of fact that the property involved came within the rules. Explaining the rules would not have helped Mr Bull at all, until the decision was made—as it was this month—that his house came within them. Our difficulty is that, having walked through his property, we cannot see how anybody with half a bit of common sense could ever have thought that his property did not come within the rules as a matter of fact. Our difficulty is why it took so long to decide that that was the factual situation. The rules are fine; it is the application of them to Mr Bull that we find really weird.

Alison Gorlov: With respect, I do not think that it is weird. The letter from Mr Sandland was written in the context of a good deal of angst about the advance purchase scheme. It was not written until SBC had been given, if not the good news that we are all hoping for, at least an indication that the good news would be forthcoming. The letter was written in the circumstance that SBC would like to be able to buy the land now. I know that because Mr Sandland consulted me about it.

Gordon Jackson: I understand about the advance purchase scheme. However, if there was no such scheme, no property would be subject to advance purchase, but property would still be covered by the compulsory purchase scheme and

would need to be bought eventually. What I cannot understand is why it took so long to decide that Mr Bull's house came within the category of property that would be purchased, irrespective of when it would be purchased. The problem for Mr Bull is not that he was not told when the property would be purchased; it is that he was not told that it would be purchased at all.

Alison Gorlov: I say this without any instruction at all. I think that one has to accept that there has been a degree of two left feet here, which is not very helpful for Mr Bull and is, as I said, very regrettable. It has happened and we are where we are, but with hindsight one can always do more. On this occasion, one can see that very much better might have been done—unfortunately, that did not happen.

Robin Bull: Just to cap this one, it appears to me, as a project manager and a chief engineer who has managed many projects—up to a level of £130 million—that Scottish Borders Council has entered the bid phase of a project without clear exit paths being available. The bid should have failed at an initial review stage because clear exit paths and clear mechanisms to enact the bill were not in place. That is a basic failure in project management. Would you agree?

The Convener: Mr Bull, I think that you are making a comment on the competency of the—

Robin Bull: It was pertinent to the answer that Ms Gorlov gave. I will leave it there.

The Convener: I think you should because we are dealing with privacy and security, not the whole bill or, indeed, the conduct of the promoter. Thank you.

Robin Bull: I understand. In which section will we cover safety? Does it come under amenity, privacy and security or noise and vibration?

The Convener: I do not have specific notes on safety. However, Mr McCracken, who is before us, has been dealing with safety issues. You can ask Mr McCracken some questions on safety.

Robin Bull: I will be brief. Decibels have been much spoken about in the 2006 oral hearings. I refuse to mention the word “decibel” any more, but I want to raise a question on energy measured in joules, simply to quantify the safety aspect of the bill not only for myself, but for my friends and similar objectors either side of my property up and down the line.

What will be the mass of a train on the line? Will it be four carriages at 100 tonnes each? If so, that would make 400 tonnes.

Andrew McCracken: Yes.

Robin Bull: The line speed of a train going past my garden will be 90mph, which is 40m/s. How much kinetic energy would such a train have?

Andrew McCracken: Can I pass on that question and come back with an answer later?

Robin Bull: Kinetic energy = $\frac{1}{2} MV^2$.

Andrew McCracken: Yes, I know that but I cannot answer your question directly.

Robin Bull: Four hundred tonnes is 400 times 1000kg. If you work it out, that comes to 200 million joules of energy. If that energy were converted by derailment, or any other means, into potential energy, how high could 200 million joules lift a 1 tonne block into the air, considering that $\frac{1}{2} MV^2 = mgh$? The answer is 20km.

The Convener: I am grateful that you are answering your own questions, as I do not have my calculator. Have you a specific point to put to Mr McCracken?

Robin Bull: Yes, I worked it out when I was sitting at lunch. It is also pertinent to other objectors who asked similar questions during previous oral hearings.

The Convener: We are dealing with your objections.

Robin Bull: My apologies. I will confine myself to my objection.

A derailed train with an energy of 200 million joules, for example, has the potential to lift a 1 tonne block 20km into the air. Therefore, do you think that it is safe—

Alastair McKie: May I come in at this point, convener? Mr Bull has answered his own question when Mr McCracken does not know the answer to it. He is now extrapolating from his own question and posing further questions. That is not fair to Mr McCracken.

Robin Bull: I am now asking the pivotal question.

The Convener: Where is this going, Mr Bull? You assured me that you were asking the pivotal question, so I am waiting for it.

Robin Bull: Does Mr McCracken agree that, in such a scenario, the construction of a safety fence or barrier would not stop the impact of a derailed train or the amount of damage that could be caused as it passes by my garden?

Andrew McCracken: A safety barrier is not required as per HMRI's guidance. If a barrier were in place, it would absorb energy.

Robin Bull: Would it absorb 200 million joules of energy with the potential to lift a 1 tonne block?

Andrew McCracken: That depends on the barrier.

Robin Bull: Are you saying that you will produce a barrier that can stop energy that would lift a 1 tonne block 20km into the air?

Andrew McCracken: No, we are not.

Robin Bull: Then my house will be less safe with a train running past it, irrespective of the safety measures that you take. Do you agree with that statement?

Andrew McCracken: There would be a risk.

Robin Bull: There would be a risk. That was my question.

The Convener: Thank you.

Mr McKie, do you have further questions for your witnesses on the loss of amenity, including privacy and security?

Alastair McKie: Yes, on the question of safety, does the line at the location in question give rise to any particular issues, Mr McCracken? Are there any specific topographical issues that give you concerns?

Andrew McCracken: No. On the contrary, that section of line is straight and has no curves. I have given evidence to the committee that severe geometry and curves create a higher risk.

Alastair McKie: For the committee's benefit, please confirm HMRI's role in improving the safety aspects of the scheme, should it proceed.

Andrew McCracken: HMRI must give its full approval to the scheme, as required by legislation.

The Convener: On built heritage and the ecology survey work, the promoter's witnesses are Steve Purnell and Andrew Coates. Will Mr McKie invite one of the witnesses to give a brief outline of where matters stand on the issue, before he asks questions?

Alastair McKie: I think that Sam Oxley will talk about built heritage. Can Ms Oxley or Mr Purnell confirm whether Mr Bull's property is a listed building?

Sam Oxley: I will let Mr Purnell answer your question.

Steve Purnell: The property is a non-statutory entry on the national monuments record of Scotland.

Alastair McKie: Does that mean that it is not a listed building?

Steve Purnell: It is not a listed building.

14:45

Alastair McKie: Will Mr Coates give his view on the adequacy of the ecology survey work? I understand that for the purposes of the environmental statement the work was undertaken with binoculars at the location that we are discussing.

Andrew Coates (Environmental Resources Management Ltd): Mr Bull expressed concerns about access for the work and sheet 4 in the environmental statement. The environmental statement shows the site as bare ground, which was the case when the survey was carried out. That was just a matter of timing; we happened to be there when refurbishments were taking place. The area has been refurbished and is no longer bare ground.

I reassure Mr Bull that there was no unauthorised access to the property. The front of his property is visible from the A7 and observations were made, as happens with any phase 1 habitat survey. I thank Mr Bull for drawing our attention to the matter.

Alastair McKie: That completes my questions.

The Convener: Mr Bull, do you have questions for Mr Purnell or Mr Coates on built heritage and the ecology survey work?

Robin Bull: No.

The Convener: Do members of the committee have questions on those matters?

Members: No.

The Convener: Does Mr McKie have further questions?

Alastair McKie: No.

The Convener: Fiona Stephen and Steve Mitchell are our next witnesses. On the European convention on human rights, Fiona Stephen is the promoter's witness.

Alastair McKie: Good afternoon, Ms Stephen. What is the promoter's position on your advice on ECHR compliance in relation to the acquisition that we are discussing?

Fiona Stephen (Anderson Strathern): I rest on the written evidence on the matter that was given to the committee.

Alastair McKie: Is the promoter's position ECHR compliant?

Fiona Stephen: Yes.

The Convener: Mr Bull, do you have questions for Ms Stephen on the matter?

Robin Bull: Yes. My question is for clarification. Ms Stephen says that the Waverley railway partnership's proposal is ECHR compliant, but my house is not caught between a rock and a hard place: there is 100m of open ground to the west of me.

I believe that we have shown that another alignment is feasible, although I understand that, in pure business case terms, cost implications may rule it out. However, the promoter cannot not

invoke the diversion, as that would leave me in my property with part of my garden compulsorily purchased. Surely that would contravene my human rights. There is an alternative, but the promoter has neither taken it up nor has it taken up the option to compulsorily purchase the whole property. I seek clarification on whether that is a breach of human rights.

Alastair McKie: If I may, I will interrupt you there, Mr Bull. Convener, the position of this objector seems to be that he is asking the promoter whether it will purchase only his garden, leaving him with the remainder of his property. That is not the promoter's position. My understanding is that we will purchase the whole property.

The Convener: We do not know that yet.

Alastair McKie: We will do so if the bill proceeds and, or if, the property is included in the advance purchase scheme.

Robin Bull: I understand what Mr McKie is saying and I thank him for that, but I am demonstrating—

The Convener: I am sorry, Mr Bull, but I have to interrupt you to respond to Mr McKie. The committee may decide that there is an alternative alignment.

Alastair McKie: Agreed.

The Convener: Perhaps Ms Stephen would now like to answer the question.

Fiona Stephen: I understand that the promoter has considered the alternative alignment that Mr Bull suggested. For the reasons that were explained previously, it was considered not to be viable. On that basis, the promoter considers that it has taken the best possible route that it can take.

Robin Bull: I agree that the promoter considered the alignment. I also agree that the costs involved would be greater than the total free market value of my property, but not by a factor of 10, or even a factor of five. The point that I have been making since the inception of the bill is that the promoter states that the proposal complies with the European convention on human rights and yet it is doing me the dual wrong of denying me an alternative alignment and the compulsory purchase of my whole property.

If the promoter had denied the alignment on cost grounds, I may have agreed with the argument as a public citizen, but only if it had offered to compulsorily purchase the whole of my property. If that had happened, I would be more inclined to agree that the ECHR had been met. However, the promoter did not do that and therefore the promoter has not met the ECHR.

The Convener: I am sure that that was not a question; it seemed to be more of a statement. Would you like to comment on the comment, Ms Stephen?

Fiona Stephen: In considering whether the bill is ECHR compliant, we have to look at a number of issues. I think that I dealt with them in my previous written evidence. In relation to property, the promoter had to consider whether, in ECHR terms, the rights of individuals were affected by the scheme. The two articles that are invoked in respect of the bill are article 1, protocol 1, which is the peaceful enjoyment of possessions, and article 8, which is the respect for private and family life. Neither article is absolute; they confer qualified rights. In making a decision on whether a proposal is ECHR compliant, a number of steps have to be undertaken. I could go through them, but I set them out in some detail in my written evidence.

The Convener: Thank you, Ms Stephen. I call Christine May.

Christine May: From what you have said, Ms Stephen, can I take it that the promoter considers its response to be proportionate in this case?

Fiona Stephen: Yes.

Christine May: I draw your attention to the decision that we heard about this morning in respect of Falahill. Are the two comparable? Was a proportionate response applied equally in both cases?

Fiona Stephen: I do not mean to avoid answering the question, but in what respect exactly?

Christine May: In Falahill, the point was taken that the line could be moved—at considerable cost—to avoid not the same circumstances as those in which Mr Bull finds himself but broadly similar circumstances. In this case the same decision was not found to be acceptable. Can you talk me through the differences?

Fiona Stephen: One issue is that a number of Falahill residents are involved. As I understand the evidence this morning, the promoter was keen to avoid a situation in which a number of people would be sandwiched between a road and a rail link. That is different from Mr Bull's position.

When the promoter examined the alignment at Falahill it considered what it could do to provide a solution for a number of people. The promoter has obviously considered the cost and other issues in relation to the group of properties. As far as I understand the position in relation to Mr Bull's property, the promoter has considered the alternative route that he has suggested but, unfortunately, the cost implications are such that, irrespective of other issues, the route that he suggests is not possible.

Christine May: Would you suggest that the proportionality test has been met in both cases?

Fiona Stephen: My view is that it has been met.

The Convener: Does Mr McKie have any further questions for his witness on ECHR?

Alastair McKie: No.

The Convener: On noise and vibration, the promoter's witness is Steve Mitchell. Will Mr McKie invite his witness to give a brief outline of where matters stand on noise and vibration? Mr Mitchell can then be asked questions.

Alastair McKie: Can Mr Mitchell confirm the position with regard to noise and vibration impacts at the property and comment on whether mitigation would be required?

Steve Mitchell: Bearing in mind Mr Bull's comment that he would not talk about decibels, I will not do so either unless he asks me to do so.

Without talking about decibels, the position is that the property is clearly sufficiently close to the line that without mitigation there would be a severe noise impact on it. That is why we have examined the matter and outlined the dimensions of a noise barrier that we think would reduce the noise levels adequately. At this stage, we believe that the noise barrier would be approximately 1.6m above the top of the rail height. I say "At this stage" because it is subject to detailed design—as are other elements of the scheme. I am confident that approximately that height of barrier would enable us to meet the noise targets that we have set ourselves in the noise and vibration policy. As the committee has heard, the basis of those targets is what I consider to be acceptable for a railway of this type. That is where we are.

The Convener: Does Mr Bull have any questions for Mr Mitchell?

Robin Bull: I promised not to mention decibels. I believe that the limits in planning advice note 56 on noise can probably be met.

The barrier would be approximately 2m from my kitchen window. The figure for the line is 9m and the figure for the barrier is 3m. The barrier would obscure the window and the drive and it would take the garden. The size of the barrier or the attenuation in decibels is immaterial because it would not be suitable, but I believe that the decibel limits probably could be met. I am sorry, but I am not asking Mr Mitchell a question; I am agreeing that PAN 56 can be met.

The Convener: Mr Bull, this is the time to ask questions.

Robin Bull: Yes. I apologise.

The Convener: That is okay. Would Mr Mitchell like to comment on that comment?

Steve Mitchell: I have the distance from the rail to the property as 9.76m and I have the noise barrier 3m from the rail. If I subtract 3 from 9.76 I am left with 6.76m to Mr Bull's building. I accept that the barrier would not look very good, but I do not think that it would be 2m from Mr Bull's kitchen.

Robin Bull: I apologise, convener. I mixed up the figure with the limits of deviation, which are 1.7m from the house. I have no questions.

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

Alastair McKie: No, convener.

15:00

Christine May: To avoid all doubt, Mr Mitchell, will you confirm that, although a noise barrier of that height and appearance will ensure that the noise tolerance limits are met, it will also have a considerably detrimental impact on amenity? You would not like it, would you?

Steve Mitchell: Gosh, there are a couple of questions in there. I am not sure that I should comment on whether I would like it or not. However, after measuring the ambient noise levels, we found that those levels will increase and that the noise environment will certainly worsen as a result of the railway.

The Convener: Thank you for that.

We will now change over the witnesses. I ask Robin Bull to take his place at the end of the table.

ROBIN BULL *took the oath.*

The Convener: We will deal first with the acquisition of land, alternative alignments and access. Given that Mr Bull does not have a questioner, I invite him to comment on whether he accepts the promoter's evidence on where matters stand.

Robin Bull: I accept the promoter's statement that, on Friday 24 February, I received a firm commercial letter of intent with regard to compulsory purchase.

The Convener: Mr McKie, do you have any questions for Mr Bull on this matter?

Alastair McKie: No, convener.

Mr Brocklebank: I realise that I sought clarification on this matter earlier, but I wish to get it straight in my mind. When we inspected your property, you said that the district valuer had visited some time before. When exactly did he visit you?

Robin Bull: He was a she called Mrs Elin Herd from the district valuer services office. I believe that she visited the property in the fortnight prior to the committee's inspection.

Mr Brocklebank: That was my recollection. If you are right, the visit occurred at the very end of last year or at the beginning of this year. Given what happened at the meeting on 25 October, would you not have expected the district valuer to visit you rather more promptly?

Robin Bull: I would have expected the district valuer to visit me earlier than that. In fact, I would have expected them to visit before the bill was introduced to ensure that all exit paths were clear when the bill was enacted. That is not the case.

The Convener: I confirm for the record that certain correspondence refers to the district valuer visiting Mr Bull's property on Wednesday 14 December.

Mr Brocklebank: So it was the end of the year.

The Convener: I ask Mr Bull to comment on whether he accepts the promoter's evidence on where matters stand with regard to impact on property values.

Robin Bull: As members know, things have moved on apace over the past few weeks. The promoter has offered some comfort in stating that there will be two independent free market valuations of the property. We will not have to rely on only the DVS valuation. I have taken up the promoter's kind offer to employ a land agent to act for me in that respect, although it is very early days.

The Convener: Mr McKie, do you have any questions for Mr Bull on this issue?

Alastair McKie: I do not, convener.

The Convener: On loss of amenity, I invite Mr Bull to indicate whether he accepts the promoter's evidence on where matters stand.

Robin Bull: I think that I have made myself clear on the loss of the prime attributes of amenity, privacy and security. Time did not permit me to submit more evidence. For example, the construction of the railway bridge over the B709 will further erode privacy. It will also increase the likelihood of vandalism on the line, but that is another matter. The committee is aware of my concerns about the bill as it stands.

The Convener: Thank you, Mr Bull. Mr McKie, do you have any questions for Mr Bull on this issue?

Alastair McKie: I do not, convener.

The Convener: Members have no questions for Mr Bull on the issue. On the built heritage and the ecology survey, I invite Mr Bull to indicate whether he accepts the promoter's evidence on where matters stand.

Robin Bull: I stand by the evidence that has been submitted.

The Convener: Thank you. Mr McKie, do you have any questions for Mr Bull on this issue?

Alastair McKie: I do not, convener.

The Convener: On the ECHR implications, I invite Mr Bull to indicate whether he accepts the promoter's evidence on where matters stand.

Robin Bull: I bow to Fiona Stephen's evidence. She believes that the promoter is compliant with the ECHR.

The Convener: Mr McKie, do you have any questions for Mr Bull on this issue?

Alastair McKie: I do not, convener.

The Convener: On noise and vibration, I invite Mr Bull to indicate whether he accepts the promoter's evidence on where matters stand.

Robin Bull: I believe that noise and vibration could be dealt with by constructing bunkers and concrete barriers, although that does not help my case. I accept the promoter's evidence on noise and vibration.

The Convener: Mr McKie, do you have any questions for Mr Bull on this issue?

Alastair McKie: I do not, convener.

The Convener: Mr Bull, would you like to make any further comments in relation to the questions that you have been asked about various issues?

Robin Bull: Thank you, convener, but I am drained and exhausted.

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

Alastair McKie: I believe that the objector's primary objectives are for his garden and house to be bought out in their entirety or, alternatively, to have the railway aligned away from his property, as we have seen on the plans. I am pleased to report that on 10 February the promoter wrote to the objector, through his solicitors, confirming its intention to purchase his property in its entirety, should the bill be passed, and indicating that the property may qualify for the advance purchase scheme, about which we will hear more from the Executive when it gives evidence. I accept that the promoter's response was late and that it has been criticised by the committee as a result. That criticism will be taken on board seriously.

The alternative alignment is shown on plan 17. I submit that it would bring the rail line considerably closer to the community of Heriot. The promoter believes that, had it published such a proposal, that would have been viewed very negatively by the community of Heriot. Significant costs are associated with the realignment. Mr McCracken said that those costs could be in the order of £1

million and that it would cost £350,000 to build a bridge.

I invite the committee to accept Fiona Stephen's evidence that the promoter is ECHR compliant and Steve Mitchell's evidence that, if the property is not acquired, it could be designed to meet the promoter's noise and vibration policy.

The Convener: Mr Bull, I know that you have said that you are exhausted, but I can offer you a maximum of five minutes in which to make a closing statement. You may comment as you wish.

Robin Bull: Thank you, convener. I will take much less than five minutes—I have nothing prepared.

My home has now been subject to formal blight for over eight years. That blight commenced with the introduction of the council's structure plan, reserving long disused routes for public works. The duration of that blight is unacceptable, and loss can be clearly demonstrated. I am pleased that the promoter has come up with a purchase-as-a-whole scheme, and I seek a time-bound resolution of the proposal free from any assumptions or dependencies such that an agreement can be reached, preferably before the bill is debated for the final time and is sent for royal assent.

After eight years' blight, I would like the offer of purchase to be independent of whether the bill passes and is enacted—albeit Scottish Borders Council might still walk away—or whether it falls. I can envisage a scenario in which the bill gets royal assent but, through cost escalation—I do not believe that anyone believes that the scheme will cost £150 million—the start of the project experiences a delay. The railway is a political railway, and it will go ahead. The Parliament has voted for a railway to be built, so it will be built some time in the future. I refuse to be under blight for any longer. I need the blight removed now, irrespective of what happens with the bill. I look to the committee to help me resolve the issue in a time-bound manner.

The Convener: As you know from when we visited you in January, the committee has every sympathy for the situation that you are in, and indeed for the situation that you have been in for many years. The committee shares your concern that it has taken a long time for you to reach a situation where you have some sort of offer from Scottish Borders Council. Those are matters that the committee will no doubt reflect upon when we come to produce our report. Thank you, Mr Bull, for attending and for giving us your evidence.

15:13

Meeting suspended.

15:24

On resuming—

The Convener: I welcome everybody back. We come now to the objection from Andrew and Dawn Smith—group 38—who have chosen to rest on their written evidence. The witnesses at the table are Alison Gorlov, Andrew McCracken and Bill Sandland.

Mr McKie, will you invite your witnesses to give a brief outline of how matters stand on loss of amenity, and will you then question Mrs Gorlov and Mr McCracken?

Alastair McKie: Plan 16 shows the land that is relevant to this particular objection; it lies on the other side of the proposed railway from Mr Bull. Will you update the committee on the present situation with regard to Mr and Mrs Smith?

Bill Sandland: Mr and Mrs Smith live at 3 Heriot Way, which is very close to the proposed railway—in fact, their property is probably one of the closest to it. We do not propose to purchase any of the property; we propose simply to erect noise mitigation measures. The Smiths have said that they would like their property to be purchased but would like to stay in the area. We have passed to them advice from the planning people to the effect that any such application would be treated sympathetically and we have stated that in our written evidence.

Mr and Mrs Smith have also expressed concern that their access may be affected during construction of the line, but we have explained that their access will be maintained under the terms of the COCP. We have also assured them that gritting and winter maintenance will be maintained at their present level.

Margaret Smith: I want to ask about the new bridge, which has already been referred to by Mr Bull. The present at-grade crossing will be replaced by the bridge. How will you ensure Mr and Mrs Smith's privacy when a footbridge passes so close to their home?

Bill Sandland: We intend to provide a solid parapet so that they are not overlooked by people who are crossing the bridge.

Margaret Smith: Is it correct that Mr and Mrs Smith want their property to be purchased but that you have no plans to purchase it, even though they are very close to the railway line?

Bill Sandland: If a voluntary purchase scheme is approved, Mr and Mrs Smith would be considered for it.

The Convener: Mr McKie, will you invite Mr McCracken to outline briefly how matters stand with regard to safety, and will you then question him?

Alastair McKie: Mr McCracken, during the discussion on Mr Bull's objection, you gave evidence on rail safety at this location. Do you wish to rest on that evidence?

Andrew McCracken: Yes.

The Convener: On the impact on access and egress, the promoter's witnesses are Andrew McCracken and Bill Sandland. Mr McKie, will you invite your witnesses to outline briefly how matters stand on the issue, and will you then question them?

Alastair McKie: Mr Sandland has already given evidence on how the COCP will ensure access to the property at all times. Committee members may wish to ask questions.

Mr Brocklebank: Mr Sandland, you said that access would be maintained, but what action have you taken to explain clearly and simply to Mr and Mrs Smith the level of access to their property that they will have? For example, have you provided understandable drawings?

Andrew McCracken: I will answer that question. The Smiths' concern was over permanent access to the front of their property. Along with some colleagues, I met the Smiths two or three weeks ago and we talked through the plans. We have confirmed that vehicular access at the front of their property will be retained. I believe that we have confirmed that in writing to them. They were fairly clear about our position—although everything was underpinned by the fact that they wanted to be bought out.

Mr Brocklebank: The Smiths are fully aware of what you propose, and have seen drawings and evidence of plans.

Andrew McCracken: Yes.

Mr Brocklebank: From what you tell us, the Smiths comply with your ideas.

Andrew McCracken: Yes.

15:30

The Convener: On the impact on property value, the promoter's witness is Alison Gorlov. Mr McKie, will you invite your witness to outline briefly where matters stand?

Alastair McKie: The promoter simply rests on its paper on compulsory purchase and compensation. If the committee has any questions, Mrs Gorlov will obviously attempt to answer them.

The Convener: Do members have any questions?

Members: No.

The Convener: The next witnesses will be Steve Mitchell and Fiona Stephen. Steve Mitchell

will give evidence on the noise and vibration impacts of the railway. Mr McKie, will you invite your witness to outline briefly how matters stand on the issue, and will you then question him?

Alastair McKie: Mr Mitchell, will you tell the committee what noise and vibration impacts are likely at this property? Will mitigation be required? I note that the objectors are raising issues to do with ground conditions.

Steve Mitchell: As we have heard, the property is one of the closest to the railway line. We have also heard from Mr Bull that the trains will be moving at top speed as they pass. The location therefore presents one of the greatest challenges as we seek to meet our noise targets, but I believe that we can meet those targets.

I will update the committee. I have visited the property and found that its floor levels are a little unusual. An extension to the rear has what one might call an attic space; I was not aware of that space when we previously described the dimensions of the noise barrier. The whole property is set about a metre in the air, for historical drainage reasons. There is also a first floor and the attic space to the rear, which means that the noise barrier will have to be a little higher than we previously said it would. As it goes past the main part of the building, the barrier will be about 1.7m above the rail and as it goes past the garden, it will be about 2.5m above the rail in order to provide the necessary protection. That is clearly not an elegant solution. It will create a high fence along the boundary of the garden and possibly a little beyond. Nonetheless, we have a technical means of providing mitigation.

I turn to vibration. As we have heard, this is a wet area. Mr Smith has concerns about the extension to the rear of his property: he is not too confident about the strength of the foundations that were put in. Nonetheless, I am sure that we can design the track to accommodate such things, as we can elsewhere. The extension is a relatively recent part of the building that would not have been in accordance with building regulations if it had not been built on a firm base. The remainder of the building has been there for some time, going back to when the railway operated previously.

Gordon Jackson: Does the ground condition at the property make a difference when you are installing noise barriers?

Steve Mitchell: The noise barrier may need a deeper foundation in order to make it stable.

Gordon Jackson: That does not affect your calculations on sound.

Steve Mitchell: No.

Gordon Jackson: What impact will the proposed noise barrier have on the outlook from the house? Will it be quite bad?

Steve Mitchell: It will be quite bad, yes. That is a fair comment.

Gordon Jackson: Will you elaborate on that?

Steve Mitchell: The barrier would be about 2.5m high on the boundary along the whole length from the house along the rear garden. The section of the barrier by the front garden could be a bit lower—about 1.7m. The barrier would create quite a narrow walkway, about 3m wide, between the property and its own boundary. It is certainly not an elegant solution, although there are planting options and softening options. The current fencing is a fairly casual wire fence that you can see through, so it would look quite different.

Gordon Jackson: It would not be ideal.

Steve Mitchell: Absolutely—it would not be ideal. It is not an elegant solution. From a noise mitigation point of view, it would provide a technical solution, but it would clearly be quite ugly.

Gordon Jackson: So, technically you can make the property quiet, but the solution would be ugly.

Steve Mitchell: Yes.

Gordon Jackson: A question has been written down for me. I do not understand the question; there is nothing unusual in that, so I will ask it anyway. There seems to have been some doubt about where the property is. Your written evidence states that receptor 31 identifies the property, but the environmental statement and further environmental information identify that property as being Mr Bull's. That obviously means more to you than it does to me.

Steve Mitchell: Yes. I apologise. I think that I said in my evidence that there may have been some confusion between the names of the two properties. I am glad that Mr Bull clarified the matter at the beginning of his remarks. In the environmental statement, the names of the properties have been interchanged, but if you check the distances that have been used we have assessed both buildings correctly—one is described as being 6m away from the line and the other is described as being about 9m away. The buildings were both assessed, but the names of the properties had been swapped round in the plans that we used. One of those errors perhaps followed through to the technical memorandum. I apologise for that.

Gordon Jackson: That is okay. The matter has now been clarified.

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

Alastair McKie: No.

The Convener: On the European convention on human rights, the promoter's witness is Fiona Stephen. Will Mr McKie invite his witness to give a brief outline of where matters stand? Ms Stephen will then be questioned.

Alastair McKie: The objector's concerns about the ECHR seem to relate to the adequacy of mitigation measures for noise and vibration and to measures for compensation. What is your position today with regard to ECHR compliance?

Fiona Stephen: On mitigation measures, that relates to the issue of proportionality in article 8 of the ECHR. My position is that mitigation measures, which Mr Mitchell has explained, are proposed, so I suggest that a balance has been struck between the objector and the overall scheme. Accordingly, the scheme is compliant as far as the objector is concerned.

Alastair McKie: Would that apply equally to compensation?

Fiona Stephen: I refer you to the paper on compensation, which has previously been before the committee.

The Convener: Do members have any questions?

Members: No.

The Convener: Some committee members have indicated to me that they wish to ask the promoter about consultation. The issue was raised in the objectors' first statement and has been of concern to some committee members. I ask Bill Sandland and Bruce Rutherford to be witnesses for the promoter on consultation in relation to group 38 and I invite Margaret Smith to kick off with some questions.

Margaret Smith: The objectors have raised concerns about how they were consulted—or, rather, how they were not consulted. Those concerns were made clear in lawyers' letters that were sent to the non-Executive bills unit in November 2003 and which have been on-going since then. Mr Sandland himself said that the property in question is one of the most affected on the route and the objectors' solicitors have said in correspondence that it lies almost as close to the line as it could without its sitting on the track bed itself.

We have been told that the objectors were not consulted or even approached and that they had to make contact with Turner and Townsend themselves. Although consultation and engagement might appear to have improved as time has gone on, the objectors are still concerned that there is an on-going

"significant failure to provide follow up information"

and that correspondence and so on is not being dealt with properly.

Given the admission that these people will be very much affected by this project, given Mr Mitchell's comments about the ugliness of the mitigation measures that will have to be put in place and given the responses to my question about the closeness of the overbridge to people's house, why on earth were Mr and Mrs Smith not told right from the start about how their property would be affected?

Bill Sandland: I first met Mr and Mrs Smith on 20 September 2005, when it became very clear that they wanted simply to sell up and move on. Although the parliamentary plans did not suggest that we would take any land from them, the first thing that I did was ask them about the matter and make doubly sure of that. I also asked whether we could build a noise barrier outwith the property or whether we had to build it within the property.

Most important, I updated Mr and Mrs Smith on the voluntary purchase scheme that was being considered. In my first letter to them, which was dated 22 December, I pointed out that that scheme was likely to be subsequent to a parliamentary debate on the bill's general principles. I then had to write back and tell them that the issue was not likely to be settled until the end of the year. Unfortunately, I am still unable to give them more information on the voluntary purchase scheme. To be honest, I can say nothing more on the matter.

Margaret Smith: If we leave aside the various legal definitions of blight and so on, surely common sense tells us that their home will be affected by the project. Is it your understanding that the objectors were not approached and told about that and that they themselves had to make the approach after learning about what was going to happen in a newspaper article?

Bill Sandland: Are you referring to the whole railway scheme?

Margaret Smith: Yes.

Bill Sandland: I am sorry—I cannot answer that.

15:45

Bruce Rutherford: I am surprised that the objectors were not involved—or, at least, have not said that they were involved—in some of the early community meetings that were held in Heriot and Stow. After all, as we have told the committee, we held roadshows in communities up and down the locality. Last night, I wrote a note on Falahill. That community and Heriot might well have been consulted at about the same time; however, one of the early meetings took place in 2002. It is clear

that local meetings were going on in and around the area at that time, which was quite some time before we submitted plans to Parliament.

We wrote to various objectors over a period of time, albeit that the plans had been submitted by that stage. When we have written to objectors, we have always invited them to get in touch with us and to get back to us should they wish to convene a particular meeting. Not only have we been proactive in trying to get the word out to people through local community meetings, but we have also put out reminders to the objectors to tell them that if they had any queries or points of detail that they wished to discuss with us, they should raise them as early as possible.

Margaret Smith: I want to put on record what we learned from some of the documents. For example, a lawyer's letter from November 2003 states:

"Our clients (whose house is less than 3 metres from the railway line) have not been consulted, except by newspaper, like everyone else. They themselves made contact with Turner and Townsend ... who took advantage of their hospitality, and by whom they were subsequently and consistently ignored."

That letter goes on in a similar vein. I accept your answers, gentlemen, but this seems to be another example of where, with a little bit of common sense, it could have been seen that the home in question was going to be very much affected by the scheme. Not everybody keeps their ear to the ground when it comes to meetings and so on, so I am a bit surprised that Mr and Mrs Smith were not contacted directly and told of the impact that the plans were going to have on their home. However, I hear what you have said in your response.

Bruce Rutherford: Mr Sandland has given me a copy of the correspondence, at least that which we have picked up in recent years. There was a letter from the Smiths on 6 November 2003. We replied to that—or a corresponding letter went out to them—on 24 November 2003. A standard response letter—one of the letters offering encouragement to get in touch with us—went out on 1 August 2005. It seems that there might well have been a gap and that we should perhaps have been knocking on the Smiths' door a little bit harder.

We had on-going discussions with quite a few residents in the area. We received the objection, and we knew that the Smiths were objecting to the scheme, but we felt that we had been proactive in the earlier days in encouraging them to come to speak to us—we even reassured them with further letters encouraging them to come to speak to us dated 22 September 2005, 30 September 2005, 16 November 2005 and 18 November 2005.

There has been a huge amount of correspondence to and from the objectors. I am

quite surprised that they felt that they could not contact us and that they did not know enough about the scheme in the early days—and that they are actually saying that.

The Convener: Mr McKie, do you have any further questions for the witness on consultation?

Alastair McKie: I do not.

The Convener: You have a maximum of five minutes in which to make a closing statement.

Alastair McKie: The promoter rests on its existing written and verbal evidence.

The Convener: That concludes oral evidence on group 38.

Group 39 relates to the objections from Peter Caunt and Heriot community council. I welcome the group's representatives to the meeting. I understand that Mr Otton will ask questions on behalf of the group.

The witnesses for the promoter on access and loss of amenity are Bill Sandland, Ian Forbes, Neil MacKay, Andrew McCracken and Alison Gorlov.

IAN FORBES *took the oath.*

NEIL MACKAY *made a solemn affirmation.*

The Convener: Mr McKie, before you ask questions, please invite one of the witnesses briefly to outline how matters stand on access and loss of amenity.

Alastair McKie: Mr Sandland, do you have a copy of plan 18, which will be an important reference point for our discussions?

Bill Sandland: I have a copy of plan 18.

Alastair McKie: I will raise two issues. First, what is the promoter's policy on maintenance or closure of the level-crossings that existed when the railway used to operate?

Bill Sandland: The strategic policy is to close level-crossings because they are deemed to be unsafe by various experts, not least by HMRI. In locations where there is clear evidence of demand, new bridges would be provided.

Alastair McKie: Mr McCracken, please take us through plan 18 from left to right and describe which crossings will be retained and the replacements that will be provided if crossings are to be replaced.

Andrew McCracken: Bridge 46 at Shoestanes is an existing bridge crossing, which we will retain by improving the deck of the structure. The former level-crossing at Heriot will be replaced by a footbridge crossing point on the same site.

Alastair McKie: Why cannot vehicular access be retained at that site?

Andrew McCracken: A level-crossing could be reinstated, but from my extensive experience of working with HMRI as a railway consultant I know that HMRI has not endorsed or supported level-crossings in other schemes and it expressed that opinion at two meetings that I attended at which we discussed proposals for the Waverley railway. HMRI clarified its view when it expressed concern about level-crossings in its objection to the Stirling-Alloa-Kinross Railway and Linked Improvements Bill. I will not read out the whole objection, but for the benefit of the committee I will read one passage. HMRI said:

"As an example, the permitting of roads and railways to cross on the level is an area of significant risk. HMRI's policy is to oppose the creation of any new crossing."

Alastair McKie: Why cannot the former crossing at Heriot be replaced by a road bridge rather than a footbridge?

Andrew McCracken: That is because there is not enough room for the height difference that is needed for the road to climb over the railway and descend to ground level before reaching the A7.

Alastair McKie: Please tell us about the new vehicular access that is marked on plan 18.

Andrew McCracken: A new road will be created to connect the A7 to Sandyknowe and there will be a brand new crossing. Existing bridge 50 is at Hangingshaw and the promoter's intention is to provide a new bridge on the existing alignment. The bill contains proposals to close the roads at the former level-crossings at Stagebank, where there is one adjacent property, and Haltree.

Alastair McKie: Are any bus stops or other facilities close to the proposed footbridge at Heriot level-crossing?

Andrew McCracken: Yes. There is currently a bus lay-by off the A7 as one travels in a northerly direction. It is intended that the footbridge should be provided to retain a modal link to the bus service for the Heriot community.

Alastair McKie: Is the post office in the location of the new bridge that will be provided at Hangingshaw?

Andrew McCracken: Yes. The road in question links to the A7. The post office is at the bottom of that road, on the opposite side of the A7.

Alastair McKie: Haltree level-crossing is of particular concern to the objectors from Heriot community council. Are you aware of any facilities that are to be found there?

Andrew McCracken: No.

Alastair McKie: Mr Sandland, will you describe to the committee the consultation that you have had with the community and the dialogue that has

taken place? Has there been an exchange of letters? Have there been meetings?

Bill Sandland: My reply to Felix Otton and Peter Caunt is dated 2 September 2005. I met those gentlemen on 29 August 2005 at their homes. It became clear that they were concerned about the closure of Shoestanes bridge, which is the most northerly of the crossings to be closed. They were also concerned about the closure of Stagebank and Haltree level-crossings. I gave some consideration to those issues and was able to confirm to them in a letter that Shoestanes bridge will remain open. That will facilitate the informal access that the residents of Nettleingflat and Falahill have to Heriot school. They currently walk along the railway track, and they will be able to continue using Shoestanes bridge.

Alastair McKie: What is the date of the letter that you wrote following your meeting of 29 August 2005 with Felix Otton and Peter Caunt?

Bill Sandland: The letter was sent on 2 September 2005. In it we required evidence of usage. It was pointed out that that would be of significant assistance to the promoter in deciding how best to address the objectors' concerns.

Alastair McKie: Are you referring to usage of Stagebank and Haltree level-crossings?

Bill Sandland: We asked a general question that related to all three of the closures about which the objectors were concerned. We wanted them to provide evidence of how the crossings are currently used. I can read out the statement, if it is of interest to you.

Alastair McKie: If it is short, you may do so.

Bill Sandland: On 2 September 2005, I wrote:

"It would be appreciated if you could provide any evidence to support your view that the aforementioned Crossings should be retained, by that I mean evidence of use of the present tracks or other such substantiation of their continued need. This could then be used in the evaluation of options when accommodation works are discussed with the relevant affected farmers."

Alastair McKie: Did you receive a response to the letter?

Bill Sandland: We did. However, it did not contain much evidence of use of the crossings. In a letter dated 25 November 2005, the objectors wrote that they were grateful for our commitment to retain Shoestanes bridge. However, they did not provide any evidence at that stage.

Alastair McKie: Your position is that the promoter has been waiting to receive evidence of usage.

Bill Sandland: Yes. In the nicest possible way, we asked for evidence of usage.

Alastair McKie: Did you receive a reply on 30 January this year?

Bill Sandland: Yes, we received a letter on 30 January, with a table that reported the results of a survey carried out in Heriot.

16:00

Alastair McKie: Have you taken any action regarding that table?

Bill Sandland: No, I just received it. I have looked at it and I read it last night. With all due respect, it seems to present an aspiration. As I understand it, the question that was asked was whether someone would use or does use a crossing. I have not seen the petition yet and it would be useful to see it. Nevertheless, it seems that the question that was asked was whether people would use a crossing if it was there. There may also have been a question about whether people use the current crossing.

Alastair McKie: So your position, representing the promoter, is that you have yet to see credible information about usage.

Bill Sandland: Yes. In all honesty, the only time that I have seen any of the crossings used was when the Post Office van used the Haltree access to deliver mail—vehicular access was given. The postman was asked whether he would be able to make alternative arrangements if that access was not there and he seemed to indicate that that would not be a problem.

Alastair McKie: Okay. I will put a question to Mr Forbes. Can you confirm what Scottish Borders Council's policy is regarding school transport and distances? If there is a change in those arrangements and an unsafe access on foot, what are the council's policies in that regard for primary schoolchildren?

Ian Forbes (Scottish Borders Council): The council's policies are clear. Any primary school child who lives more than 2 miles away from their catchment school is entitled to free travel and any secondary school child who lives more than 3 miles away from their catchment high school is entitled to free travel, too. The exception is that if there is no safe walking route between the school and home, we provide transport. The route to school is assessed—independently of me—to see whether it is safe as a walking route.

Alastair McKie: If a road did not have a pavement, would that be an unsafe route?

Ian Forbes: I would not like to comment, to be honest, because I do not get involved in that process at all.

Alastair McKie: Thank you.

Mr MacKay, the two level-crossings under scrutiny are Stagebank and Haltree. Is Haltree a public right of way? If so, do you know where it goes?

Neil MacKay (Scottish Borders Council): That particular route is not classified at all, so it is not a right of way and the council does not promote it as such.

Alastair McKie: That concludes my questions, which were about explaining the issues to the committee as best we could.

The Convener: Thank you, Mr McKie. I have a question for the witnesses. What would be the cost of providing a footbridge at the Stagebank and Haltree crossings? Have you any estimates for how much that would cost?

Andrew McCracken: To provide a ramped footbridge would cost about £350,000. There are variables, such as ground conditions and topography, that would affect that figure, but as a rule of thumb, £350,000 would be a reasonable estimate.

The Convener: Is that for one footbridge or for both?

Andrew McCracken: One.

The Convener: So we are talking about £700,000 for both.

Andrew McCracken: Correct.

The Convener: I did not need my calculator for that one. Do you think that a bridge is required at Haltree Farm?

Bill Sandland: I will answer that. Given the cost that Mr McCracken indicated, the usage that we have seen and the necessary diversion if there is no crossing there, we would suggest that a bridge is not justified.

The Convener: Mr Otton, do you have any questions for these witnesses on access, loss of amenity or, indeed, consultation, which Mr McKie introduced?

Felix Otton: Yes, convener. However, I have a query on procedure. We were not aware of the full range of witnesses that the promoter is fielding today. Is that usual? We were consulted about only one witness being added to the team.

The Convener: The agenda has been out since last Wednesday and all the promoter's witnesses are listed on it.

Felix Otton: Okay, but the agenda was not sent to us. I do not have a problem; I just wanted to understand the procedure.

The Convener: The agenda is freely available on the parliamentary website.

Felix Otton: I will start by directing my questions to Mr Sandland.

When the plans for the railway project were drawn up, you would have made conscious

decisions about closing crossing options across the line. What evidence did you take into account on the use of these crossings before deciding that it was acceptable to close them?

Bill Sandland: As I stated earlier, the policy was to close level-crossings for the reasons outlined by Mr McCracken. An exception would be made for a crossing that was clearly necessitated by circumstances. It would be considered separately, costed and the alternatives evaluated. The decision was taken pretty early on in the design process. I suggest that that would have been in about 2003.

Felix Otton: Through our evidence we are attempting to demonstrate that these crossings are of value to us. I am surprised that you did not see it necessary to establish for yourself the extent to which these routes are important. Can you confirm whether that was part of your consideration?

Bill Sandland: I was not personally involved at that time. Perhaps Mr McCracken can add more.

Andrew McCracken: We would have approached this as a topographical and mapping exercise. We knew that there were obvious demands for crossings at, for example, Heriot, where there is a community and a bus stop adjacent to the A7. We provided a footbridge in the modal interchange with the bus station. Similarly, because we lost our access along Heriot Way, we put an alternative road at Sandyknowe.

When we came to Stagebank and Haltree, the questions were about where the population mass is and where the roads and the links go. Historically, there were many level-crossings on Victorian lines because people did not have cars then. At that stage, rightly or wrongly, there was no information to suggest or justify from the promoter's point of view that there had to be crossings at those locations.

Felix Otton: I understand that.

In December 2003—just after we lodged our complaint—we had a meeting with Mr Rosher to discuss these issues. Mr Rosher stated that, in his view, a tactical decision had been made to close as many crossings as was feasible and to flush out the degree to which people actually cared about them. That is an opinion that he expressed and I know you cannot speak to that.

Andrew McCracken: I would agree with that sentiment.

Felix Otton: That is useful to know. Essentially what we are saying is that you did not attempt to establish usage. You took a more strategic view on where population bases are.

Andrew McCracken: Personally, on the engineering side, I would not have done that. That was down to the consultation and Mr Rosher.

Felix Otton: I want to clarify with Mr Sandland that we understand that level-crossings are not an option. At no point in the discussion or in our objection have we suggested that the level-crossings be retained. We understand the safety issues involved.

Bill Sandland: The reason that we requested information from you on their usage was a genuine attempt to suss out whether you knew things that we were not aware of. I have never seen anyone using the crossings, but that does not mean that they are not used. It was an attempt to check on the reality of their use.

Felix Otton: We were very happy to be asked for that information. We have now done some work on the best basis that we could. It inevitably took some time because we are not specialists in community consultation and have other things to do with our time. We have tried to establish local interest and the usage of the routes. That was achieved through a questionnaire and we held a community demonstration.

The Convener: Mr Otton, will you just ask the witnesses questions please?

Felix Otton: Mr Sandland, do you agree that the figures that we sent you on 30 January show a significant level of interest in these routes?

Bill Sandland: They appear to indicate that 109 people—84 adults and 25 children, I think—have answered a questionnaire that I have not seen. Obviously, I would like to see the petition so that I could see how the figures were arrived at.

Felix Otton: I will be happy to show you the details of the returns and the question that was asked, which was quite simple. Basically, it asked: "Do you use these routes and by what means of transport?"

We have collected responses from 109 individuals who say that they use those crossings in one way or another. That is well over 25 per cent of the Heriot community. They were collected over a short period of time by quite an informal method—

The Convener: Mr Otton, you are not asking questions, you are explaining about your petition. If you have specific questions to ask Mr Sandland or the rest of the panel, could you do so now?

Felix Otton: Mr Sandland, if you do not think that that is an acceptable level of support, what would have been adequate?

Bill Sandland: We have given some thought to that. We cannot just say that if 500 people—to pick a figure from the top of my head—use the

crossing today, that justifies the building of a bridge. Clearly, the decision would depend on the cost of that bridge and how close to it the alternative lies. If, as in this case, there is another bridge that is not too far away, a decision to build a bridge will need a higher degree of justification than it would otherwise do.

We have concluded that the provision of bridges at Stagebank and Haltree, at the cost that has been indicated, is not justified by the evidence that we have at the moment.

Felix Otton: Could further evidence change your mind?

Bill Sandland: It would depend on what it is. You are suggesting that 100 people—or 25 per cent of the population—have said that they would use those crossings. How often do they use them? For what purpose do they use them? What alternative would be available to them? Those are the questions that immediately come to mind.

Felix Otton: We were happy that you decided to retain the Shoestanes bridge after discussion with us. On what basis was that decision made? Did you take usage into account in deciding to retain that one?

Bill Sandland: First, it is our policy to retain existing bridges. Secondly, because people in Falahill travel on foot to school in Heriot, it seemed appropriate to refurbish that bridge.

Felix Otton: Is cost the only reason why the promoter does not plan to keep the two crossings open?

Bill Sandland: To some extent, it is. If we could provide crossings for nothing, I cannot imagine any reason why we would not. At Haltree, the cost would arise not only from the bridge, but from the realignment of the road to accommodate it. My engineer would be able to advise you of the details of the extra cost, but I can say that the matter is not as simple as just constructing a T-junction. Cost is a hugely important consideration. We are dealing with public money.

The Convener: We are talking about the Stagebank and the Haltree level-crossings, which the objectors have confirmed that they do not want to retain in any case. If a crossing were to be kept there, it would have to be some form of footbridge.

Bill Sandland: A footbridge or a vehicle bridge.

The Convener: So nobody is arguing that two level-crossings should be retained.

Bill Sandland: That is correct.

Felix Otton: Your written evidence discusses the provision of a bridge at both locations and indicates that the cost would be at least £300,000 at each location. We have asked for a bit more

information about how you came up with those figures but have not had a response. Can you tell us whether those figures are based on a specific design for the particular sites? Why are the costs the same at both sites when the topography of the sites is quite different?

Andrew McCracken: In my response to the convener I stated that there were variables—ground conditions and topography—that would affect the cost. The cost of £300,000 to £350,000 would vary depending on topography and ground conditions.

Felix Otton: Do those costs reflect an appraisal of those locations?

Andrew McCracken: Not specifically, no.

Felix Otton: Is that a generic figure for a foot crossing?

16:15

Andrew McCracken: It is. The £350,000 figure covers the cost of a ramped footbridge crossing.

Felix Otton: Right. At one of the locations, the road is higher on the other side—

Andrew McCracken: It is at Haltree.

Felix Otton: Yes. It is arguable that a ramp would not be required at Haltree. Would that alter your estimate?

Andrew McCracken: Possibly.

Felix Otton: We spoke briefly to a local bridge-building company and experts on the council's staff about the cost of bridges. They expressed great surprise that your figure was so high and said that a bridge could be provided more cheaply; possibly for around £50,000 to £150,000. Whose advice did you use as the basis for your estimates?

Andrew McCracken: We have a database of rates that we use to price schemes. The figure is consistent with the cost of other footbridges that we have priced for the bill scheme.

Felix Otton: Do you have any comment on the view that the experts shared with us that it would be possible to build a footbridge more cheaply?

Andrew McCracken: If they can build a footbridge with a ramped access for £50,000, I would give them the job.

Felix Otton: You may have some bidders out there.

In our view, the true net cost of providing the bridge needs to take account of the fact that, if a crossing is not provided—particularly at Haltree—the farmer will lose access to part of his land. Do your calculations for the cost of the bridge take

account of any offsetting compensation costs or land-purchase payments that might need to be made?

Bill Sandland: I believe that they do not. However, in my reply to you, we said that the net cost of providing the bridge is a consideration for us. Clearly, if isolating a couple of farmer's fields led to a compensation cost to us of—let us say—£100,000 and, if the bridge also served to give access to the fields, the additional cost would be in the order of £250,000 or so. That has been taken into consideration.

Felix Otton: So, the broad estimate figure of £300,000 takes account of the offsetting costs of making compensation payments.

Bill Sandland: As I think Mr McCracken will confirm, the figure is for the cost of providing the bridge in isolation.

Andrew McCracken: That is correct.

Bill Sandland: In evaluating the situation, we would take cognisance of the fact that, in any case, some form of access would have to be provided for the farmer or compensation paid to him for loss of land or whatever. Clearly, it is appropriate for us to do that.

Felix Otton: I am just asking you to agree that the figure of £300,000 is not the true net cost of the bridge that would be designed for that location. As I have argued, it does not include the offset costs that you would have to pay to the farmer.

Bill Sandland: It would not be the net cost.

Felix Otton: Right. Is there any figure that you consider to be an acceptable net cost for a bridge at that location?

Bill Sandland: Without the usage figures, the question is difficult to answer. The first step in the analysis is to assess demand. As yet, I have not seen the evidence. I understand your petition, but without having seen either it or the usage results, it is difficult to know which cost to apply.

Felix Otton: We can provide the information; we are happy to do so. I will move on. I do not want to take up too much time on the issue.

Is the promoter aware that the farmer at Haltree did not enter a formal objection to the proposal on the understanding that a crossing would be provided at Haltree?

Bill Sandland: In our discussions with the farmer at Haltree on access, the point did not come over clearly.

Felix Otton: But the farmer has strongly made the point to us. He told us that, if he had realised that there would not be a crossing, he would have wished to object. In a discussion with a project

representative, he was promised a bridge. We cannot go further with that today, but the point is worthy of the committee's examination.

How do you propose to deal with the fact that the railway will sever Haltree Farm?

Bill Sandland: That continues to be discussed and considered at the moment. We have no definite proposals as yet.

Felix Otton: So you have not been able to put a cost on alternative options?

Bill Sandland: We have been able to put a maximum cost on the accommodation works for Haltree Farm.

Felix Otton: Can you share that with us?

Bill Sandland: Before I can divulge figures I would need to consult with colleagues.

Felix Otton: All right. Thank you.

I have a couple more questions on core paths. At the heart of our objection is the wish to retain access routes. Under the Land Reform (Scotland) Act 2003, the council is obliged to adopt a network of core paths by February 2008. Will you describe the council's plans for the adoption of its core path network and give the criteria that will be used to judge whether a path is included?

Neil MacKay: As you rightly point out, section 17 of the Land Reform (Scotland) Act 2003 places a duty on local authorities, including Scottish Borders Council, to adopt a system of core paths and to draw up a core path plan for their areas. The aim is to ensure that the public have reasonable access by February 2008. That should include access for disabled people, cyclists, pedestrians and horse riders.

However, core paths should be viewed in the wider context. The local authority should manage and promote them in such a way as to give access to the wider network of paths and tracks that local authorities do not manage and promote and to the wider countryside. The process by which a core path plan is adopted always involves a formal consultation process, which will stem from an informal consultation process. Scottish Borders Council is about to start the latter process. We will carry out participatory appraisals in the Heriot area, which should be completed by July. Therefore, we cannot currently identify any core paths in the Heriot area or elsewhere in the local authority area.

Felix Otton: Okay. We understand your decisions, but we think that the strength of feeling is such that the community in Heriot is likely to nominate the crossings as part of its preferred core paths when it is consulted as part of the process. Given the importance that we attach to such routes, does the council still plan to cut them with the railway?

Bill Sandland: We have no plans to change the proposals on the basis of the evidence that we currently have. That is where we are—I cannot say any more than that.

Felix Otton: I understand, but what would happen if the railway scheme went ahead, the community nominated the crossings as still being important parts of its preferred network, but the promoter closed the paths?

Bill Sandland: I think that I hinted in a letter to you that there may be a wish to do something at the location in question or at another location as a result of other council policies. There may be a wish to do something in that direction, but that would be extraneous to the railway proposals rather than part of them.

Felix Otton: Are you suggesting that crossings might be provided later and that their provision would be separate from the railway proposals?

Bill Sandland: I am simply saying that it may be appropriate for you to approach the matter in a different way and that the council may have other initiatives. Maintaining crossings at the locations is not part of the railway proposals.

Felix Otton: If the bill is passed in its current form, do you agree that it is likely that we would have little chance of campaigning successfully to have the routes reinstated?

Bill Sandland: It is likely that bridges will cost more once the railway becomes operational.

Felix Otton: Right.

Your evidence clearly states:

"Scottish Borders Council cannot ... be forced to ... designate core paths whose existence ... would be inconsistent with the promotion and safe ... operation of the proposed railway."

Is there a conflict of interest in the council? The council wishes or intends to pursue the railway proposals, but it has an existing duty to adopt a core path network within two years. I do not see why that wish and that duty should be in conflict, but do you?

Neil MacKay: It is worth pointing out that a section of the 2003 act—I cannot remember which—states that the act does not overrule any other functions of local authorities. Perhaps that includes the provisions of the Waverley Railway (Scotland) Bill.

Felix Otton: Do you agree that although the local authority wishes to pursue construction of the railway, that is not a current function of the local authority? By my amateur reading of the situation, it does not currently have to construct the railway, but it must adopt a core path network.

Neil MacKay: Although the local authority has a duty to adopt a core path plan, the adoption of such a plan depends on the resource implications at the time. You are perhaps suggesting that the routes in question should be core paths, but any candidates for core path status might not be adopted as core paths because of the resource implications.

Felix Otton: I understand that.

I have one final question. Last week, our local MSP wrote to us to say:

"Retaining footpaths and rights of ways is a very important aspect of ensuring the rail project does not remove amenity."

He added that he was very supportive of what we were doing at Heriot. How do you respond to that statement?

Bill Sandland: I will—

The Convener: I do not think that it is appropriate for Mr Sandland to be asked to comment on correspondence between an MSP and another person. That is a matter for the constituent and the MSP; it is not something that Mr Sandland should be asked to comment on.

Felix Otton: I accept that. I have no further questions.

The Convener: Mr McKie, do you have any further questions for the witnesses on amenity, access and consultation?

Alastair McKie: I do not.

The Convener: The same witnesses for the promoter will deal with questions on safety and social inclusion. I ask Mr McKie to invite one of his witnesses to give a brief outline of where matters stand on safety and social inclusion and then to question that witness.

Alastair McKie: I believe that most of the ground between the promoter and the objector has been covered in the previous lengthy exchanges. We simply rest on our written evidence; questions can be asked about that.

The Convener: Mr Otton, do you have any questions for the witnesses on safety and social inclusion?

Felix Otton: I have a small number. The promoter's written evidence implies that if, as is proposed, the present routes are closed and the crossings are lost, the pedestrian, cyclist and horse traffic that uses them should use roads instead. Some diversions are proposed and one of the roads that is mentioned is the A7, which is extremely busy and has a history of accidents on the relevant stretch. Can the promoter confirm whether it has consulted the police about its intention to divert pedestrians, cyclists and

children from off-road routes on to the A7? I do not know who wants to answer that question.

Andrew McCracken: I do not think that the police have been consulted on that, but I can confirm that we have gone through part 1 of the road safety audit that Mr Forshaw referred to earlier. Scottish Borders Council has gone through that audit process with the designer, has reviewed the plans and has accepted the proposals.

The Convener: In its written evidence, the promoter stated:

"Scottish Borders Council meet with the Police on a regular basis to discuss road safety matters and the Police have confirmed that they do not foresee any additional safety concerns arising from closure of the crossings and associated additional usage of the local roads."

Would you adhere to that statement?

Andrew McCracken: Yes, I think that we had better do so.

The Convener: It was in paragraph 16 of the promoter's response to group 39.

Mr Otton, do you have any further questions?

Felix Otton: I invite the witnesses to tell us explicitly what the police said in response to the promoter's proposal to move non-vehicular traffic on to the A7. It has been stated that such a discussion took place and we would be interested to hear what the police said.

Andrew McCracken: Mr Rutherford has been the main point of contact with the police on road safety, so he might have to answer your question.

The Convener: Come on down, Mr Rutherford. Paragraph 16 of the promoter's response to group 39 is clear to me and, I think, to the rest of the committee. It says that in the discussions that Scottish Borders Council has had with the police,

"the Police have confirmed that they do not foresee any additional safety concerns arising from closure of the crossings and associated additional usage of the local roads."

I do not know what sort of explicit comment Mr Otton seeks from Mr Rutherford, but I would have thought that that paragraph gives a clear indication that the police have been involved in discussions on the matter.

Felix Otton: I contacted the police and the person to whom I spoke—who may not have worked in the right part of the police—suggested that they had made general observations on the safety of the railway project as a whole, but were not aware that they had been explicitly consulted on the proposal that would put additional, non-motorised traffic on to the road. That is the point on which I am trying to extract confirmation.

16:30

Bruce Rutherford: There are two things to mention. First, the police are aware of the issue and are aware of horses going along verges to get access to a different crossing point. The police will be fully consulted at a later stage through the detailed road safety audits. Secondly, although we usually study horse accidents over a three-year period, we have gone back into our database and found 11 injury accidents involving horses in the past six years. The only such accident on the A7 during that period was at the Kingsknowe roundabout on the Selkirk leg of the route, about 18 miles away. In general, the A7 between Galashiels and Edinburgh does not have a history of horse accidents and if there is proper compliance with and adherence to design standards to ensure that horses are safe I do not envisage there being a problem in the future.

Felix Otton: Do you agree that a reason for the figure that you have just quoted could be that horses are currently managing to avoid the A7 by using the type of crossing that we are describing?

Bruce Rutherford: In the case of the accident at Selkirk, there were 20 or 30 horses stabled there that regularly used the side of the road to get access to the hills or to routes round about the town. A piece of paper blew in front of one of the horses, which reared up and ran in front of a vehicle. That was what caused it to go into the path of the traffic, causing the accident, but that is unusual.

Felix Otton: My question is, do you agree that the fact that in the Heriot area—I do not know about the Selkirk area—there are many options for horses not to use the main road could contribute to there being so few horse accidents?

Bruce Rutherford: The hills are endless and riders can go in various different directions from where the horses are stabled. It may be that there are no accidents on the road in the Heriot area because there is plenty of access to the hills round about.

Felix Otton: I am not sure where you are taking me with that answer, so I shall leave this line of questioning. On a different issue, if you close the crossing routes, will you be providing alternative safe pedestrian, cycle and horse routes alongside the A7, given that your only proposed and alternative routes involve using the A7 and given your earlier comment that it is clearly unsafe for such traffic to use the A7? Will you provide separate routes at the places where you are now obliging people to use the A7?

Bruce Rutherford: I cannot remember where I said that it was unsafe to use the A7. That must have been in earlier evidence, but I certainly have not said that the A7 is an unsafe route. At the

detailed design stage, we must consider how best to get the horses across the road, if it is proven that the horses need to get across the road. Part of our reason for asking for an indication of demand was to gauge how best to handle that in future. Mr Sandland is not alone in having passed the sites on many occasions and seen little activity of horses, people or bikes crossing the road. Before we provide resources such as cycle or horse tracks, we need to gauge whether there is a demand, and it is really over to you to do that.

Felix Otton: Well, we are certainly willing to do that and I have expressed our intention to do so, but I wanted to ask whether, in principle, you would consider the provision of safe routes alongside the A7 that did not involve horses, pedestrians and children travelling on the A7 itself.

Bruce Rutherford: If you come forward with a demand, I can guarantee that we will consider it.

Felix Otton: You are obviously unable to put a figure on what the demand would look like at this stage.

Bruce Rutherford: If you let us see your figures, we will consider them.

Felix Otton: Right. I shall move on to my last few questions. We talked briefly about public transport and Mr McCracken explained about access to the bus. Can you explain how residents at Haltree, where there are currently seven households, will access the A7 to catch the number 95 bus if you block that crossing?

Ian Forbes: By whatever alternative route they have got—that is my take on it. Perhaps it is best if Bill Sandland answers that question.

Bill Sandland: In simple terms, if you were at Haltree Farm and you wished to access the A7 by vehicle, you have the alternative of travelling 1,750m north or 2.5km south, to the Fountainhall access. Presumably, you would use either route, depending on whether your ultimate destination was to the north or the south. The diversion is not that great.

Felix Otton: In the past, children have travelled to school from Haltree, although there are none who do so at the moment. Will you confirm that individuals living at Haltree who wish to use public transport will not be able to do so without using some other form of transport first? They will have to make an additional journey before they can reach the bus.

Bill Sandland: Yes, I accept that.

Felix Otton: You have stated that one of the objectives of the railway is to reduce reliance on the car and to cut congestion. Will you explain how removing the ability directly to use public transport fits in with that?

Bruce Rutherford: I can pick up on that. We have evidence to suggest that about 770,000 vehicle trips will be removed from the A7 over the length of the Waverley corridor. That is a gain—it is a benefit that the railway will provide. However, we acknowledge that there will be a negative, which will be more localised. That is the one that Mr Otton is describing, in which one or two people will be more inconvenienced and might have to use a car or a different form of transport. However, through a reduction in the number of vehicle trips over the length of the corridor, the railway will, on balance, provide far greater benefits to the community as a whole.

Felix Otton: So you agree that Heriot is in a sense being asked to take the hit for that greater benefit through its loss of amenity and loss of options. As you have explained, in the greater scheme of things, greater numbers are gaining than are losing. Do you agree that Heriot is among the losers?

Bruce Rutherford: We are suggesting that you will lose one crossing out of four or five crossings.

Felix Otton: Will you explain which one that is?

Bruce Rutherford: We think that you are saying to us that you must keep the Haltree crossing.

Felix Otton: We are saying that we want both of the crossings to be retained.

Bruce Rutherford: Haltree and—?

Felix Otton: Stagebank. That was the basis of our objection.

Bill Sandland: In the length we are talking about—some 3km—there are currently two footway crossings and three vehicular crossings. The proposal would be to have two footway crossings and two vehicular crossings. That is my understanding.

The Convener: Mr Rutherford, would there be any additional bus services to meet the demand from the hamlets that are cut off from the A7? Would you consider that, as compensation?

Bruce Rutherford: I have got the bus transport officer next to me here—perhaps Mr Forbes can pick that one up.

Ian Forbes: We might be looking at different ways of providing bus services in future. We have committed in the long term to providing an on-going bus service along the A7 corridor for the communities that are not served by the railway. Whether that is a conventional bus service, come 2008-09—or whenever the railway opens—I do not know. We would consider demand for services and the resources that we have to provide services. However, technology and best practice are moving on; for such locations and for small levels of demand, initiatives such as demand-

responsive transport might be more appropriate. I would not like to be held down to any particular solution at the moment. We would have to consider the situation when the railway opened.

The Convener: Generally, though, given the scattered nature of some of the rural communities in the Borders, it is already on your agenda to consider transport in terms of responding to local need.

Ian Forbes: Yes.

The Convener: Thank you.

Bruce Rutherford: We have doubled the service on the X95 route, which is the main A7 bus route. That has been seen as a good lift for the local community.

Felix Otton: We welcome the increase in that service. I seek your agreement that that still does not overcome the fact that in some locations, such as Haltree, people will be unable to access the service without getting into another form of transport first.

Bruce Rutherford: We are looking forward to receiving the demand survey from you and we would welcome hearing specific numbers for those who currently use the bus services, how frequently they use them and what days they use them. Do they use cars? Do they use bikes?

Felix Otton: I would love to be able to provide all that information. You must recognise that that is quite a big piece of work that requires a bit of help. It is not something that the community can manage on its own.

Ian Forbes: To be fair, we have been monitoring the use of the service carefully. Its long-term success depends on growing patronage in the next four years, so we have been keeping close tabs on where people are travelling to and from.

Felix Otton: I have one more question, which flips back briefly to paths. Mr MacKay explained helpfully that the routes about which we are talking are not designated rights of way. I ask him to confirm that there are few designated rights of way in this part of the world and therefore that the fact that the routes are not rights of way does not tell us much.

Neil MacKay: The last page in the booklet of plans shows rights of way in and around the immediate vicinity of Haltree, Stagebank and Heriot. You can see that there are four designated rights of way on that plan, so it is the case that there is a network of paths with that designation.

Felix Otton: Thank you for that information.

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

Alastair McKie: I do not.

The Convener: I will allow a few moments' pause for the witnesses to change over. The witnesses to be seated at the table are Michael Dunn, Peter Caunt and Melanie Lawrie. *[Interruption.]* I understand that Michael Dunn is not here, but that we have Peter Caunt and Melanie Lawrie.

PETER CAUNT *took the oath.*

MELANIE LAWRIE *made a solemn affirmation.*

The Convener: We will suspend for a couple of minutes.

16:43

Meeting suspended.

16:44

On resuming—

The Convener: On access and loss of amenity, the witnesses for group 39 are Peter Caunt and Melanie Lawrie. I ask Mr Otton to invite one of his witnesses to give a brief outline of where matters stand on those issues and then to question his witnesses.

Felix Otton: I ask Peter Caunt to give us a brief outline of where we have got to on access and loss of amenity.

Peter Caunt: We welcome very much the promoter's agreement to keep the crossing at Shoestanes, which was originally planned to be closed. The essential point remains that we wish to keep the other two valued and well-used crossings. As suggested by the promoter, we have done work to try to quantify current usage, but it has been difficult in the timescale to get anything like a decision on the numbers involved.

Perhaps I should start at the point at which I was the original and solo objector and was asked by the Parliament to look at only what affected me, in line with the parliamentary process. It was only by combining with the community council that I took—as it did—a much wider interest in those particular crossings. They are community assets that affect people individually, but we have to ask how many people they affect. The community council was concerned that we should legitimise our case by learning for ourselves how many people use the crossings. A petition was put into the post office so that signatures could be collected, and a cavalcade was arranged as a demonstration, which drew huge local interest. The 30 or 25 per cent figure—whatever it was—shows that support among our community is large.

We have had further discussions with the promoter, but it is unwilling to provide the other

crossings because of cost, as members heard. We believe that the costings are not correct. Neither a cost-benefit analysis nor an offsetting-costs exercise has been done. We have the full support of Councillor Douglas Younger and Jeremy Purvis in fighting to keep the crossings open.

The Convener: Do you have any questions, Mr Otton?

Felix Otton: Yes. How many people did our survey show used the crossing at Haltree?

Peter Caunt: I should explain the survey that I compiled for the benefit of Bill Sandland.

The Convener: The committee asked for that information, but we got it only very recently. I am not minded to accept it as evidence because there has been no discussion of it. We made it clear to all parties that we would not accept evidence that had not been circulated previously.

Peter Caunt: It has been with the promoter for the past month.

The Convener: It came to the committee only on Friday night at 8.52.

Peter Caunt: It is part of our discussions with the promoter. We are not asking you to take it as evidence; in fact, it is only a snapshot in time as part of an on-going process of trying to find out information.

The Convener: If you are not asking us to accept it as evidence, why are you leading it as evidence?

Peter Caunt: It is evidence sought by the promoter that we have given to the promoter.

The Convener: Yes, but this committee is charged with looking at the bill. It was made very clear to all objectors and to the promoter that we would not accept late evidence or information. The survey arrived with us at 8.52 on Friday evening, and I am not minded to accept it. Will you move on, Mr Otton?

Felix Otton: Very well. Does that mean that you are not willing to take account of any of the information in the survey?

The Convener: No, I am not.

Felix Otton: Right, but you agree that we submitted it to the promoter as part of a discussion because the promoter asked us for the information.

The Convener: When the committee met you on a site visit, we asked whether you had carried out any work or surveys and, at that point, you had not done so.

Felix Otton: We were in the middle of that process.

The Convener: I am not inclined to accept your survey as evidence today because it has not been tested and the promoter has not had an opportunity to comment on it.

Felix Otton: I understand the position.

Who, apart from local residents, would be inconvenienced by the loss of the crossing at Haltree?

Peter Caunt: There is the post office, but its staff can, as the promoter said, divert. However, the crossing provides access for emergency services and a short cut for local car traffic. We also have specific evidence of people from outwith the area using it. Although we are reassured that there is a great deal of interest within the community, we also know of others, such as ramblers groups, who use the crossing.

Christine May: Will you show me the location of the post office? We were shown earlier on, but I have forgotten. Is it on the Sandyknowe junction?

Peter Caunt: It is at Hangingshaw.

There are lots of settlements on the west side of the valley and the main road is on the east side, so people find it beneficial to be able to go between the two sides.

Christine May: But the post office is readily accessible.

Peter Caunt: At Haltree, the crossing is used daily.

Christine May: At Hangingshaw, there will be a crossing that will allow access to the post office.

Peter Caunt: Both crossings are used, as a circuit.

Christine May: Will you confirm that there will be a crossing at Hangingshaw that will give access to the post office?

Peter Caunt: Yes, that is correct.

Michael Dunn apologises for not being here today. He is our expert on horses and I know from him that a great deal of horse riders, of a variety of types, use the crossing at Haltree. It is not only recreational riders; the local hunt also goes through from Lauderdale on occasion.

Felix Otton: Will you explain what route horses could take if the crossings were closed?

Peter Caunt: People from all sides of the horse world have expressed to me that riding on the A7 is not an option. It is extremely dangerous, as horses are freaked by sudden movements. Not only does the traffic travel fast but it is heavy, so riders would not get the opportunity to progress in calmer moments, which they do if they use the back road in the Gala water valley, which is much

more suitable for horses. However, without exception, riders would not take that route, as it would be cut off to them.

Felix Otton: Will you also clarify that the point about the post office, which Christine May asked you about, was not about public access to the post office but—

Peter Caunt: The post office van.

Felix Otton: It was about use of the crossings by the post office van so that it can make its delivery round. Is that correct?

Peter Caunt: Yes. It is a delivery-round issue.

Felix Otton: I have no further questions for my witnesses.

The Convener: Mr McKie, do you have any questions for the witnesses on access and loss of amenity?

Alastair McKie: I have a few.

Good afternoon, Mr Caunt. I visited the location on Saturday. I went down to have a look at the crossing at Shoestanes, and a sign is still up—screwed into a telegraph pole—that says that the Shoestanes crossing is to be closed. The sign directs people to go to the post office to sign a petition. I went to the post office and the petition was not there—it might have been taken away by then—but a poster is still up that says that the Shoestanes crossing is going to be closed, which seems to contradict the position that the promoter has informed you about over many months.

Peter Caunt: It is only in our meetings last autumn that it was suggested that the Shoestanes crossing would be kept. We felt that the best way to gauge usage was to promote interest in the crossings. Our case has always been that the crossings are assets even for those who do not use them—it is when something is gone that one realises that it was there. We felt that the Shoestanes crossing should be secure—that we should be able to retain it.

Alastair McKie: I am not criticising you for publicising what you believed to be the crossings concerned. However, you must have known in September last year that Shoestanes was to be retained, yet you have continued to publicise the fact that it is to be closed. I am asking you why you did not change your plan or map and let the community know.

Peter Caunt: By the time that we arranged the cavalcade, we knew that the promoter had committed in writing to the crossing remaining—initially, the fact that the promoter would be able to do that had not been put in writing. So, if you like, we said to ourselves that, having retained one crossing, if we redoubled our campaign, we would have a good chance of success with the others.

Alastair McKie: I am not asking you about your attitude to the current situation. As of Saturday of last week, you were still maintaining to the community that the crossing at Shoestanes was to be closed, when you must have known that the position is different and that the promoter is going to redeck the bridge.

Peter Caunt: You are saying that there is a sign there that we should have taken down or amended, and you are correct.

Alastair McKie: Do you agree with me on that?

Peter Caunt: I do.

Alastair McKie: Can we agree that because it is going to preserve the footbridge at Heriot and build the new vehicular access at Sandyknowe and the new bridge at Hangingshaw that connects to the post office, the promoter has considered the crossings that serve the community most effectively at the moment, rather than the slightly more remote ones towards Stagebank and Haltree?

Peter Caunt: In terms of prioritisation, I see your point. However, there are two vehicular crossings very close together and none at Haltree, which is on a stretch of railway line that will be a long barrier that prevents access from one side to the other.

Alastair McKie: Might we agree that the promoter's approach, which is to consider the priorities, is reasonable? For example, you would not want the promoter to disconnect Heriot from the A7 and give you a bridge at Haltree; that would provoke a strong reaction from the community council.

Peter Caunt: On balance, someone who looked at the problem with an open mind might have chosen Haltree as a vehicular crossing. The priorities are not obvious.

Alastair McKie: Might we agree that there are two bus stops where the A7 enters Heriot?

Peter Caunt: Yes.

Alastair McKie: They are on either side of the road.

Peter Caunt: One of those will be inaccessible to us.

Alastair McKie: There is also a post box there.

Peter Caunt: Yes.

Alastair McKie: So there are important services for the community there. Might we agree that, because of the proximity of the Heriot community, closing that crossing would have denied the community in Heriot the right to cross the rail line and take the bus?

Peter Caunt: Yes.

Alastair McKie: In terms of the type of access sought by the community at Haltree and Stagebank, you have talked a lot about equestrian access. Mr McCracken has given evidence that footbridges would cost about £350,000 each, depending on the topography. Would such a bridge serve for equestrian access?

Peter Caunt: You tell me—the promoter is the designer. The figure of £300,000 to £350,000 has been given and we are not clear whether that is for a vehicular bridge or a pedestrian bridge. I am not an expert, but I would have thought that a pedestrian bridge would not require a great deal more investment to become a bridge that is suitable for horses. Indeed, in all those cases, we are looking for bicycle bridges—bridges without steps.

Alastair McKie: The crossing at Haltree seems to be the one that is mentioned the most. Where does a person go once they have crossed the existing route if they do not go along the A7?

Peter Caunt: They go up the Gilston road. It is an important road junction, to which all the farms up the Gilston road have access. The promoter's evidence was that there are no facilities there, whereas there is in fact a bus stop. There is access to a bus stop from both the Gilston road side and the Haltree side.

Alastair McKie: The bus stop has been talked about in discussions about responsive buses. What facilities exist up there? Is it the new road to Gilston? Why would one want to access it?

17:00

Peter Caunt: It has been put to me that people who ride horses in the Borders go to various places, and they need to get access to those places. They might want to do a circuit within a certain amount of time—perhaps an afternoon ride, for example. If there are long, unpleasant diversions nearby, people will not go on such rides.

The valley is being split. People who live on one side of the valley or the other will be able to do things on their side, but they will not be able to cross over.

Alastair McKie: We are faced with a potential denial of choice for someone who is using a horse or a bicycle for recreational pursuits.

Peter Caunt: It is a matter of choice, and it is about the opportunity for the development of such recreational pursuits.

The Convener: Do members have any questions?

Gordon Jackson: I have one.

Mr Caunt, the convener has told you that the committee does not want your figures, but one of the issues that was raised was that people who live in the Haltree Farm area would not be able to get to the bus. How many people regularly go from Haltree Farm to catch the bus? How many of those people do not have access to motor cars?

Peter Caunt: I have met one. Collecting evidence has been very difficult for us because we do not have the time and resources to do that. We have relied on people coming forward by visiting the post office.

Gordon Jackson: You have met one person who—

Peter Caunt: I know of one person who catches a bus, who crosses the line.

Gordon Jackson: Who does not have access—

Peter Caunt: He uses a bicycle, chains it to a tree and catches a bus.

Gordon Jackson: So he would need to cycle.

Peter Caunt: Douglas Helm, who is the son of the farmer at Haltree and who is also a farmer, said that six or seven children of his generation went on the bus, but currently no children do so. It is cyclical. We are saying that we do not want the asset to be taken away from us as that would mean that it could never be used in the future.

Gordon Jackson: Someone who currently takes a bike over the crossing would need to cycle along to the next crossing. However, you do not know of anyone without a car who walks over the crossing for the bus, but who in the future will not be able to do so.

Peter Caunt: I do not have evidence of such a person.

The Convener: Does Mr Otton have any further questions for the witnesses on the issue?

Felix Otton: I have one question. Could Peter Caunt confirm that one of the merits of the Haltree crossing is not so much that there are a lot of facilities at the Gilston road or, indeed, at either side of the crossing, but that it is a link in local networks that people move around on?

Peter Caunt: Absolutely. The fact that those routes come to either side of the crossing means that it is part of an important core path.

The Convener: We now move to the issue of safety and social inclusion. The witnesses for group 39 are the same as before.

Would Mr Otton like to invite one of his witnesses to give a brief outline of where matters stand on safety and social inclusion? He can then question his witnesses.

Felix Otton: I ask Melanie Lawrie to give a very brief statement of where we are on progressing the safety and social inclusion issue.

Melanie Lawrie: I do not have a great deal more to say about the current situation, as Peter Caunt has already covered most of the issues. We are particularly concerned by the suggestion that the A7 is safe for pedestrians and cyclists to use.

The Convener: Does Mr Otton have further questions for his witnesses?

Felix Otton: Yes.

The promoter suggests that the people who currently use the crossings should consider alternative diversion routes, which it has laid out. Those all involve travel on the A7, which we think is unsafe. Would you allow your children or your family to take a diversion of that type?

Melanie Lawrie: No. I certainly would not allow my children to walk along the A7. In fact, I avoid walking along it myself. It is a very dangerous road—many accidents happen on it. It is not pleasant and it is irresponsible to expect pedestrians or horse riders to use the road when we currently have the facility to get across the valley and on to the back roads.

Felix Otton: What is your view of the length of the diversions that the promoter suggests we might be able to take? The promoter states that the lengths of the diversions are 0.6km at Stagebank and 1.7 km at Haltree.

Melanie Lawrie: The extra distances for the diversions will mean significantly longer journeys, especially for children if they are walking. That is likely to discourage people from making use of the countryside. They are less likely to go out for a walk, especially when part of the walk would be on the A7. Also, the distances of 0.6km at Stagebank and 1.7km at Haltree are only half of the diversion. If someone wanted to cross from one side to the other at Haltree to go up the Gilston road, they would have to travel up the back road to the post office at Hangingshaw—a distance of 1.7km—and back down the A7 to get to the Gilston road, which is another 1.7km. It is actually an extension of 3.4km.

Felix Otton: Can you explain briefly why the crossings are important to parents of children in Heriot, given that, as Mr Jackson pointed out, most people in our community have cars?

Melanie Lawrie: Some people in our community rely on the bus service, but many people with children have a car, because that is a necessity. I have young children. There is a thriving community of children in Heriot—we have more than 100 children and young people. We like our children to be able to move about safely within the community. As they get older, they gain

independence, which helps their self-esteem. Children in a more urban area are able to travel independently between one another's houses, without going on main roads. In future, it will become more difficult to get children to move around on their own, and the community will lose that amenity.

Felix Otton: What impact would the loss of the routes have on the community as a whole?

Melanie Lawrie: We are a geographically dispersed community. Part of Heriot community exists up the Gilston road, which comes down to the Haltree crossing. There are three hamlets up that road—I live in the hamlet of Nettleingflat. Although we are very dispersed, we are an active and caring community. If the railway is brought down the valley and people in the south of the community are unable to cross it, that will create a symbolic division in the community that will impinge on our ability to connect with one another. We do not want to lose that facility.

Christine May: How many households are there in the community council area?

Melanie Lawrie: There are 270 people on the electoral roll. I do not know how many households that equates to.

Christine May: The ratio of individuals to households is approximately 2:1 or 1.5:1.

Melanie Lawrie: The community is very spread out. There are about 40 households—

Christine May: Of those households—let us say that there are 150—how many have contacted you directly with concerns?

Melanie Lawrie: I have not been contacted directly.

Christine May: I put the same question to Mr Caunt.

Peter Caunt: It is the 80 adults—

Christine May: Have they contacted you directly to express their concern?

Peter Caunt: Through the petition.

Christine May: So they have expressed concern only as a result of your asking them.

Peter Caunt: At one point, we were asked whether we had any evidence—

Christine May: I am just trying to find out whether people have contacted you proactively.

Peter Caunt: At a community council meeting, we put the question, and everyone there—

Christine May: How many was that?

Peter Caunt: There were about 20 people at the meeting.

Christine May: On how many doors have you knocked to gauge the level of support for your position?

Peter Caunt: None. We have not done a door-to-door survey.

Christine May: In any of the communities?

Peter Caunt: No.

The Convener: Mr Otton, do you have any further questions for the witnesses?

Felix Otton: I have one last question for Melanie Lawrie. Will you explain how the railway and the loss of crossings might affect schoolchildren who currently catch the bus from Heriot to Galashiels?

Melanie Lawrie: Until recently, children who travelled to Galashiels on the service bus had to walk from the village across the A7 to catch the bus on the far side of the road. Parents were concerned about safety and did not want their children to go alone to catch the southbound school bus. There was a hard-fought campaign, and the parents of the children and the community council, with the support of our councillor, were successful in persuading the service bus to turn into the village to pick up the children in safety, so that they could be taken to Galashiels without having to cross the A7.

When the road is blocked off at the end of Heriot Way and vehicular access is stopped, the bus will no longer be able to turn into the village. I recognise that a footbridge will be provided over the railway. However, we were previously led to believe that the footbridge would be extended to cross over the A7 as well, so that our previous campaign to fight for the school bus to come into the village would not be negated by the railway. We realise that the plans show that the footbridge will not be extended. On that basis, we feel that we have taken a big step backwards.

Gordon Jackson: Presumably, as good activists, you could at least try, with your community councillors, to persuade the local authority to take the bus at school times on to the new road that will be built, because children's safety is involved. It would not be a huge distance for the bus to cross at Sandyknowe. It would require only an extra two or three minutes. One would have thought, using common sense, that it would be possible to get the buses to do that.

Melanie Lawrie: We will certainly undertake to persuade the authority of that. However, it was very difficult just to get the buses to turn the short distance into the village, as they do at the moment. We are worried that we might not be able to persuade them to make the bigger detour.

Gordon Jackson: I appreciate that. However, you take my point that that would be a reasonable solution.

Melanie Lawrie: Absolutely.

Gordon Jackson: It would take the bus an extra four minutes or something.

Peter Caunt: To return to Christine May's question, we sent out a note about our demonstration—the cavalcade—to every house in the community. That ensured that the event was very well attended.

The Convener: Mr McKie, do you have any questions for the witnesses on safety and social inclusion?

Alastair McKie: I do not.

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

Felix Otton: No, I do not.

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

Alastair McKie: The promoter takes very seriously the issue of social inclusion and the impact of severance that the railway might have. The promoter's approach has been to close all level-crossings, as they represent a potentially significant risk to safety. Indeed, as Mr McCracken has indicated, new level-crossings are contrary to the policy of HMRI.

The promoter's approach to the community at Heriot has been to seek to retain crossings where evidence of usage and patronage is present. Specifically, and as we can see from plan 18, that approach has been to redeck Shoestanes bridge, which, in my submission, will represent a considerable benefit to the community, as, I am advised, it is not currently available for use. Heriot level-crossing will be replaced by a footbridge. That will be necessary because it is not possible to have a vehicular road bridge, due to the distance from the road.

On the discussion between Mr Jackson and Mrs Lawrie, the promoter will of course take on board the need for any diversion of the school bus that is reasonable. The promoter will investigate that and will report back to the committee on the issue.

A new vehicular access will be provided at Sandyknowe, which will be compliant with modern road safety standards. A new bridge will be provided at Hangingshaw. That is important because it is the bridge that links the community with a small shop—I was there on Saturday—and a post office.

The promoter's approach has been to prioritise—against the cost to the public purse of

footbridges, which may well be of the order of £350,000—what it believes to be the most important elements to retain for the community. The difficulty that the promoter is in is as much a matter for the community as it is for the promoter. The community has not come forward with what the promoter would consider to be credible evidence of usage, which would justify a cost of £350,000 for each crossing.

The Convener: Thank you, Mr McKie.

Mr Otton, you have a maximum of five minutes in which to make a closing statement.

17:15

Felix Otton: I have been grateful for the chance to expand on our views and positions and to explain our concerns. Although I think that we have made this point very clearly, I stress again that we are not opposed to and are not campaigning against any aspect of the railway; we are simply trying to preserve and protect the amenities that we currently enjoy. I hope that the committee agrees that we have taken a positive approach in our discussions with the promoter. Although the work clearly does not yet meet the promoter's required standards, we have invested much effort in establishing evidence of usage, which we sent to the promoter nearly a month ago. We are happy to continue that work, but I do not want people to think that we have not responded to the promoter's request. We acknowledge its importance to the promoter.

Our key objective is to protect our community's choices and options and the various aspects that make it what it is at the moment. We have tried to carry out some of the work that the promoter has requested to show how important the routes are to us and have been surprised by the amount of support that we have received through the demonstration and the questionnaire. Indeed, we are still receiving unsolicited expressions of support. Only the other day, we received a letter from a ramblers group, saying that it was keen to keep open one of the routes. As a result, we have demonstrated to ourselves—and, I hope, to the committee—that there is a significant level of interest in the routes.

We are disappointed that the promoter does not appear to have thought seriously about how the closure of the crossings will impact on the community or about the range of options for keeping them open safely. We have heard a lot about bridges, but in some locations it might be possible to establish a safe crossing not on the level but under the line itself.

We are also concerned that the promoter has significantly understated the true length of diversions. Indeed, the diversions that will

substitute for the crossings are twice as long as the distances stated in the promoter's evidence.

We realise that the promoter is concerned about the cost of retaining the crossings; however, the evidence that we have collected suggests that the promoter has not estimated the costs accurately. Indeed, my exchange with Mr McCracken shows that the promoter has put forward only indicative figures, not fully costed options. Moreover, we are not convinced that the promoter has taken into account all the offset costs of losing the crossings that ought to be included in the equation. For example, there is no mention of land purchase and compensation payments, the costs of using additional fuel or the loss of convenience and other costs that the community will have to bear.

The crossing routes are vital in ensuring that Heriot remains a well-connected place where we can benefit from the quality of life in a rural community and where we can choose not to use the car to go everywhere. It would be ironic if the coming of the railway in Heriot led to an increase in car usage and the loss of the chance to use other forms of transport. In that respect, we are particularly disappointed that the council has not yet recognised the importance of such routes to the forthcoming core path network.

I do not have anything more to add, apart from to thank the committee for its patience with us. We hope that members feel that we have explained our case clearly.

The Convener: I thank Mr Otton, Ms Lawrie and Mr Caunt for giving evidence and engaging with the committee on the bill.

Our final group is group 41, on behalf of which Graham Allison will ask questions of Alison Gorlov, Fiona Stephen and Andrew McCracken. However, at this point, I call a very short suspension.

17:18

Meeting suspended.

17:22

On resuming—

The Convener: Group 41 relates to the objection from Mr and Mrs Allison. I welcome Graham Allison, who will ask questions. Mr McKie, will you invite one of your witnesses to give a brief outline of where matters stand on the acquisition of land and property and then question Mrs Gorlov, Ms Stephen and Mr McCracken?

Mr McKie: I move straight to Mrs Gorlov. Do you have plan 19 before you?

Alison Gorlov: Yes.

Mr McKie: As you can see, Stagebank Crossing Cottage is within the limits of deviation. Do you agree that, if the bill is enacted, the promoter will be obliged to acquire the property?

Alison Gorlov: Yes.

Mr McKie: Do you agree that, because the property is within the limits of deviation, it will fall within the advance purchase scheme if that scheme is promoted by the Scottish Executive?

Alison Gorlov: That is correct.

Mr McKie: Mr McCracken, will you confirm your understanding of the consultation that took place with the owners of the property?

Andrew McCracken: I believe that the consultation was covered by Mr Rosher, but I will comment on how it affected the engineering. At the earliest stages, we looked to reinstate the railway using the former railway corridor, which is shown in red on plan 19. As a result of feedback from the consultation, we considered moving the alignment further from the property to the alignment that is shown in blue on the plan, which I think the objector calls option B in his written evidence. We considered that alternative, but because of the capital costs that were involved, particularly for earthworks on the hillside, it was deemed not to be a viable alternative and the promoter stuck with the former corridor alignment, which is shown in red.

Alastair McKie: Alternative alignment option A is marked in green on plan 19. Why was that option excluded from the promoter's consideration?

Andrew McCracken: We did not initially consider option A because it was not a good option in an engineering context. However, because Mr Allison suggested option A as an alternative, we undertook a quick review of it. In summary, option A is a fairly lengthy off-line solution that would have to be built on an earthworks embankment because it is on the flood plain. It would require three new bridges over the Gala water, which are marked on plan 19. In addition, a new road-over-rail bridge crossing would be needed if we wanted to retain the existing vehicular access to the A7. The new crossing is shown in the middle of the plan.

Alastair McKie: Miss Stephen has joined us because I think that a sentence in Mr Allison's most recent response to the committee concerned human rights. What is the position on ECHR compliance in relation to Mr Allison's objection?

Fiona Stephen: I believe that the scheme is ECHR compliant in that regard. Compensation will be offered to the objector in relation to the compulsory purchase of his property.

Alastair McKie: That concludes my questions.

The Convener: Mr Allison, do you have questions for the witnesses on acquisition of land and property, or on ECHR compliance?

Graham Allison: Yes, but I do not know whether the witnesses are capable of answering my questions. I accept that compulsory purchase would be necessary—there is no question about that. Unless there is significant deviation in the alignment, the track will run through my kitchen, so why has it taken five years to make the decision that my property must be compulsorily purchased? Why have we made no progress on any advance purchase scheme? Why does the promoter appear not to be responding to the Scottish Executive's questions about the scheme? Can anyone answer those questions?

Alison Gorlov: I will try to answer them.

The Convener: Please do so.

Alison Gorlov: I am not sure that I will be able to give answers that are as full as Mr Allison or Scottish Borders Council would like them to be. Mr Allison mentioned a five-year period. I am not sure when that period kicked in, but it becomes appropriate to start working on advance purchase when one has a scheme. The scheme was crystallised when the bill was finally prepared. The bill was introduced in September 2003 and shortly thereafter I advised Scottish Borders Council on advance purchase. Various permutations were considered and I prepared a draft APS. I am afraid that I do not have the date on which the draft was put to the Executive, but it was approximately two years ago. If necessary, Mr Rutherford can supply the date. Since then, the draft APS has been with the Executive. One might say an awful lot more, but I will say that my clients have done everything that they have been asked to do. Mr Rutherford will correct me if I am wrong, but the council has answered all the Executive's inquiries. The committee can ask the Minister for Transport and Telecommunications for an account of the Executive's activity in relation to the scheme.

The Convener: Thank you for that explanation. The committee shares the frustration of Scottish Borders Council, Mr Allison and other objectors who are waiting for the Executive to approve the scheme. We have written to the Executive and we assure everyone that when the minister comes before us we will pose some of the questions to which they would like answers.

Graham Allison: I am aware that about four to six weeks ago the Executive went back to the promoter to seek answers on what appeared to be four key points. Has the promoter responded?

Alison Gorlov: I am instructed that it has done so.

Graham Allison: Are we correct in assuming that the Executive does not require any more information from the promoter before the advance purchase scheme can go ahead?

The Convener: We welcome Mr Rutherford to the table.

17:30

Bruce Rutherford: I will clarify the position. Scottish Borders Council has had two meetings with the Executive since our previous visit to the committee. We wanted to know exactly what the Executive needed from us. Mr Allison is right to say that we have been trying to finalise various issues. Tomorrow, a letter will go to the Executive that will encapsulate the outstanding information that the Executive needs on the scheme.

Following our meetings here with the committee, the Executive asked us to do more work. We have taken two weeks to do that work—and to bottom things out with the Executive—and we are now ready to write to the Executive to solidify the position.

Gordon Jackson: Are you talking about the advance purchase scheme, rather than the voluntary purchase scheme? Are the two part of a package and would they run in tandem? What is their relationship?

Bruce Rutherford: The advance purchase scheme is slightly behind the voluntary purchase scheme. We sorted out the voluntary purchase scheme with the Executive within days of our previous meeting with the committee. The Executive asked us to have another look at it, so we resubmitted it. We have been keeping all the landowners informed of progress.

The Executive said that it was generally comfortable with our work on the advance purchase scheme, but it wanted a final document. Before we could produce such a document, we had to ensure that we knew the detail that the Executive wanted.

Gordon Jackson: Is that what you are doing today and tomorrow? Is that the scheme that will affect Mr Allison?

Bruce Rutherford: Yes, it is. Mr Allison is within the CPO, so the advance purchase scheme will affect him.

Gordon Jackson: We can but hope, Mr Allison.

Graham Allison: Unfortunately, that does not answer the difficulty. When the bill was introduced, it was clear that my property would have to be compulsorily purchased, but there was, until October last year, very little contact from the promoter about the advance purchase scheme. I find it astonishing that for a number of people

whose properties will not be directly affected, the alternative purchase scheme has been agreed and they have received offers in principle, while I have not.

Gordon Jackson: To be fair, Mr Allison, that is to do with the amount of money. Your offer in principle is the same as that which has been made to other people.

Graham Allison: Is Bruce Rutherford of the opinion that I have an offer in principle?

Bruce Rutherford: As you know, a valuation has been carried out for budgeting purposes. We now need to work a bit more with you to ensure that the process moves forward. You will get a full valuation inside and outside your property, and we will then discuss with you whether you are satisfied. It may well be that we will go for a second valuation.

Alison Gorlov: In a sense, Mr Allison and Mr Rutherford are conflating two separate things. On the one hand, we have the question of principle: Will the Scottish Borders Council buy the property? On the other hand, we have the question of cost: How much will it pay? The answer to the question of how much will be paid has yet to be sorted out for everybody. For some people, it is in progress; for others, it will be.

However, when a property that is within the limits of deviation—such as Mr Allison's—is to be acquired, no principle has to be decided on. As Mr Allison says, the railway will go through his kitchen. The principle exists; the property will be compulsorily purchased. By contrast, when a property lies outside the limits of deviation, a decision on the principle has to be made.

When Mr Allison says that he has not had an offer, the answer really is that it is all there already. Unfortunately, for reasons that we have explained and that the committee knows about, Scottish Borders Council was not in a position to say to Mr Allison that it wanted to go ahead with the purchase.

The Convener: Mr Allison, have you any further questions for the witnesses on the acquisition of land or property?

Graham Allison: When did the promoter identify the people who were likely to be affected and whose homes were to be acquired? Why could we not reach an agreement in principle on the advance purchase scheme before the proposal was submitted to the Scottish Executive? In particular, you talk about buying my property and leasing it back to me but, to date, I have seen no prospective lease and no terms and conditions for the purchase of my property. I am certain that that information would have to be included in the risk assessment that you have to provide to the

Executive. Why have you not discussed it with me?

Alison Gorlov: I am not sure, but it might be that Mr Rutherford ought to answer part of that question. It might help—if only to clear my own thoughts—if I go through the preparatory process stage by stage.

In such a scheme, the first thing that one has to do is work out where one would like the railway to go. That is the work that Mr McCracken was engaged in. When one has worked out the optimum route for the railway, one has a corridor of property that is earmarked for potential compulsory purchase. One then examines the corridor to see whether there are areas where, for one reason or another, the list of property needs to be finessed. For example, a piece of land might be landlocked and must therefore be acquired or, as in the case of Falahill, one might want to realign the railway to mitigate the adverse impact of what one is doing. At that stage, a set of proposals is gradually worked up.

At that stage in the Waverley process, there was a consultation process. The committee has heard about that and it was reported in the promoter's memorandum, so I will not rehearse it all but it included public meetings. I will not say any more about that at the moment. When the bill was introduced, there was a crystallised proposal. At that point, notices were served on all landowners regardless of whether they knew about the proposal before then. Regardless of personal approaches and consultation, all landowners were immediately told about the crystallised proposal. It is that proposal that we have been working on since then.

Formal proposals for leasebacks might well have come into play if Scottish Borders Council had been in a position to say what it was able to do in terms of advance purchase but, as we have just explained, that has not been possible. Frustrating as that undoubtedly is for Mr Allison—I have to say that it is frustrating for Scottish Borders Council as well—it has not been possible to do all the well-ordered things that one might have liked to do. Scottish Borders Council has no control over that.

The Convener: I am sure that Executive ministers and officials will read the *Official Report* of today's meeting and note not only the difficulties that the committee and the promoter face but the great deal of stress and distress that has been experienced by some of the witnesses from whom we have heard today. If nothing else, that might urge the Executive to get a move on and get things sorted out so that there can be a resolution as quickly as possible.

Mr McKie, do you have any further questions for the witnesses on the issue?

Mr McKie: I do not.

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

GRAHAM ALLISON *made a solemn affirmation.*

The Convener: On the acquisition of land and property, I invite Mr Allison to say whether he accepts the promoter's evidence on where matters stand.

Graham Allison: I would like to know what information is still required by the Executive to progress the advance purchase scheme.

The Convener: I advise Mr Allison that that is a question that nobody here can answer, as Mr Rutherford speaks on behalf of Scottish Borders Council, not the Scottish Executive.

Graham Allison: Presumably he knows what information the Executive required and what it was given.

The Convener: Those are issues that the committee is progressing with the Executive. The Executive will deal with them in the near future. We are going to have ministers before us. I invite you to agree that the committee will do all that it can to progress those matters with a degree of urgency. We understand the position that you and others are in. We are as frustrated as you are. I ask you to leave the matter with the committee and I assure you that we will do whatever we can as quickly as we can.

Graham Allison: I understand your point. You will understand my need to ensure that this matter appears as a matter of record.

The Convener: Absolutely.

Mr McKie, do you have any questions for Mr Allison on the issue of land and property?

Alastair McKie: I do not. Obviously, the promoter sympathises with this particular objector.

Christine May: Mr Allison, would it have been a help to you if Scottish Borders Council had been in a position to write to you to say that it confirmed that your property would be materially affected?

Gordon Jackson: It has done that.

Christine May: It has done so, has it? Has it said that it will require to compulsorily purchase it but that, at the moment, it is in no position to give Mr Allison any legal comfort?

Graham Allison: I can quote from a letter that I received from the council after a meeting with Bill Sandland. It says:

"It was agreed that the early purchase of your property would ease some uncertainty by providing resources for the purchase of a replacement home. Furthermore a lease back arrangement would allow your social life to continue ... and your children to remain at their present school ... I

undertook to advise if such an arrangement would be possible. I can now advise that this would be acceptable, in principle, to the council, as promoter".

The Convener: Mr Allison, do you have any further comments to make in relation to the question that you have been asked on this issue?

Graham Allison: I cannot understand why the council, as the promoter, could not have set aside some of the money that it previously allocated to take the bill to this level to deal specifically with the people who were in danger of losing their homes.

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

Alastair McKie: On this occasion, the promoter rests on its written and oral evidence. We do not wish to make a closing statement.

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

Graham Allison: I have detailed planning permission on my property—I have had it for the past five-and-a-half years. During the greater part of that time I have been unable to complete the works that I have begun. I was given every indication that, by now, the bill would have been dealt with and I would have been in a position to complete the house that I wanted to live in. I have not been able to do that.

Throughout the process, in all my discussions with the promoters, I have been given various assurances. One of those was that the advance purchase scheme should be in a position to deal with this matter effectively by the end of this financial year. I believe that we have a month or so left before that date. However, none of that has happened. The situation is on-going. My human rights have been infringed and continue to be infringed. I am not at all convinced that the level of the competence of the promoter does not have a direct bearing on that.

The Convener: Mr Allison, thank you for giving evidence today. We welcome your engagement and share your frustration. We will do all that we can to ensure that the Executive advances these issues as quickly as possible.

That concludes the public part of our meeting. I thank all the witnesses for their assistance in the smooth running of this meeting.

17:45

Meeting continued in private until 17:59.

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