

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

Monday 6 March 2006

Session 2

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## **WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE** **6<sup>th</sup> Meeting 2006, Session 2**

### **CONVENER**

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

### **DEPUTY CONVENER**

\*Christine May (Central Fife) (Lab)

### **COMMITTEE MEMBERS**

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

\*Gordon Jackson (Glasgow Govan) (Lab)

\*Margaret Smith (Edinburgh West) (LD)

\*attended

### **THE FOLLOWING ALSO ATTENDED:**

Alastair McKie (Counsel for the Promoter)

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

Fran Baillie

George Baillie

Chris Bone (Turner and Townsend)

Robert Forrest (Robert Forrest Ltd)

Robin Forrest (Robert Forrest Ltd)

Brian Frater (Scottish Borders Council)

Alison Gorlov (John Kennedy and Co)

Graham Lofthouse

Wilma Lofthouse

Andrew McCracken (Scott Wilson Railways Ltd)

Steve Mitchell (Environmental Resources Management Ltd)

Sam Oxley (Environmental Resources Management Ltd)

Steve Purnell (Environmental Resources Management Ltd)

Kenneth Robertson

Bruce Rutherford (Scottish Borders Council)

Bill Sandland (Scottish Borders Council)

Fiona Stephen (Anderson Strathern)

### **CLERK TO THE COMMITTEE**

Fergus Cochrane

### **LOCATION**

Committee Room 1



## Scottish Parliament

### Waverley Railway (Scotland) Bill Committee

*Monday 6 March 2006*

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

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

**The Convener (Tricia Marwick):** I welcome witnesses, their representatives and members of the public to the Waverley Railway (Scotland) Bill Committee's seventh meeting at consideration stage and sixth meeting in 2006.

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 and objectors 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 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 people in that regard and appreciate all their efforts.

Today, we will hear oral evidence on seven groups. The process to be followed in hearing evidence is broadly as follows. Every witness who has contributed fully to the written evidence process will face the same three-step process. First, he or she may be questioned by their representative; secondly, the witness may be questioned by the opposing side; and, finally, the witness may be questioned again by their representative. The 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.

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

People must restrict their questions to issues that remain in dispute. The committee does not expect, and will not permit, documents to be circulated that it has not previously seen, unless

there are exceptional circumstances. If objectors or the promoter need to give us an update, they will be invited to say a few words at the commencement of their oral evidence. Following the completion of evidence taking for each group, representatives of that group and the promoter will be offered a maximum of five minutes each in which to make any closing comments.

We intend to complete our evidence taking in respect of the groups today. We have all the written evidence before us—witnesses should therefore refrain from repeating points that have been made in written evidence.

We recognise that today there is a mix of objectors who are represented by lay members of the public and objectors who are not represented at all. I am sure that all parties would welcome brevity and clarity in questions and answers. The use of overtechnical language is discouraged, and I encourage those who are asking questions to do so and not to make statements as a preamble to questions.

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. The meeting is being held in public, but it is not a public meeting. It is the formal work of the Parliament and I would appreciate the co-operation of members of the public in ensuring the proper conduct of business.

For the record, I say to objectors who are following our proceedings that, should they reach an agreement with the promoter that leads to the withdrawal of their objection, they must inform the committee. A signed letter to the clerk to the committee that states that they are withdrawing is required. The committee will then give no further consideration to that objection. I refer all parties to paragraph 3.14 of "Guidance on Private Bills".

Again, I urge all parties, in particular the promoter, to maximise efforts to enter into open and constructive dialogue with a view to reaching agreements that lead to objection withdrawals. The committee's strong and continuing desire is that all efforts should be made to reach agreements.

We are concerned at the most recent objection progress report from the promoter, which is dated 3 March. Several entries are exactly the same as they were in the report that was dated 10 February. That suggests either that no progress

has been made in settling objections or that the promoter simply has not updated the report to inform the committee. Either way, I tell the promoter that we expect greater progress to be shown in the next report, which is to be with our clerk by noon on Friday.

I will not go into specific objections, but we note that the two gas company objections and the objection from BRB (Residuary) Ltd, which we considered at our first oral evidence meeting on 16 January, have still not been settled. I say bluntly to all parties: kindly get these sorted. I also note some entries that show that objectors appear to be taking a rather long time to respond to the promoter. The promoter has the committee's approval to intimate to those objectors the committee's deep concern at the lack of progress and urgency on their part.

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

I ask everybody to ensure that all mobile phones, BlackBerries, pagers and whatever other pieces of electronic equipment they have are switched off.

We move to consideration of evidence in respect of group 42. I welcome Alastair McKie, who will ask questions on the promoter's behalf. Group 42 relates to objections from residents of Still Haugh in Fountainhall and from C J A Samuel and J M Llewellyn. I welcome George Baillie, who will ask questions on the group's behalf.

We will deal first with acquisition of land—an issue that arises from the Samuel and Llewellyn objection—for which the witnesses for the promoter are Steve Purnell, Bill Sandland and Andrew McCracken. I understand that the promoter has formally indicated to the objectors that it no longer requires three of the four plots of the objectors' land that it sought to acquire and that it requires access only to one plot to construct a boundary fence. However, the objectors are still not in a position to withdraw their objection.

I ask Mr McKie to invite one of his witnesses to give a brief outline of where matters stand and then to question them.

**Alastair McKie (Counsel for the Promoter):** Good morning. Plans have been provided; we are on plan 1. I invite Mr Sandland to give a brief update on where the promoter is with the objection from Samuel and Llewellyn before we discuss Still Haugh.

**Bill Sandland (Scottish Borders Council):** What the convener said is correct. Initially, we intended to acquire four plots from the objectors,

but it has proved possible to rearrange access to the railway temporarily and permanently at the relevant location, so only one plot will be required. Possession of that plot will be required only to erect a boundary fence, exactly as the convener said. One of the objectors indicated his agreement with the amended proposals when I met him on 2 March and he intimated his intention to withdraw his objection to the railway. That is the current situation.

**Alastair McKie:** I ask you to look at plan 2. Will you identify on that plan the only remaining plot that the promoter requires and say why it is required?

**Bill Sandland:** It is plot 235, which is just to the right of the access road down from Old Stage Road. As I said, we require access to that plot only to erect a boundary fence. Mr Llewellyn agreed that it might be necessary to step on to his land to build that fence. His concern was about the trees in the plot, but I assured him that we would not significantly interfere with the trees and he seems satisfied with that.

**The Convener:** Mr Baillie, do you have questions for the witnesses on land acquisition?

**George Baillie:** No. Mr Samuel wants to rest on the written evidence that he presented.

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

**Members:** No.

**Alastair McKie:** May I ask Mr Sandland to give a brief update on the objection in relation to Still Haugh? He updated us on the objection from Mr Samuel and Mr Llewellyn, but the Still Haugh objectors, who are represented by Mr Baillie, raised a slightly different issue.

**Bill Sandland:** Extensive discussions have been held with the objectors in an attempt constructively to address and resolve their concerns. There have been numerous items of correspondence and three meetings have taken place at the objectors' premises at Still Haugh since the general principles of the bill were agreed to. Progress has been made and the promoter has been able to avoid taking temporary acquisition of plot 225, which is part of the garden of 2 Still Haugh.

Assurances were given about the effects of noise and vibration when Steve Mitchell visited Still Haugh on 14 February. The proposed line of the track has been moved 1.5m further from the objectors' gardens, which might not appear to be a great distance but will allow the construction of a bund between the gardens and the railway. The bund and associated planting will be provided on railway land and will be of sufficient height to address concerns that the rear gardens should not be overlooked by passengers on trains. The bund

will extend for the length of Still Haugh and will be provided early, to allow planting to become established before the railway is operational.

The objectors were advised that claims for compensation may be made if they think that the physical effects of the railway are unacceptable. At our last meeting on 2 March, Mr Baillie broadly agreed that the proposed measures effectively address his concerns, but he said that he would have to consult other residents before he could formally confirm that position. That remains the situation, as far as I am aware.

**Alastair McKie:** Mr McCracken, you carried out work on realigning the railway. Will you turn to plan 3, which shows the potential realignment, and explain the promoter's proposals? It might also be useful in this context to consider an e-mail that Mr Baillie sent to Fergus Cochrane yesterday about the possibility of realigning the railway even further from the properties.

**Andrew McCracken (Scott Wilson Railways Ltd):** I met Mr Baillie on 14 February at his home at 4 Still Haugh to consider his concerns from an engineering point of view. Mr Baillie had requested that we try to push the track further from his property. When I discussed Mr Baillie's request with him, I made it clear that the changing of track alignment can introduce curvature on the track, which has an impact on speed and timetable.

The blue lines on plan 3 represent the track position as indicated in the bill when it was introduced in September 2003. After my meeting with Mr Baillie my task was to review that track alignment to try to ascertain the maximum shift of the track that would be possible. We did that and the red line on plan 3 shows a lateral shift of the track 1.5m away from the line that is stated in the bill. I can confirm that that is the maximum shift that we can achieve without introducing a speed impact that would create timetabling problems and raise wider issues that would have to be addressed.

Plan 4 shows a cross-section through Mr Baillie's property, which again indicates the 1.5m shift from the alignment marked in blue to the one marked in red.

**Alastair McKie:** Another issue that Mr Baillie asked about in his e-mail was the possibility of increasing the height of the bund that is shown on plan 4 to some 2.4m. Would there be any construction constraints on doing that or other issues that it would be important for the committee to know about?

10:45

**Andrew McCracken:** I ask the committee to refer to plan 4. I apologise for the fact that I have

not had time to review the e-mail, but I was handed it only about five minutes ago. Mr Baillie wants the height of the bund to be increased. As plan 4 shows, its proposed height is 1.5m. Mr Baillie is requesting that its height be increased to 2.4m. There are two ways of achieving that. One could either push the track further away to provide more space on plan or engineer a solution that resulted in the bund having a higher face. The section shows that the face of the bund that is adjacent to the track is steeper—it has a 6 in 1 slope. A similar effect could be created on the other side of the bund—the one that is adjacent to Mr Baillie's property—by building a steeper, more structural face. I believe that although that could be achieved from an engineering point of view, from an environmental point of view it might cause problems with planting. I have described an engineering solution.

**Alastair McKie:** Let us turn back to plan 3. Beneath the track, there is an area that is coloured yellow. Are you discussing any proposals not to use that area with the objectors?

**Andrew McCracken:** Are you talking about the area that is slightly to the left-hand side of plan 3?

**Alastair McKie:** Yes.

**Andrew McCracken:** I am sorry to jump between plans, but I ask the committee to refer back to plan 1. On 14 February, we attended a meeting with Mr Baillie and Mr Weir, at which Mr Weir, who lives at 2 Still Haugh, expressed concern about our proposal to take part of his garden. On site, I agreed that we would not take the part of plot 225 that lies within his garden.

**Alastair McKie:** We have now brought the committee up to speed.

**The Convener:** Mr Baillie, do you have any questions for the panel?

**George Baillie:** Yes. The drawing that we have prepared was done only yesterday. It is based on the information in the sketch drawing that we received on Saturday. We have carried out a level survey directly in front of our house; rather than running the length of the houses, it provides a snapshot of what we think that the bund will look like.

My first question is for Mr McCracken. When a train runs along the section of the line adjacent to Still Haugh, will it be travelling at the maximum speed that it can achieve on the line—in other words, at 90mph?

**Andrew McCracken:** From memory, I think that it will be travelling at 85mph; at that location, it will certainly be travelling at close to the maximum speed for the line.

**George Baillie:** We believe that some sort of mitigation measure is needed in case a train that is travelling at that speed is involved in a derailment. We are concerned that although a 1.4m-high bund would offer a degree of protection, it would not go far enough in offering protection in the event of the derailment of a train that was travelling at 90mph. Do you accept that that is the case?

**Andrew McCracken:** I make it crystal clear that the bund is being provided not on rail safety grounds, but because you requested it.

**Alastair McKie:** May I intervene? I am not aware that the objector has raised rail safety issues, although I stand to be corrected. I think that the objection related to aesthetics and the appearance of what was proposed. Mr McCracken may be able to answer questions on safety, if required.

**The Convener:** Although it is true that Mr Baillie's objection does not mention safety, I think that we can afford him a bit of latitude.

**Alastair McKie:** Of course.

**George Baillie:** Our three main concerns relate to aesthetics, safety, and noise and vibration. Given that the train will be travelling at its maximum speed on the line of 90mph, safety is obviously an important consideration. Anyone who has been passed by an articulated lorry while standing on a pavement or sitting in a car will know that that generates a considerable amount of wind force and noise. We feel that although a 1.4m-high bund would go some way towards mitigating wind pressure and acting as a safety barrier, it would not be sufficient to stop a train that had derailed. I repeat my question: do you feel that a 1.4m-high bund would stop a train that was travelling at 90mph?

**Andrew McCracken:** I have no idea. However, I refer to our previous policy paper and previous evidence. We make it crystal clear that the railway will be designed and approved in accordance with the safety standards of Her Majesty's Inspectorate of Railways. At your location there is a section of straight track and there is no way that the bund is being provided on safety grounds. We have tried to give you an aesthetic option because you specifically requested it. We have done a similar thing at Eskbank station, not on safety grounds but because residents have asked for a visual bunding arrangement. The bund is not there on safety grounds.

**George Baillie:** I think that safety is a consideration. You talked about the speed of 85mph and about not compromising timetables. Do you not think that safety should be put in front of timetables?

**Andrew McCracken:** I could not agree more. Safety is paramount. That is why Her Majesty's Inspectorate of Railways has fairly stringent rules and an appeals process. Safety will not be compromised.

**George Baillie:** Do you still accept that a—

**The Convener:** Mr Baillie, I ask you to move on. You have not addressed the question of safety in your written evidence so far. I ask you to address the points that you need to.

**George Baillie:** With respect, I think that I mentioned in our additional written evidence the fact that trains would travel at 90mph.

**The Convener:** I have given you sufficient latitude. Safety is a matter for HMRI and speed is a reserved issue. Can you now move on to the substance of your objections?

**George Baillie:** I want to ask some questions on noise and vibration, which are—

**The Convener:** We will move on to that in a further section. If you want to rest for the moment, we will come on to that shortly.

**George Baillie:** I will rest at the moment.

**The Convener:** Many thanks, Mr Baillie.

On loss of amenity, aesthetics and planning consent, the witnesses that we require for the panel are Sam Oxley and Brian Frater.

BRIAN FRATER *took the oath.*

**The Convener:** Mr McKie, would you like to invite your witnesses to give a brief outline of where matters stand on those issues and to question them?

**Alastair McKie:** I will. Good morning, Ms Oxley. Let us turn to loss of amenity and how that can be mitigated at this location. I turn to plan 4. On top of the bund, we see some landscaping. Can you advise the committee how that landscaping would work in practice and contrast how landscaping proposals could be deployed if we opted for the higher bunding that is being sought by Mr Baillie?

**Sam Oxley (Environmental Resources Management Ltd):** In designing the bund, the main aim has been to create a gentle slope. As you can see, it is an asymmetric bund creating the ha-ha effect that has been discussed in previous meetings. By creating a gentle slope on the residents' side of the bund, we can plant trees and shrubs to screen or filter further the view of the trains from the properties.

If we steepened the bund, it would not be possible to plant on it and we would need an engineering solution to achieve the height that would be required. We need a compromise between, on the one hand, a bund that can be



planted and is aesthetically acceptable from the properties and from the wider area and, on the other, an engineered structure that goes further in obstructing views but which would not look attractive from the properties.

Beyond the railway there is an attractive vista over fields, trees and the hills beyond and some residents want to retain the more distant views. We suggest a filtering of views with vegetation on top of the bund because that will allow those wider views to be seen.

**Alastair McKie:** I turn to plan 1 and the objection from Samuel and Llewellyn. In the middle of the plan, we can see the access road. There is a reference to

“Trees to be retained in Plots 230 & 234”.

Will you describe to the committee what the promoter intends to do there?

**Sam Oxley:** To an extent, that was covered by Andy McCracken. There is a belt of trees along the lane, which is shown by the yellow streak on the plan. Originally, it would have been necessary to take out at least some of that vegetation to allow access. However, I understand that we will not need access through the plot, so the vegetation will remain and it will continue to filter the views from the properties towards Still Haugh.

**Alastair McKie:** Thank you, Ms Oxley. Convener, would you like me to move on to planning consent?

**The Convener:** Yes, please.

**Alastair McKie:** Good morning, Mr Frater. On behalf of group 42, Mr Baillie raised concerns about the granting of planning permission for the Still Haugh development. When was permission granted, and in what ways was the railway taken into account during consideration of the proposal?

**Brian Frater (Scottish Borders Council):** The site was first identified for residential development in 1996 in the Ettrick and Lauderdale village plans document. Outline consent for residential development on the site was granted in that year but was not taken up. There was a subsequent outline planning application by the eventual developer of the site in April 2000. At that time, we had no formal or detailed scheme for a railway at the location—the scheme was in an embryonic form. Scottish Borders Council had resolved to support the re-establishment of a rail link between Edinburgh and the central Borders and, wherever practicable and appropriate, to protect former railway lines for future transport or recreational use. The council's resolution, which is dated March 2000, was in the public domain. The council's position reflected the advice that was provided in the then draft national planning policy guideline 17 on transport and planning, which

stated that councils should ensure that disused railways were not unnecessarily severed by new buildings or other non-transport uses.

The application did not encroach on to the former railway line and did not breach any local or national planning policies and, therefore, there were no planning grounds on which to oppose it. Notwithstanding that, the planning department was aware of the potential for the line to reopen and it discussed the application with the Waverley project team, which had no objections to or concerns about the proposal. On that basis, outline consent was granted on 14 August 2000.

Despite the fact that there were no formal proposals for the railway, we thought it appropriate to attach a condition—it is condition 4 of the outline consent notice—to require the developer to submit measures for the treatment of the site boundary along the former Waverley line. A reserved-matters application for the site was subsequently submitted in February 2002. At that time, there was no detailed scheme for the railway line—the Waverley proposal had no formal status. However, once again, we alerted the Waverley project team to the application and, as a result of our discussions, the layout was adjusted—the houses were moved further away from the former Waverley line. The intention was to introduce a landscaped buffer with a depth of about 4m along the site boundary.

The reserved-matters application was approved in April 2002, with a condition that further details of the planting scheme should be submitted to the council. Subsequently, the developer expressed the wish to reduce the depth of the buffer and submitted a landscape scheme with a reduced planting area along the length of the site, but with a 1.8m-high fence. The fence has already been erected, although I am not aware of substantial planting being carried out. That is the planning background to the site.

11:00

**Alastair McKie:** Does the promoter's proposal for landscaping on top of the bunding have any planning benefit? Will it comply with the planning condition for a landscaped strip that you mentioned?

**Brian Frater:** I understand that the proposal to reduce the depth of the planting strip came about in part because of residents' concerns about the proximity of trees to the properties. The planting strip has been reduced at the behest of either the residents or the developer. The introduction of a bund with planting outwith the site would be an even better scheme, as it would allow the developer to retain a larger area of open and unimpeded garden space, but with the planting, bunding and buffer zone as originally envisaged.

**The Convener:** Mr Baillie, do you have any questions for the witnesses on loss of amenity, aesthetics and planning consent?

**George Baillie:** Yes. I have a question on planning consent. Mr Frater mentioned condition 4 in the schedule of conditions to the planning consent, which relates to the boundary between the development and the railway line. He said that there was a condition on

“the treatment of the site boundary”.

Was that treatment related specifically to mitigation for the Waverley line?

**Brian Frater:** It was not specifically for that purpose, although it would contribute to providing a buffer. The condition was also introduced for wider environmental reasons. However, the treatment was specifically required for that boundary alone because of the knowledge that the railway might be reintroduced at a future date.

**George Baillie:** But it was not specifically a mitigation measure.

**Brian Frater:** I would say that it had a dual purpose.

**George Baillie:** The treatment area that was originally to be a 4m-wide strip applies to the first seven houses but, for the other seven houses, from numbers 8 to 14, there is a drainage ditch. How could a treatment be made to the drainage ditch that would sit comfortably with the Waverley development?

**Brian Frater:** The approved plan—by which I mean the reserved-matters approval in 2002, not the 2000 approval—showed the drainage ditch with a 4m-wide planting strip on the side of the ditch that is closest to the houses. That was the preferred option that the developer presented to us. There would be no difficulty in doing that, but I understand that the residents would rather have the trees further away from their properties. The scheme that has now been presented provides that opportunity.

**George Baillie:** I am at a wee bit of a loss over what you say about residents and trees. I understand that Scottish Water does not want trees planted on a particular drainage outfall from the sewage treatment works. That outfall runs between house numbers 1 and 14, so large trees could not be planted there.

**Sam Oxley:** Perhaps I could respond to that. We are often restricted in what we can plant; near a drainage ditch, we would have to be careful about what we planted and how far away we planted it. We would probably plant smaller scrub species, such as hawthorn and blackthorn, and would avoid species with very invasive roots, such as willow, which might cause problems with the

drainage ditch. Usually, we are able to reach agreements on what to plant, with a reasonable offset from the service.

**Brian Frater:** I would add that the drawing approved in 2002 showed no conflict between the drainage and the planting. The planting was on the house side of the drainage ditch. I understand that some residents now wish the trees to be moved further away from their properties. In effect, that would mean jumping the drainage ditch in some places. However, the original approval had first the houses, then the open gardens, then a buffer area of planting, and then the ditch.

**The Convener:** I am interested in the planning background, but why was none of that information included in the promoter's written evidence to the committee?

**Brian Frater:** I am sorry, but I am unable to answer that. The information was available, and had I been asked to provide it, I would have been happy to do so.

**The Convener:** In his final summing-up questions, Mr McKie might wish to ask one of his witnesses to explain why the committee did not receive information on the planning background.

**Alastair McKie:** I will do that.

**The Convener:** Thank you.

**George Baillie:** The drainage ditch runs for only 50 per cent of the length of the Still Haugh development; for the other 50 per cent, the boundary is the existing boundary of the railway line. In that area, there is a pipe, rather than a drainage ditch, and it is only 300mm below ground level. That is the area that concerns me, rather than the drainage ditch. Would the planting for a pipe that is only 300mm below the ground be the same as it would be for a drainage ditch?

**Sam Oxley:** The same offset would be required. The proposed bund is actually a little away from the pipe, if the pipe runs as a continuation of the drainage ditch. We would be planting further up the side slopes of the bund so that the roots were kept away from the service.

**George Baillie:** I accept that the bund came into the equation only recently. We have been talking about the buffer zone, the purpose of which is to mitigate the development. Because of the existence of the pipe, will the height of planting be limited?

**Sam Oxley:** If the planting were in the gardens, as originally envisaged, conflict could definitely have arisen between the location of the service and the planting.

**George Baillie:** As things stand, the first seven houses do not have the buffer zone. We are therefore asking for a bunded area, to provide a better view.

At the time of planning, part of the 4m strip was actually purchased by the first six houses. Scottish Water and Scottish Borders Council have agreed that that was acceptable. In effect, the buffer zone has disappeared from the boundary. How does that sit with your condition 4 for the treatment of the boundary?

**Brian Frater:** That area, which has now been included, was not originally intended for planting; it was to be the drainage area. The 4m-wide buffer strip planting area on the approved plan in 2002 was on the house side of the drainage ditch. That has not disappeared. It is still there, if the developer or the occupants choose to plant up that area. You might prefer that planting to be provided on the bund, outwith the site.

**The Convener:** Mr Baillie, it seems to me that you are making an awful lot of statements in advance of your questions. I ask you to focus more clearly on the questions themselves.

**George Baillie:** Mr Frater, you say that the planning consent was in keeping with the Waverley line project. I still do not understand how that fits in with what you have said about the fact that the consent does not relate specifically to the Waverley project. How can that sit comfortably with the council?

**Brian Frater:** I think that what I said was that, at the time when the applications were processed and determined, there was no project. All that we had was a resolution of the council to protect the line and ensure that it was not unnecessarily severed. Those were the material planning considerations that we took into account.

**George Baillie:** But that was not to protect the actual houses; it was to protect the line or the new Waverley development.

**Brian Frater:** That was the resolution of the council. We went further than that and took the prudent step of discussing the proposal with the Waverley group and introducing a buffer zone. That went beyond what the resolution of the council required us to do.

**George Baillie:** But the buffer zone was not specifically for mitigation purposes for the Waverley line.

**Brian Frater:** As I have indicated, I think that, effectively, it had a dual purpose.

**George Baillie:** But the fact that that was the case was not stated specifically to the developer. Is that correct?

**Brian Frater:** The developer was well aware of the potential for reopening the line. We described the area as a buffer—I am not using that word as a railway pun—to indicate that its purpose was to provide some separation between the houses and the gardens and any future development.

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

**Alastair McKie:** I do not.

**Mr Ted Brocklebank (Mid Scotland and Fife) (Con):** I would like Sam Oxley to clarify something. I want to get the height of the bund clear in my mind. You have said that it would be difficult to increase the height of the bund, because of the engineering issues that you outlined. However, should not the fact that the line is to be 3m further away make your engineering task easier, given that you will have a greater distance in which to increase the slope?

**Sam Oxley:** On plan 4, the outline shown in blue is the original bill alignment and the one in red is 1.5m further away. I understand from Andy McCracken that a move of 1.5m is all that can be achieved without compromising train speeds because of an increase in the curve on the line. The mock-up that is before you takes into account that additional 1.5m. Having said that, it would be possible to make the bund a little bit higher without resorting to an engineering solution. How that balance could be achieved would be a matter for detailed design. From the perspective of planting and wanting to fit the bund into the natural environment, it is better to have a more gentle slope.

**Mr Brocklebank:** Yes, but surely your problem is eased by the fact that you can take that extra space.

**Sam Oxley:** Yes, it is.

**Mr Brocklebank:** Are you able to identify how much extra you might be able to raise it by at this stage, given that you are gaining that bit more space?

**Sam Oxley:** We would have to draw a few more sections. The amount might vary from house to house because the space that is available will go in and out slightly all the way along. A few tens of centimetres would be fine, but more complicated engineering solutions would be required if we were to raise it by a metre or more. There is some room for compromise.

11:15

**Christine May (Central Fife) (Lab):** I have some questions for Mr Frater on the planning concerns that Mr Baillie has raised. When structure plans are drawn up, is it not usual to ensure that major strategic routes are protected?

**Brian Frater:** Yes.

**Christine May:** Did the structure plan seek to ensure that land for any future railway would be protected?

**Brian Frater:** The issue was covered in our draft structure plan. However, at the time, we had not concluded work on the plan.

**Christine May:** Is it normal for developers to comment and make representations on draft structure plans?

**Brian Frater:** Yes.

**Christine May:** So the developer of the houses in question could have known of and commented on the contents of the draft structure plan and, indeed, could well have known about the issue when it proposed the development.

**Brian Frater:** The developer would have had the opportunity to view and comment on the structure plan, but I cannot say whether it did so.

**Christine May:** But developers are routinely aware of the contents of structure plans, representations that have been made on those plans and the future thinking that they set out and that informs local plans.

**Brian Frater:** That is correct.

**Christine May:** So the matter depends on purchasers eliciting such facts by asking specific questions at the time of purchase.

**Brian Frater:** Again, that is correct.

**Christine May:** Because, after all, when they sell properties, developers do not normally broadcast anything that might be seen as detrimental.

**Brian Frater:** I could not possibly comment on that.

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

**Alastair McKie:** No, convener.

**The Convener:** Do you wish to invite your witness to answer my question on the absence of any planning background in the promoter's written statement?

**Alastair McKie:** I had intended to return to that matter in my closing statement. Some information has now been put forward.

**The Convener:** Fair enough.

We turn to noise and vibration and maintenance costs, on which the promoter's witness will be Steve Mitchell.

**Alastair McKie:** Convener, I indicated that Mr McCracken could be recalled on the issue of safety. Perhaps he could join the panel just now.

**The Convener:** I will come to that shortly, Mr McKie. For the moment, please ask your witness to tell us where matters stand on noise and vibration and maintenance costs.

**Alastair McKie:** Good morning, Mr Mitchell. As this matter predominantly concerns the residents of Still Haugh, it might be useful if you have the map of the development in plan 1 in front of you.

Will you tell the committee whether you have visited the site and assessed noise and vibration impacts; if so, what your findings were; whether you are proposing mitigation; and whether any noise and vibration issues might arise as a result of the bund that we have just discussed?

**Steve Mitchell (Environmental Resources Management Ltd):** I visited the site on 14 February when I met Mr and Mrs Baillie, and various colleagues visited the site before that. In February 2005, we set out our assessment of the noise and vibration impacts on the estate in a standalone report that I believe has been circulated to the committee.

The meeting in the middle of February helped us to understand clearer the objectors' concerns, and we also discussed and clarified the proposal to construct a bund. In fact, I should point out that, before that, we had identified the need for a noise barrier of approximately 1.5m above the top of the rail. That situation has not changed.

Being able to move the railway about one and a half metres away does not make very much difference in relation to noise, so the requirement for a 1.5m high noise barrier remains the same. The best position for the noise barrier—the position in which the barrier will work most effectively—is about 3m from the tracks, which is as close as we can put it to the tracks. The landscaped bund will sit between the barrier and the houses, so it will soften the appearance of the barrier. In fact, residents may hardly be able to see the noise barrier as a result of the landscaping that is now proposed.

**Alastair McKie:** Let us pause there. Will you indicate where on plan 4 you envisage the noise barrier being located? Will it be between the line and the bund?

**Steve Mitchell:** Yes. The dimension on the plan is shown as 3.00m, which is the distance between the nearest track on the realigned route and a point 3m from the rail. That is where the noise barrier will go, because, for safety reasons, that is the closest that we can put it to the railway.

**Christine May:** Can you confirm how far from the properties the noise barrier will be?

**Steve Mitchell:** The distance varies from one property to the next, but the noise barrier will be between 17m and 20m away from the properties.

**Christine May:** Can you comment on the distance in the case of Mr and Mrs Baillie's property?

**Steve Mitchell:** I do not have the precise figure, but it is about 17m to 20m.

**Christine May:** Thank you.

**Steve Mitchell:** I would like to touch on one or two points in Mr Baillie's evidence.

**Alastair McKie:** That might be useful.

**Steve Mitchell:** I have not had a chance until today to respond to the evidence that Mr Baillie has put to the committee.

**Alastair McKie:** It was my intention to—

**The Convener:** You will have an opportunity to question Mr Baillie when he gives evidence.

**Alastair McKie:** The issue is to do with the fact that Mr Baillie suggests that the  $L_{Amax}$  is set too high and has commissioned his own acoustic report. It might be useful if I could take the evidence from Mr Mitchell now.

**The Convener:** Okay, we will deal with the matter now.

**Steve Mitchell:** There are three points; the point that Mr McKie has raised is one of them.

I am not sure how much detail I should go into on the matter, because the committee has heard some of this from me before.

There is a difference of opinion about the highest peak noise level that can be tolerated before sleep disturbance occurs. I have spelled out in my evidence that I believe that the peak value is 82dB before significant community sleep disturbance would occur, but this objector feels that a lower value should be used. It may not be appropriate for me to go into that in detail now, but I draw the committee's attention to a development that occurred last week, when the Edinburgh Tram (Line One) Bill Committee reported. The 82dB value has been adopted for the noise policy in the Edinburgh tramline project and sections in the Edinburgh Tram (Line One) Bill Committee's report confirm that it is happy that that is the right value to use for that scheme. As members know, our noise and vibration policy is similar to the one for that scheme.

I am aware that the committee does not want to hear too much from me, but I will mention two other points briefly.

Mr Baillie expressed concern that the noise barrier is not high enough, because he felt that some train noise comes from the exhaust system; he enclosed some photographs of an exhaust system in one of his appendices. We discussed the matter the other day and I believe that he is now happy that most of the noise—particularly from a train that is travelling at speed—comes from the wheels and rails rather than from the

exhaust. The noise barrier that I have talked about would deliver between 10dB and 15dB of noise attenuation for the upper and lower storeys of the properties in Still Haugh. Those numbers are confirmed in the Sandy Brown Associates report that the residents commissioned. Paragraph 2 in section 7 of that report confirms that Sandy Brown Associates expects, in the same way as I do, those noise attenuations to be delivered.

My third point is very brief. In his evidence, Mr Baillie expresses some concern about vibration. We talked briefly about vibration when we met—it was raised quite late in our discussions. Mr Baillie may well ask me questions about the matter today, but I believe from his response that he is perhaps less concerned about vibration than he was when he wrote the documents.

**The Convener:** Thank you, Mr Mitchell. In relation to the Edinburgh Tram (Line One) Bill, I should say that the Edinburgh Tram (Line One) Bill Committee has, of course, made up its own mind, having heard the evidence, just as this committee will make up its mind based on the evidence that we hear. It is a different bill and a different committee.

**Christine May:** The houses in question are of timber-framed construction. What impact does that have on noise and vibration levels?

**Steve Mitchell:** I do not think that it makes any significant difference at all. In terms of noise, we set our standards outside the buildings and we assume that the windows are open, so all the noise would come through the open windows, regardless of the construction of the building. In terms of vibration, people with timber-framed buildings are sometimes more concerned, because they feel that those buildings are in some way flimsier. Again, the standards that we have set ourselves apply to any kind of building. The standards are to do with perception and with people's discomfort from vibration, which is felt at levels that are very much lower than those that would cause damage to any building.

**Christine May:** The committee is perhaps just as concerned with perception as it is with physical vibration. Are you aware of any comparative studies of the impact of noise and vibration on buildings of different construction types, and what the results of those studies were?

**Steve Mitchell:** Some work has been done by organisations such as the Building Research Establishment, normally with regard to road traffic and heavy goods vehicles going over potholes. The standards that we have set ourselves have two values for peak particle velocities—of 5mm and 3mm per second. The lower value of 3mm is specifically for buildings that are more sensitive, such as timber-framed buildings. In other words,

the standards that we have set cover all types of building, including timber-framed buildings.

**Gordon Jackson (Glasgow Govan) (Lab):** I think that you have probably answered this question, but I just want to be clear about it. Will the noise barrier at the side of the line reduce the noise level to below day and night threshold levels?

**Steve Mitchell:** Yes, it will. It will comply with the noise policy targets that we have set ourselves.

**Gordon Jackson:** Can you be quite specific about that?

**Steve Mitchell:** Yes. It will meet the daytime equivalent noise level of 55dB, the night-time equivalent noise level of 45dB and the peak value of 82dB, although the peak value will be more like 73dB.

**Gordon Jackson:** At one point, the evidence states that

“significant levels of sleep disturbance in the Paddock estate are not expected.”

Perhaps it is the lawyer in me, but there seems to be a wee get-out in the phrase “not expected”. It does not sound terribly committed. Can you be specific about that?

**Steve Mitchell:** Perhaps I could have said “are not predicted”.

**Gordon Jackson:** Does that mean that they will not happen, or is it that you are not sure?

**Steve Mitchell:** To give you an example, if the Paddock estate happened to be occupied by 10 super-sensitive people, perhaps they would suffer some sleep disturbance, but I do not think that that is the case.

**Gordon Jackson:** So, what you are saying is that the level of noise would not normally disturb the sleep of the average man on the train—I was going to say “on the bus”. Are you saying that a normal person would not be disturbed, and that it would have to be something extraordinary to do with the person that would cause the sleep disturbance?

**Steve Mitchell:** Yes, I think that that is a reasonable way of stating it.

**Gordon Jackson:** Okay. I understand that.

**The Convener:** Mr Baillie, do you have any questions for Mr Mitchell on noise and vibration and maintenance?

**George Baillie:** I would like to question Mr Mitchell’s statement about noise levels coming purely from the train. I did not say that I accepted—

**The Convener:** Do you have a question?

**George Baillie:** The question is about a 1.5m-high fence in mitigation for sound. I do not know how that relates to a 4m-high train that has an exhaust system and fans at high level.

11:30

**Steve Mitchell:** Let me answer the question for you. In our report of February 2005, we say that a noise barrier of that height would achieve about 10dB of attenuation for your bedroom and about 15dB for your ground floor. The first paragraph of section 7 of the report that you commissioned from Sandy Brown Associates LLP mentions the proposed barrier’s dimensions; the second paragraph of that section states:

“This will reduce noise levels at the nearest properties by around 15 dB at the ground floor windows, and 10 dB at the upper floor windows.”

If you are right, both your consultant and I are wrong.

Of course the exhaust system on a diesel multiple unit will make noise, but it will make much more noise at a station when a train pulls off under load, for example. Once the train is mobile, around half of the noise will come from the rails and around half will come from the wheels. The traction gear underneath its floor level will also make a small amount of noise. In that context, it would be wrong to think that exhaust systems would be a significant source of noise.

**George Baillie:** Do you accept that exhausts and any fans at that level will be a source of noise?

**Steve Mitchell:** They will be a source of noise, but not a significant one—the noise will be much lower than the noise that will come from wheels on rails.

**George Baillie:** In general, do you accept that, in order to mitigate a noise, it is better to have an object or barrier in the line of sight between the noise source and the receptor?

**Steve Mitchell:** Yes, but the noise source to which you refer will not be significant, as I said. The dominant noise source by a long way will be wheels hitting the rails as trains go by at around 85mph.

**George Baillie:** But they will be a noise source.

**Steve Mitchell:** There will be a further noise source, but people talking inside a vehicle will also be a noise source. Such noise sources are not significant.

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

Mr McKie, do you have any further questions on noise and vibration and maintenance for your witness?

**Alastair McKie:** I have a follow-up question on maintenance. If the noise barrier were installed, who would maintain it?

**Steve Mitchell:** I am glad that you asked me that. I had not thought of the answer, but I think that the people who would maintain the railway generally, including the track and all the infrastructure, would maintain it. They would move along railway land and maintain the barrier in the same way that they would maintain all the other equipment on railway land.

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

**The Convener:** We turn to pollution, on which the promoter's witness is Steve Purnell. Mr McKie, do you want to invite Mr Purnell to give a brief outline of where matters stand on pollution? You may then question him.

**Alastair McKie:** Good morning, Mr Purnell. What do you understand to be the pollution issues? Do you believe that the effects of railway pollution will be significant?

**Steve Purnell (Environmental Resources Management Ltd):** I think that two issues arise in the objections of all the objectors who are being represented. One is whether the operation of the trains would cause pollution in the ground, but stronger points have probably been made on whether the trains would have a health impact as a result of the fumes that they would generate.

On the first issue, railway lines are generally not a major source of contamination. They may have been historically, particularly when diesel trains were introduced in the early to middle part of the previous century, but those trains were very badly designed compared with those that are designed to today's standards. Fuel could slop out and find its way into the ground, particularly on curved parts of tracks and in areas where trains stopped for significant periods. However, that will not be an issue in the Waverley railway project because the trains that are envisaged will be of a modern design and will be extremely well maintained.

We considered the air pollution generated by vehicles for the environmental impact assessment. I can comment on the details in answer to questions but, as we set out in the written evidence, we do not consider it a significant source of concern.

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

**The Convener:** Mr Baillie, do you have any questions for Mr Purnell on pollution?

**George Baillie:** I have one question on pollution. Will the train generate more pollution than a heavy goods vehicle?

**Steve Purnell:** No. You have, or one of your fellow residents has, kindly provided a *Hansard*

extract. I will use that if I can find it. Heavy goods vehicles are not included in the table in that extract, which refers to an urban car—a petrol car, not a diesel car—an urban bus and an average diesel multiple unit train. The diesel multiple unit trains that are cited in the table are, as is described beneath the table, an average of the trains that are currently on the network throughout most of the United Kingdom. By definition, that includes a number of old and poorly maintained vehicles. Nevertheless, the  $PM_{10}$  factor that is given for such a vehicle is 0.122g/km. The equivalent heavy goods vehicle  $PM_{10}$  factor is 0.143g/km. Therefore the train will not emit more pollutants than a heavy goods vehicle.

**George Baillie:** Is that the case even though it is a diesel multiple unit, rather than a single heavy goods vehicle—a single motor unit?

**Steve Purnell:** Yes, that is my understanding.

**George Baillie:** Do you agree that, because of the introduction of the train, there will be some pollution that is not present at the moment?

**Steve Purnell:** Some pollutants will be emitted by the trains as they are moving. There are a couple of things that I should say about that. First, one of the objectives of the scheme is to reduce the number of vehicles on the nearby A7 to the tune of around 2 per cent—I think, from memory. Ordinarily, there are between 5,000 and 10,000 vehicles a day on the A7; a 2 per cent reduction of that might be a reduction of about 200 vehicles. A number of those will be diesel cars.

Secondly, the emissions that come from a train are not the same as the concentrations at the receptor. Even using the factors in the *Hansard* extract that you provided to us—which I believe illustrate the worst case—once the pollution is dispersed, it will be negligible. We can provide the calculations to demonstrate that. That is the professional opinion of the people undertaking the exercise for the environmental impact assessment.

**George Baillie:** The A7 is a significant distance from the development at the moment. Would the fact that the road is so far away but the train will be so close to the houses have an effect?

**Steve Purnell:** Although the train will be relatively close to the houses, the pollutants will disperse extremely quickly. Given the fact that it is a relatively fast moving source—as we discussed earlier—the pollutants will be dispersed almost immediately. We firmly believe that the impacts will be negligible, as I have said before.

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

**Alastair McKie:** I do not.

**The Convener:** Thank you. We will have a short suspension while Alison Gorlov and Andrew McCracken take up their positions.

11:39

*Meeting suspended.*

11:41

*On resuming—*

**The Convener:** The promoter's witnesses on the impact of the railway on the value of properties and compensation are Alison Gorlov and Andrew McCracken. I ask Mr McKie to invite one of his witnesses to outline where matters stand.

**Alastair McKie:** The appropriate witness is Mrs Gorlov, but the promoter simply rests on its compulsory purchase policy paper. I refer the committee to paragraphs 37 to 39 of that paper, which deal with compensation when no land is acquired.

**The Convener:** Thank you. Mr Baillie, do you have questions for Mrs Gorlov on the impact on property values and compensation?

**George Baillie:** Yes. Would the introduction of a railway line so close to the houses at Still Haugh have an impact on property values?

**Alison Gorlov (John Kennedy and Co):** I honestly do not know. That is not my expertise and I am not a land valuer.

**George Baillie:** Over and above the funds for the compulsory purchase of properties, have any moneys been set aside in the overall project funding to cover compensation claims for devaluation of properties?

**Alison Gorlov:** I am afraid that I am not the person to ask about that, either. I cannot tell you how the figures have been produced. All that I can say is that the promoter is aware that such compensation might become payable.

**George Baillie:** But you do not know whether anything has been allowed in the budget for such compensation.

**Alison Gorlov:** The figures that have been budgeted take account of potential liabilities to compensation, but I cannot tell you how that has been dealt with in detail, because I have not been involved in preparing the figures. I hazard a guess that Mr Rutherford could assist.

**The Convener:** I hazard a guess that Mrs Gorlov is right. I invite Mr Rutherford to come to the table to answer the question.

**Bruce Rutherford (Scottish Borders Council):** Various factors have been built into the ultimate bill for compensation. Each property has been

examined and we have assessed what the market value of each property would be if it were subject to a compulsory purchase order and were bought under the scheme.

Other factors are also built into compensation, such as whether part of a property—for example, a garden—is to be bought. I am not aware that any amount has been set aside to meet any claim against us for devaluation of a property. The burden of proof is always with the claimant. We would respect and interrogate any claim for compensation that was made on that ground.

**Gordon Jackson:** I want to try to give some comfort to Mr Baillie on the issue. If people establish that they have a legal claim, they will be paid—whether there is a budget for that is irrelevant and will make no difference.

11:45

**Bruce Rutherford:** That is correct. The laws of the land cover that.

**George Baillie:** Do you accept that it is difficult to prove property devaluation in this case?

**Bruce Rutherford:** Some people have commented to us that their property values may rise as a consequence of the railway being close to them but, on the other hand, people such as you suggest that your property values will fall. I accept that that may be difficult to prove one way or the other.

**The Convener:** Mr McKie, do you have any further questions for the witnesses? In particular, you may wish to ask Mr McCracken the questions on safety that I omitted to allow you to ask earlier.

**Alastair McKie:** Mr McCracken, Mr Baillie has concerns about safety, particularly about derailment near the properties at Still Haugh. Is there anything about the character of the line, the topography or conflicting railway movements in the vicinity that makes the safety of the railway at this location different from the safety of any other part of the modern railway network?

**Andrew McCracken:** No.

**Alastair McKie:** Will you remind the committee how safety will be reinforced in the design and operation of the railway, if it proceeds?

**Andrew McCracken:** I refer the committee to our policy paper on rail regulation, which was submitted on 9 December 2005. I do not want to regurgitate the whole paper, but I refer to paragraphs 9, 10, 12 and 13, which lay out clearly the process for design assurance and approval under HMRI's approvals process.

**Alastair McKie:** Do you have any reason to believe that HMRI will withhold its consent for the railway on safety grounds?



**Andrew McCracken:** No.

**The Convener:** We will now have a witness changeover. I ask George and Fran Baillie to take their seats.

GEORGE BAILLIE and FRAN BAILLIE *took the oath.*

**The Convener:** We will first deal with the acquisition of land. As Mr and Mrs Baillie do not have a questioner, I ask them to say whether they accept the promoter's evidence on where matters stand.

**George Baillie:** I accept that the situation has generally improved in the past two to three weeks, in that there has been much more dialogue with the promoter and the design team. That was a little late in the day and could have been done earlier, but in general we agree with what has been said on that.

**The Convener:** Mr McKie, do you have any questions for Mr or Mrs Baillie on the issue?

**Alastair McKie:** I do not, if they are in general agreement.

**Margaret Smith (Edinburgh West) (LD):** I am not sure that my question is on the right topic, but I want to ask about your original proposal to remove the access track to Allanshaugh Farm and to provide in its place a bridge or underpass at the existing crossing point. Are you still pursuing that proposal?

**George Baillie:** We put forward that option because we thought that the elimination of the long road that would run along the length of the estate would allow the railway to be moved a few metres and create space for a bund, which is what we wanted in the first place. Because the new road would be approximately three quarters of a mile long, we thought that the construction of an underpass at the existing access point to Allanshaugh might create savings and offer a solution.

**Margaret Smith:** What was the promoter's response to your proposal?

**George Baillie:** The promoter said that the provision of an underpass at that location would create engineering difficulties and that the underpass might be intrusive.

**Margaret Smith:** Did the promoter comment on the cost of the proposal?

**George Baillie:** We were told that the proposal would be expensive, but we said that if the promoter did away with three quarters of a mile of road, a saving could be made, which could offset—in part, at least—the cost of the underpass.

**Margaret Smith:** Have you ascertained the views of Mr and Mrs Scott on the matter?

**George Baillie:** No.

**Margaret Smith:** Do you still think that your proposal has merit and should be pursued, in that it might enable the bund to be constructed further from your house?

**George Baillie:** Our suggestion was to move the railway line as far as possible from the boundary and leave in place the existing access point to Mrs Scott's house at Allanshaugh, which would be served by an underpass.

**Mr Brocklebank:** Mr Baillie, is it your understanding that your proposal was rejected on the ground that a bridge would be intrusive?

**George Baillie:** Yes.

**Mr Brocklebank:** How high would the bridge and the bund be?

**George Baillie:** I think that the height of the bridge would be determined by the highways authorities and would depend on the height of the vehicles that would pass underneath. If a conventional bridge of 4m or 5m was provided there would have to be a cutting and an access road, to allow the train to travel over the bridge.

The bund would end before the Allanshaugh access point. We maintain that a bund that was 2.4m high would be acceptable. Our detailed proposal would allow for a bund of 2.4m, which would remain within the boundaries of the existing track—in other words, Mrs Scott's fence and the fence at the boundary of our properties.

**Mr Brocklebank:** Have you received a response to that?

**George Baillie:** No, but, to be fair, we produced it only over the weekend, after we received the sketch detail from the promoter on Saturday.

**Mr Brocklebank:** If there was no new road, how far from the properties could the track be moved?

**George Baillie:** The distance between the boundary of Mrs Scott's property and that of the estate is 19.4m. We calculated that there could be 12.5m between the boundary of the houses and the nearest track. There would then be a 3m-wide zone to allow for the width of the track and a further 3.9m between the track and Mrs Scott's fence.

**Mr Brocklebank:** Would that be more acceptable to you?

**George Baillie:** Yes.

**The Convener:** Do Mr and Mrs Baillie accept the promoter's evidence on the impact on property value and compensation?

**George Baillie:** At this stage it would be difficult to prove that values will go down, although we

have an estimate of the current value of the houses. We understand that compensation claims cannot be made until the railway has been up and running for a year and a day.

**The Convener:** Mr Baillie, in paragraph 37 of your initial written evidence, you stated that five houses had been put on the market. At the time you submitted the evidence to the committee, none of those houses had been sold. Are they still on the market?

**George Baillie:** One of the bungalows has been sold; one large house on the railway side has remained unsold since it was built; and one house is to be let. We understand from the developers that two or three potential buyers pulled out because the railway was imminent.

**The Convener:** Mr McKie, do you have any questions for Mr and Mrs Baillie on the value of properties or on compensation?

**Alastair McKie:** Mr Baillie, do you accept that numbers 8, 11, 12, 17, 19 and 27 were all sold long after the Still Haugh objection was submitted to Parliament?

**George Baillie:** That was in 2004.

**Alastair McKie:** My information is that those properties were sold after the objection was submitted.

**George Baillie:** That is correct.

**Alastair McKie:** Do you also accept that number 21 was sold in December last year, several months after the committee's preliminary stage report approving the bill was published?

**George Baillie:** That is the bungalow; yes, you are correct.

**Alastair McKie:** Do you also accept that the promoter has applied the terms of the Land Compensation (Scotland) Act 1973 and that, as Mr Jackson has pointed out, if a person can demonstrate a reduction in value due to physical effects, that person will have a right to compensation in law?

**George Baillie:** Yes—that document has been presented to us.

**The Convener:** I turn now to loss of amenity, aesthetics and planning consent. I invite Mr and Mrs Baillie to say whether they accept the promoter's evidence on where matters stand.

**George Baillie:** As I say, developments in the past three weeks have introduced something that we proposed back in November—a bunded area beyond the boundary fence. That will go a long way towards dealing with the problems that we raised in our objections.

**Alastair McKie:** You are seeking a realignment, but do you accept that the promoter cannot align

the track to be further away from your properties because of the impact on line speed?

**George Baillie:** I do not think that that is a factor. It can be done.

**Alastair McKie:** It is physically possible, but do you accept that the new curvature would affect line speed?

**George Baillie:** No—there is no curvature on the line at that location.

**Alastair McKie:** Mr McCracken has given his professional opinion on that. Do you disagree with it?

**George Baillie:** I disagree because I have walked the full length of the line in the location and it is a straight section of track—although it does go into a very gentle curve a mile or a mile and a half away. Moving the track by 3m within a 1-mile or 1.5-mile length of track would be achievable.

**Alastair McKie:** You have not commissioned a professional report to assess the impact on line speed.

**George Baillie:** No.

**Alastair McKie:** You are proposing higher bunding. Have you canvassed the frontagers in Still Haugh on the details?

**George Baillie:** Yes.

**Alastair McKie:** How did you do that?

**George Baillie:** We spoke to all parties who were available, which was the bulk of them, in properties 1 to 14. We showed them the details of our proposal and asked them for their views in principle. It was agreed that, in principle, the proposal was correct and would be acceptable. The consensus was that the bunding had to be higher.

**Alastair McKie:** Do you accept Mr McCracken and Mrs Oxley's evidence that, if the bunding is to be at the height you hope for, it will have to be more of a structure? The bunding that the promoter proposes may be more aesthetically pleasing than what we might call an engineered bund at the end of gardens.

**George Baillie:** The present proposal involves a bund that has a shallow inclination of 1 in 3 down to the boundary of the houses and a steep inclination of 6 in 1 down to the track side. We have proposed extending the side of the bund that has a 1 in 3 gradient and retaining the 6 in 1 gradient down to the track side. In other words, the gradients would remain the same, but the bund would be higher. To achieve that result, a larger base area would be required.

12:00

**Alastair McKie:** Would providing a larger base area not have an impact on the distance between the base and the railway line?

**George Baillie:** It would. We are suggesting that an additional 3m would be required.

**Alastair McKie:** So the higher bund that would provide the improved aesthetics that you favour could be achieved only if the alignment were pushed a further 3m away from Still Haugh.

**George Baillie:** That is right; 3m is approximately 10ft.

**Alastair McKie:** Do you accept that given that the railway line can be pushed only 1.5m further away because of technical constraints, the raising of the bund would have to be engineered, which would involve a move away from the softer landscaping impact that the promoter is trying to achieve?

**George Baillie:** I do not think that that is the case. The present proposal would involve an engineering operation because the inclination on the track side of the bund is 6 in 1. Our proposal merely involves an extension of the 1 in 3 gradient on the side of the bund that leads down to the houses. The appearance of the bund would be exactly the same, except that it would be longer.

**Alastair McKie:** But that could be achieved only if the railway line were moved further away from the houses.

**George Baillie:** That is correct.

**Alastair McKie:** According to the professional expert evidence that the promoter has provided, that is not achievable.

**George Baillie:** I have done a survey of the land in question and have presented it to the committee. I feel that the dimensions that I have provided, which are hard and fast measurements—I do not know whether the promoter has made hard and fast measurements—appear to suggest that there is sufficient space. The size of bund that I have suggested, a sound mitigation fence and the 3m gap that is required between a railway and any structure that is close to it could all be fitted in and there would still be a 3.9m-wide space to the boundary at the other side of the line.

**Alastair McKie:** The promoter and the objector disagree on that. We will agree to disagree.

**The Convener:** On noise and vibration and maintenance costs, I invite Mrs Baillie to say whether she and her husband accept the promoter's evidence on where matters stand.

**Fran Baillie:** Not really. We feel that there is a discrepancy between what the two noise

surveys—one of which was done by the promoter and the other of which was commissioned by the residents—say. The promoter claims that the 1.5m-high noise mitigation fence that it proposes to provide will reduce the decibel level by 10dB at first-floor level. The report that Sandy Brown Associates produced for us estimates that the night-time noise level will be over the limit by between 12dB and 15dB and that the daytime level will be over the limit by between 7dB and 10dB. The promoter says that the noise mitigation fence will reduce the noise by 10dB, but that means that night-time noise will still be over the maximum permitted level. It is at night that the noise should be reduced the most.

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

**Alastair McKie:** The objectors should perhaps have raised that issue with Mr Mitchell, who would have been best placed to deal with it. They say that their professional report says one thing while the promoter's professional report says another. When it comes to which report the committee should prefer, that question should be put to Mr Mitchell.

**The Convener:** I will not allow the committee to go back just because the objectors have omitted to ask a witness a question. You might like to clear up the matter in your five-minute summary. Do you have any further questions for Mr and Mrs Baillie?

**Alastair McKie:** Yes.

Do you accept that the promoter has adopted a policy for achieving noise and vibration targets that has been accepted on many rail projects and, as Mr Mitchell has pointed out, has recently been endorsed by the Edinburgh Tram (Line One) Bill Committee?

**George Baillie:** That policy contains standard levels. We have ambient noise levels that are significantly lower than the threshold levels that you seek to achieve.

**Alastair McKie:** That is the answer to a slightly different question. Do you accept that the promoter has adopted a policy of achieving targets that are nationally recognised as being acceptable limits? The promoter made a commitment to the committee—and, indeed, to you and everyone at Still Haugh—that the thresholds will be achieved.

**George Baillie:** Yes, but the thresholds are not the actual levels that are unique to the area.

**Alastair McKie:** I am not sure—

**George Baillie:** You present generic threshold levels that are used throughout the country, but the report established that the actual levels at Still Haugh are significantly lower.

**Alastair McKie:** It may be that you seek a lower threshold. I think that Mr Mitchell said that you seek a maximum level of 60dB.

**George Baillie:** I believe that the generic level is 45dB, but our levels range from 34dB to 38dB.

**Alastair McKie:** Do you accept that the promoter seeks to achieve levels that are universally accepted on railway projects—45dB during the day, 55dB at night and no less than 82 dB  $L_{Amax}$  at night.

**George Baillie:** As an objector, I can only consider our area and, as I said, those levels are not those which are unique to our area. They have been presented as baseline levels that the promoter considers to be acceptable. There is no information available—bar the report that we commissioned—that shows the actual levels.

**Alastair McKie:** One of the issues is the promoter's  $L_{Amax}$  level of 82dB. Do you accept that that is derived from planning advice note 56 and from a parliamentary report known as the Mitchell report?

**George Baillie:** Is not 82dB the predicted level of noise that the train will generate?

**Alastair McKie:** I am asking you—

**The Convener:** Mr McKie, I think that you have made your point. Will you move on, please?

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

**The Convener:** On pollution, I invite Mr and Mrs Baillie to comment on whether they accept the promoter's evidence on where matters stand.

**George Baillie:** We think that the introduction of trains to the Still Haugh area will lead to more pollution.

**The Convener:** Mr McKie, do you have any questions on pollution for Mr and Mrs Baillie?

**Alastair McKie:** I do not.

**The Convener:** Mr and Mrs Baillie, do you have any further comments in the light of the questions that you have been asked on various topics? You will have five minutes to sum up after Mr McKie.

**George Baillie:** I will make our comments during those five minutes.

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

**Alastair McKie:** Thank you, convener.

First, on objection 119, by Samuel and Llewellyn, the promoter rests on its written and oral evidence and its endeavours to resolve the objection. In particular, the promoter will not acquire three of the four plots—it will acquire only plot 235—and the retention of trees is assured, as plan 1 shows.

On objection 128, from the residents of Still Haugh, the promoter's position is that there has been extensive consultation of the objectors, which culminated in the meeting on 2 March. The promoter can realign the railway 1.5m further away from the properties; in the promoter's view, that is the maximum shift that can be allowed if line speeds are to be retained.

The promoter's position is that the bunding of 1.5m will be adequate. There would clearly be technical constraints and issues if the bunding was to be significantly increased in height. The Still Haugh objectors' position is that the height of the bund should be extended to 2.5m. However, because of the base that it would take up, that would mean that the railway would need to be aligned a further 3m from the bund; that space is not available. The bunding is not a rail safety barrier. However, I ask the committee to accept Mr McCracken's evidence that there is no safety issue at Still Haugh and that rail safety will be enforced through Her Majesty's railway inspectorate.

Mr Frater has confirmed that one of the advantages of the landscaped strip is that it will enable one of the planning conditions, which relates to landscaping, to be implemented outwith the boundaries of the properties. I was asked to address the site's planning history, which I intend to do. The first document to which I refer the committee is the promoter's response on objector group 42. Paragraph 63 of the response says:

"The Still Haugh site was allocated for housing development and outline Planning consent granted in August 2000 before the Waverley project had any formal status. Proper consultation was undertaken when the Planning application was being processed. The approved houses were set back by what was considered to be an appropriate distance from the railway and intervening planting was introduced as a condition of the Planning consent."

I also refer the committee to the promoter's memorandum on the Still Haugh comments, which develops that a little bit further and states:

"Planning permission ... was granted in outline on 14 August 2000 with the reserved matters approval for the development being granted in three phases on 15th April 2002, 28th March 2002 and 18th August 2003. In granting permission, the Planning Committee of Scottish Borders Council (acting completely independently of the Bill promotion) took account of the existence of the Structure Plan policy supporting the reintroduction of the rail link. A planning condition applied to that planning permission required 'measures for treatment of the site boundary adjoining the former Waverley Line'. Scottish Borders Council were satisfied that the grant of planning permission for the development was acceptable in planning terms having regard to the possibility of the rail link being reinstated."

On noise and vibration, I invite the committee to accept Mr Mitchell's evidence. He has confirmed that, with the appropriate noise barrier, noise will

be kept within the limits that are set within the promoter's noise and vibration policy: 45dB during the day, 55dB during the night and within the threshold 82db  $L_{Amax}$ . The difference between the Sandy Brown Associates acoustics report and Mr Mitchell's report is not an issue of performance; it is in respect of the noise limits that they chose. I invite the committee to accept the promoter's noise limits which, as Mr Mitchell said, have been endorsed by the Edinburgh Tram (Line One) Bill Committee, although I accept that that is a different committee and that it is for this committee to make up its own mind.

On the impact on value, I refer the committee to the questions that I put to the objectors. The properties are selling, and have continued to sell, since the bill passed the preliminary stage. The promoter has applied the Land Compensation Act 1973 to the project and, if devaluation of the properties occurs through physical effects of the railway, a claim for compensation can be made a year and a day after it commences operation.

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

Mr and Mrs Baillie, you have a maximum of five minutes in which to make a closing statement.

12:15

**George Baillie:** As the representative of the resident Still Haugh objectors, I will summarise our main objections to the proposed reinstatement of the Waverley rail link. I first point out that we have endeavoured to comply with the committee's wish that we resolve our objections with the promoter; however, until three weeks ago, our efforts to do so were frustrated by the promoter's lack of communication, its dogmatic approach and the provision of totally inaccurate information, which has led to confusion. Meaningful dialogue started only prior to this meeting, with the promoter offering the objector accurate facts and figures for consideration.

For this rail project to proceed, the promoter would have been wise to have taken heed of objectors and to have researched each objection accurately—after all, the onus is on the promoter to provide solutions to objections, rather than vice versa. Should the reinstatement proceed, we will remain resolute in our efforts to achieve the best possible solution to the intrusion into our lives of a project that is not of our making.

Our proposal of an earth bund embankment with suitable planting and noise mitigation fencing offers a way forward and would answer our main objections. First, as far as safety is concerned, an earth bund embankment would offer some protection against derailment, train debris and the wind pressure that is generated by a train travelling at 90mph. Secondly, on noise, an earth

bund embankment with plantings and noise mitigation fencing would offer some protection from the noise of a train running through the quiet rural environment that we currently enjoy. Thirdly, on loss of amenity, an earth bund embankment with suitable plantings would obscure our view of the train and passengers' views into our rear gardens and would give us privacy in using those gardens.

At the moment, the promoter is offering to build a 1.4m high earth bund embankment against a 4m tall train—the effect of a bund of such height would be only minimal. If the track can be moved only 3m—or 10ft—a 2.4m high embankment could be built, which would go a considerable way towards reaching an acceptable solution.

We do not wish to be obstructive and we are keen to continue our dialogue with the promoter and design team in reaching a solution that addresses our objections. However, after canvassing the objectors whom we represent, we are aware that the consensus remains that the height of the earth bund must be increased as we have suggested. As a result, we crave the committee's indulgence: we would like the committee to review our proposals to reach a compromise on this intrusion into our environment.

**The Convener:** I thank Mr and Mrs Baillie for giving evidence. The committee notes the promoter's recent meetings with the Still Haugh residents and the progress that appears to have been made, and encourages the parties to continue their dialogue. If objectors feel that further meetings might be useful, we expect the promoter to respond quickly and positively to such requests. If the parties can reach solutions, we ask that they do so.

That concludes the evidence taking for group 42. We will now have a short recess for lunch and will reconvene promptly at 12:50.

12:18

*Meeting suspended.*

12:56

*On resuming—*

**The Convener:** I have a couple of announcements to make. First, I intend now to call group 46, which relates to the Lionel Lofthouse partnership objection. Secondly, Gordon Jackson, one of the members of the committee, has been unexpectedly called away, so we will have to progress through the rest of the afternoon without him. Rule 9A.5.6 of the Parliament's standing orders states:

"At Consideration Stage, a member of a Private Bill Committee may not participate in any consideration of the

merits of an objection or in any further proceedings relevant to that objection unless—

(a) all evidence directly relevant to that objection given orally during proceedings of the Committee at Consideration Stage has been given in the presence of the member; or

(b) with the agreement of—

(i) the persons who gave any such evidence in the absence of the member; and

(ii) the promoter,

the member has viewed a recording or read the Official Report of the proceedings of the Committee at which that evidence was given.”

In light of that, I intend to ask Gordon Jackson to read the *Official Report* and to view the tape of the meeting. Do the objectors and the promoter agree to our proceeding on that basis?

**Robert Forrest (Robert Forrest Ltd):** Yes.

**Graham Lofthouse:** Yes.

**Wilma Lofthouse:** Yes.

**Alastair McKie:** The promoter is happy to offer that agreement.

**The Convener:** Thank you.

I welcome to the table Kenneth Robertson, who will ask questions on behalf of group 46. I also welcome Mrs Lofthouse and her son Graham, whom we met on our recent site visit.

Dealing first with the acquisition of land, the impact on business and the loss of revenue and livelihood, the witnesses for the promoter are Andrew McCracken, Bill Sandland, Robert Forrest and Chris Bone.

ROBERT FORREST *took the oath*.

**The Convener:** Mr McKie, you may ask one of your witnesses to give a brief outline of where matters stand and to question them.

**Alastair McKie:** Certainly. Plans 8 and 9 are the appropriate ones for this evidence. I ask Mr Sandland to give a brief outline of where matters stand at the moment and to say what he understands to be the issues. Following that, it might be useful to hear from Mr Forrest on the more detailed impacts on the farm and how they can be mitigated, as that is his area of expertise.

**Bill Sandland:** Mr and Mrs Lofthouse and Graham Lofthouse occupy Bankhouse Farm, which incorporates 22 fields. The farm stretches northwards for more than four miles from the south of Stow to Bankhouse farmhouse. The fields are in three distinct groups: two at Stow in the south, two at Watherston in the middle, and 18 at Bankhouse in the north. The railway not only forms the principal communication link between those groups and many of the fields within them, but

offers a hard-standing and dry accommodation for animals when the need arises.

Reopening the railway will cause problems for the objector in relation to operating the farm. Extensive consultation has taken place with the Lofthouse family with a view to resolving those problems, which are so significant that the promoter explored the possibility of buying the whole farm in an exercise that was undertaken in consultation with the objectors. However, at a meeting on 15 February the objectors confirmed that they no longer wished to pursue that option. Consequently, my colleague Mr Robert Forrest has been engaged with the objectors' agent in identifying practical measures that could be taken to mitigate the effects on Bankhouse Farm of reopening the railway.

13:00

**Alastair McKie:** Mr Forrest, will you tell us about the practical measures that can be taken to mitigate the effects on the farm?

**Robert Forrest:** The proposed reintroduction of the railway line undoubtedly would affect Bankhouse Farm adversely. The land that is involved in the business comprises approximately 162 hectares that are owned, and a further 15 hectares that are rented. As Mr Sandland said, the land is in three blocks—land at Stow, land that is rented at Watherston and land at Bankhouse.

The Lofthouse family have access to the entire distance of the railway that pertains to their business, either by owning it or through neighbourly agreements. The route is the main artery of the farming operation. The railway line is used as a roadway and as hard-standing for overwintering and feeding stock. We do not underestimate that in our consideration.

It was initially suggested that the business would no longer be able to function physically or financially without the construction of several bridges, but through proactive and practical discussions we are trying to maintain the farming business's future operation, in conjunction with considering viable solutions, which do not necessarily include the construction of bridges, which could be expensive.

I begin with plan 2 of 2 for group 46—drawing number 9—which shows the two areas at Stow to which I will refer. The result at Stow would be two areas of sterilised land—2.43 hectares in the south haugh and 1.22 hectares in the north haugh. The promoter intends to purchase that land. We have also agreed to the construction of a set of livestock handling pens, which would be accommodated in the lower haugh, as pens would be lost when the railway was built. The pens would be provided through compensation or through their

physical construction. We would also consider improved access for accommodation works at the bridge that goes over the railway at the hairpin in Stow. That would provide suitable access for future farming operations, as it would allow access to the upper or north haugh.

I will move up the railway line to Watherston. Part of the rented land at Watherston—3.01 hectares—would be sterilised. That land is between Stow and Bankhouse, so I am not sure whether it is on the plans—it is just south of field 18 in Bankhouse. We have had further discussions with the Lofthouse family and their agent about limited access by crossing the Gala water from field 18 into the land at Watherston. However, the land would be sterilised from the owner that the family rent it from.

I move to drawing 8, which covers Bankhouse Farm. Field 18 is a long, narrow field at the farm's south end, amounting to 9.91 hectares, which would become sterilised if the railway were built. By means of recent discussions with the Lofthouse family and their agent, Mr Kenneth Robertson, we have reached agreement in principle that the promoter will supply a farm track that runs parallel to the east side of the railway track, from field 15 along the length of field 17, to allow access to field 18. That would be more economic than constructing a bridge, and I am sure that it would be more beneficial to future farming operations.

Our final main point of discussion has been the provision of access under the southernmost solum of the bridge to the north end of the farm at Bankhouse—that is to the north of field 15. Until construction, that area—like the other fields—will be accessed over the old railway track. Providing access will prevent a further 1.38 hectares of field 15 from becoming sterilised.

From representing the promoter in recent discussions, I believe that we will be able to enable the objectors to continue farming, which is their wish, and that we will seek to make accommodation wherever necessary to mitigate the impact on their business. Apart from losing the entire area of the railway that they own, which amounts to approximately 10 hectares, the family will lose only another 3.65 hectares of land that they own.

**Alastair McKie:** Does the promoter own or control the piece of land that will enable access to field 15? If not, will the promoter enter into negotiations to secure access?

**Robert Forrest:** We will enter into negotiations with the neighbour, who is Mr Muir of Torquhan. There are three solums under the bridge—

**Bill Sandland:** I understand that the Lofthouses own the appropriate solum under the bridge.

**Robert Forrest:** That is correct, so we have access through the bridge.

**Alastair McKie:** That concludes the promoter's evidence.

**The Convener:** I am curious about the fact that most of the suggestions in the plans arose fairly recently, so we were not aware of them before. I am not sure who will answer this question, but how will the new plans and the proposals on access tracks affect the appropriate assessment that is to be carried out?

**Bill Sandland:** We have checked with Environmental Resources Management Ltd, our adviser, which suggests that there should be no significant issues with the provision of the suggested track between field 15 and field 18.

**The Convener:** Is that true of the rest of the new proposals that are before us?

**Bill Sandland:** I am advised that there are no significant issues with the passage under bridge 61. The river flows through the centre of three spans and we will be able to clear out a track under an outer span without encroaching on or interfering with the river and its wildlife.

**The Convener:** Has the promoter discussed any of the issues with Scottish Natural Heritage?

**Bill Sandland:** I will have to renege on answering that question, but I will find out the answer and get back to you.

**The Convener:** We may come back to the issue.

**Alastair McKie:** I undertake to report separately to the committee on whether the impacts of the proposals have been taken into account and whether they have any consequence for the forthcoming appropriate assessment.

**The Convener:** Thank you.

Mr Robertson, do you have any questions for the witnesses on the impact on business of the acquisition of land?

**Kenneth Robertson:** Yes. I will begin with the track that Mr Sandland mentioned. It is fairly obvious that the track was mentioned in principle and that, as yet, there is no guarantee that it is possible. If we are fully to evaluate the effect on the farm, we need to know whether the answer is yes or no.

**The Convener:** Mr Sandland, is it yes or no?

**Bill Sandland:** It is yes—we believe that we can do it.

**Kenneth Robertson:** Is it categorical that the track can be constructed?

**Bill Sandland:** There is no difficulty with the physical construction of the track. The only caveat is that it might be necessary to encroach on the adjacent farm of Mr Muir to provide land for the track. However, we will be able to arrange that matter with him.

**Kenneth Robertson:** I apologise for lingering on the subject, but can I take it that that is a yes?

**Bill Sandland:** Yes.

**Kenneth Robertson:** Is it accepted that the proposals will have a serious impact on the farm's financial income, which supports three households? The viability of the farm, which is a livestock unit, is in question, because the acreage will be reduced by about 20 per cent. Is it accepted that the farm will struggle to make an income, given the amount of land that will be acquired and the other land that will be affected?

**Robert Forrest:** The farm will be affected. We will take that into consideration in the compensation package.

**Kenneth Robertson:** Thank you. At one point there was a proposal to build access bridges to the land that will be sterilised, but we are told that that is no longer feasible. Why was the proposal dropped?

**Bill Sandland:** The two areas in question are relatively small and the cost of providing bridges over the railway would be disproportionate. Mr McCracken might correct me, but I think that the bridges would cost about £350,000 each. That is a significant amount.

**Kenneth Robertson:** That is a significant cost for the railway project, but the effect on the Lofthouse family is that land will be taken out of production.

**The Convener:** Do you have a question or are you just going to make statements all afternoon?

**Kenneth Robertson:** I hope not, convener. If I am seen as making statements, I apologise.

**The Convener:** I have a question for Mr Sandland. You said that you need the neighbouring landowner's agreement to construct the track. Has that agreement been sought?

**Bill Sandland:** We have not made a formal application yet, but we are minded that that agreement is deliverable.

**Christine May:** You said that the impact on the Lofthouse family's business will be factored in to the compensation. Will you take into account the cumulative loss of income over a number of years or will compensation be paid only for the loss of land?

**Robert Forrest:** I imagine that the compensation will be based on a cumulative loss.

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

**Alastair McKie:** I have none.

**The Convener:** Mr Brocklebank has a question.

**Mr Brocklebank:** I think you said that you made a proposal to acquire the farm compulsorily. Is that correct?

**Bill Sandland:** We investigated the possibility of acquiring the farm. When the effects on the operation were explained to us it became clear that there was a major difficulty. In view of the initial assessment that three or four bridges would be needed, it was suggested that it might be appropriate simply to buy the farm. We put that to Mr Lofthouse's agent, Kenneth Robertson, and the proposal was explored, but at the meeting in the middle of February Mrs Lofthouse intimated that she no longer wished to pursue that option.

**Mr Brocklebank:** Was a value discussed or a sum of money proposed for the acquisition?

**Bill Sandland:** No firm sum was discussed.

**Mr Brocklebank:** So the proposal was turned down in principle?

**Bill Sandland:** Yes.

**The Convener:** On the impact on the movement and handling of livestock and storage facilities, the promoter's witnesses are Andrew McCracken, Bill Sandland, Chris Bone and Alison Gorlov.

Mr McKie, will you invite one of your witnesses to outline briefly where matters stand on the impact on the movement and handling of livestock and on storage facilities, and will you then question them?

**Alastair McKie:** Mr Forrest covered many of the points about the retention and maintenance of access between the various farms, but if he has anything to add on the specific issue I invite him to do so now.

**Robert Forrest:** The only thing that I will add is that something will have to be built into the compensation package to cover the area where the cattle are outwintered.

**Alastair McKie:** Is that because cattle are outwintered on the line?

**Robert Forrest:** Yes. The cattle and the sheep are outwintered on the old line.

**Alastair McKie:** What is the acreage of the line?

**Robert Forrest:** I am not sure, but it is probably about 25 acres.

**Alastair McKie:** Ten hectares, approximately.

**Robert Forrest:** Yes.



**The Convener:** Does Mr Robertson have any questions for the witnesses about the impact on the movement and handling of livestock and on storage facilities?

**Kenneth Robertson:** Yes. Is it accepted that the loss caused by the railway line, which amounts to 25 acres, will cause severe difficulties in the day-to-day running of the farm?

**Robert Forrest:** Yes.

13:15

**The Convener:** Does Mr McKie have any further questions for his witnesses on the issue?

**Alastair McKie:** No. Compensation is a matter for Mrs Gorlov, but the promoter rests on its existing compensation policy paper, which applies the existing law. If there is a severe impact, a claim could be submitted and it would be dealt with accordingly.

**The Convener:** On access, the witnesses for the promoter are Andrew McCracken, Bill Sandland, Chris Bone and Alison Gorlov. Would Mr McKie like to invite one of his witnesses to give a brief outline of where matters stand on the issue and then to question the witnesses?

**Alastair McKie:** We have covered access between the various dispersed fields on the farm, so I will rest on what has been said.

**The Convener:** Does Mr Robertson have any questions for the promoter's witnesses?

**Kenneth Robertson:** Not at the moment, convener. There is an issue, but I think that it will come up later.

**The Convener:** Okay. I will allow a few moments for witnesses to change over. The witnesses to be seated at the table are Wilma Lofthouse and Graham Lofthouse. I understand that they will be joined by Mr Robertson in giving evidence.

WILMA LOFTHOUSE, GRAHAM LOFTHOUSE and KENNETH ROBERTSON *made a solemn affirmation.*

**The Convener:** We turn first to acquisition of land, impact on business, loss of revenue and livelihood. Would Mr or Mrs Lofthouse or Mr Robertson like to make an opening statement on whether they agree with the promoter's position?

**Kenneth Robertson:** We agree that, as has been stated, the railway will have a severe impact on Bankhouse Farm. We appreciate that the promoter accepts that it will have such an impact. We are grateful that we have had the opportunity—albeit late—to discuss and negotiate with the design team. That has given us some degree of comfort.

At the moment, Bankhouse Farm is 298 acres—I give the size in acres because that is the measurement that I was brought up with. The farm carries 76 breeding cows and 680 breeding sheep, and the maximum stock on the farm at any one time can be 228 cattle and 1,830 sheep. No one can expect the farm to work any harder or be any more efficient; it is doing a very good job on the acreage that is there and with the stock that is produced. The farm will lose 8.5 acres of sterilised production land and, in addition, 25 acres of railway. Just as important, 47 acres or thereabouts will be taken out of full production—in other words, brought into limited production—if the track is constructed as is currently planned. We reckon that those fields will be reduced to about 50 per cent of their current production.

There is also the possibility of losing a further area of rented land at Watherston and Pirn House. The farm will be left with about 217 unaffected acres—that is, 217 acres that it will be able to carry on farming as it is now. The farm supports three households, and there is the prospect that losing that land will devalue the remainder of the farm land. There is also concern about who will manage and maintain the sterilised land that is being bought out. Will it become an area of wilderness, with weed seeds blowing on to my client's land? A farm is a factory in the country that produces food. Twenty per cent of this farm's production will be taken away; no other factory could cope with that.

There will also be a reduction in the single farm payment—the current form of subsidy—and there is little or no prospect of more land being purchased to compensate for that. It is not foreseen that any further land will be available in the immediate vicinity. The farm is not a large unit, and the Scottish Agricultural College would certainly say that the farm would no longer be a viable unit if the land was taken out of it.

It is important to realise that 90 acres of land were added to the farm when the Waverley railway line closed in 1969, or shortly after that, and all the land could be accessed from the disused railway. Even when the railway was operating, the land could be accessed, as there were private level crossings on every farm. The access restrictions that will be brought in are a new problem. Access was not a problem, even when the railway operated.

That is all that we have to say on the impact on the farm's viability, value and livelihood.

**The Convener:** Thank you, Mr Robertson. Is there anything that Mr or Mrs Lofthouse would like to add?

**Wilma Lofthouse:** Not at this time.

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

**Alastair McKie:** Mr Robertson, may we agree that there has been a discussion between the promoter and yourself about potentially purchasing the whole of the farm and that the family—for perhaps understandable reasons—does not wish to pursue that?

**Kenneth Robertson:** There was discussion, yes. I will elaborate on why that did not go any further. The farm is owned as a partnership business, which is slightly complicated and involves a few different people. The only real reason for not considering the farm being bought outright was that complication. If it had been owned simply by the Lofthouse family, I think that we would have gone down that road and given a lot more serious consideration to an outright purchase.

**Alastair McKie:** Do you agree that the promoter recognises that the scheme will have adverse impacts on the farm and that, if those impacts give rise to claims for compensation, it will be paid, if appropriate, by the promoter?

**Kenneth Robertson:** We accept that the promoter is aware of the adverse affect that the scheme will have on the farm—that has never been in dispute. However, we will all have difficulty quantifying the compensation, because there will be a loss of income, as well as a loss of value.

**Alastair McKie:** You appreciate that compensation is not a matter for the committee.

**Kenneth Robertson:** Absolutely.

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

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

**Christine May:** Earlier you spoke about the addition of 90 acres to the farm as a result of the removal of the railway line. Over what period was that land added?

**Kenneth Robertson:** I am informed that it was added around 1995.

**Christine May:** So the last purchase was made in 1995.

**Kenneth Robertson:** Yes.

**Christine May:** We have heard from the promoter about what is proposed to maintain access across the land. I recall from our visit that the farmhouses are on the east side and that there is a lot of land to the west. Are you satisfied with the access arrangements that have been made for the land on the other side of the railway line?

**Kenneth Robertson:** It is difficult for me to answer the question. We are satisfied that the promoter has gone as far as it can go. It will not be exactly the arrangement that we would like, but it

is difficult to see what, if anything, could be better than what is being offered.

**Wilma Lofthouse:** I know that there is a so-called dry arch on one side of the bridge, but it is not always dry. Sometimes the river is in flood. At the moment, the promoter is suggesting that we drive vehicles into the river, under the arch and up the other side if the river is at a high level or is in flood. If it is dry, people will still have to dig down. You have probably seen that the water table is high, because the problem with the Gala water is that it meanders in and out. That will limit our access, which is why Mr Robertson says that it will be possible to use the fields for only about 50 per cent of their normal production. We certainly cannot take vehicles such as fertiliser spinners and muck spreaders under the bridge—that is too dangerous. In any case, the fertiliser would get wet and be ruined by the time we reached the other side.

I am not sure what the Scottish Environment Protection Agency would say about the matter. You asked whether Scottish Natural Heritage had been consulted, but I am concerned about SEPA's view. Because we have fields at Stow, over the years we have had a lot to do with pollution in the river—not our pollution, but human sewage problems. I know that SEPA does not like anyone to drive in and out of the river on a regular basis. People are not allowed to move soil or stones from the river-bed without written permission from SEPA. Until the promoter gets in touch with SEPA and obtains something in writing, we cannot go ahead with a track on the east side of the railway line. I am concerned about the welfare issue that would be raised by our driving in and out of the river. I would not do that with a tractor and trailer, and I would be concerned if my son did. We have had trouble crossing the river in the past. I am not saying that we do not cross it, but it can be hazardous. We would have to have permission to do it.

**Christine May:** My next question was to be about access for machinery, so it has been answered.

**The Convener:** On the movement and handling of livestock and storage facilities, do the witnesses agree with the current position?

13:30

**Graham Lofthouse:** We are in negotiation with the promoter on the movement of livestock and machinery and on the storage of farm manure. We use the railway line at the moment, in a way that complies with the regulations of the Scottish Executive Environment and Rural Affairs Department.

No agreement has been reached on the movement of livestock. We move livestock over a distance of 4 miles, from our farm at home to Stow. Using the disused railway line allows us to walk the animals over a period of days down to the 90 acres of fields at Stow. If the railway comes back, we will not be able to walk the animals to Stow because the river is in the way. We cannot use the back C11 road because of the traffic. Therefore, all movement will have to be by lorry or livestock trailer. That all takes time, money and effort. Welfare issues also arise when livestock are being moved in that way—for example, when lambs that are just two days old are put into a lorry.

All such movement would be at our own cost; the promoter has not come up with any alternative ways of moving the livestock, or said whether it would bear the cost of that for 35 years, which is my foreseeable lifetime on the farm.

**The Convener:** Mr McKie, have you any questions on these issues?

**Alastair McKie:** No, but Mr Lofthouse's final point may form the basis of a claim for compensation. I can say no more than that.

**The Convener:** They may feel that access has been covered, but if the witnesses have anything further to say, they may do so now.

**Wilma Lofthouse:** We still await further clarification from the promoter.

Only since November 2005 has the promoter come to us to discuss any significant ways of dealing with our objections and problems. I must say that, in the past few weeks since Mr Forrest has been involved, things have suddenly moved. Whether that was because we were coming to Parliament today, I am not quite sure. Before Mr Forrest, Mr Sandland came. He had a bumpy journey up the railway in the Landrover with my son, and learned an awful lot about farming on a one-hour visit.

Since Mr Forrest began working on this on behalf of the promoter, he has looked into farming and we have had several very constructive meetings. I am sure that we will resolve some of the problems over the coming weeks and months; but I am also sure that we will not resolve them all. However, we continue to negotiate and we hope to solve some problems. Access is a major problem.

**Alastair McKie:** Good afternoon, Mrs Lofthouse. You have made some criticisms of the promoter before Mr Forrest became involved—and I am delighted that you have found Mr Forrest helpful—but can we agree that, when the promoter offered to purchase the whole farm, that was a fairly significant step towards resolving the impact of the railway? I know that you do not want to sell the farm, for understandable reasons.

**Wilma Lofthouse:** The offer to purchase was a significant step, but there was no point in discussing money because I made it clear to Mr Sandland—who was very fair, took a great interest in our farm, and tried to find out all he could—that selling was not an option because of our extended family partnership. My mother-in-law is 85 and has been nearly 50 years on the farm. She has dementia and it would be crazy to move her now.

**Alastair McKie:** The promoter understands your position and is sympathetic, believe me.

**Wilma Lofthouse:** I know.

We have to consider compensation. I know that that has nothing to do with the Parliament, but that will be a long-drawn-out affair as well.

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

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

**Alastair McKie:** Thank you. The promoter takes these objections very seriously, as they relate to the potential adverse impact on the objectors' agricultural business. I would submit that there has been extensive consultation. The promoter has taken the significant step of offering to purchase the farm but, for the understandable reasons that we have heard, the Lofthouses do not wish to take up that offer.

The Lofthouses wish to remain on the farm and I submit that the promoter has tried to find creative solutions to overcome the rather complex access difficulties. The promoter believes that those difficulties can be overcome. Mr Forrest, who is an agricultural expert, believes that the severance issues involve 10 hectares of track bed area and an additional 3.65 hectares. The committee has made interesting observations on the attitudes of SNH and SEPA towards potential access arrangements, which the promoter will certainly investigate if it has not already done so. The promoter will report back to the committee accordingly.

The promoter will obviously progress the third-party land issue relating to land that Mr Muir owns.

**The Convener:** Mr and Mrs Lofthouse and Mr Robertson have a maximum of five minutes in which to make a closing statement. They can share the time that is available if they want to do so.

**Wilma Lofthouse:** I want to say something brief before Mr Robertson sums up. Today is 6 March 2006. Our farming business's hassles, worries and stress started in May 2003 when an envelope like the one that I am holding, with 22 maps and 43 pieces of paper inside, fell through the door. There

were little black squiggly lines on the papers that nobody could read.

In September 2003, we received a larger envelope that contained 144 pieces of paper and 36 maps. We had to provide our objections to what that envelope contained at our own expense and in our own time. The promoter has only recently come up with better maps—I think that we received maps that we could read only in October 2005. The maps twice went across my kitchen floor and back again before we could find out what to do with them. Scottish Borders Council could have come up with something better. We are farmers, not lawyers, surveyors or land agents, and we had to sort everything out at our own expense. I object to the promoter's producing all that information to send to our house.

We received the final papers—from TerraQuest Solutions plc, not Turner and Townsend—in December 2005. TerraQuest Solutions is definitely a much better company. We received only four envelopes, each of which contained 20 pieces of paper, but they related only to the Stow station site, of which we do not own any part. I had to reply quickly to the correspondence—before the end of December 2005—so that that site could be put on the agenda for consideration of the bill. TerraQuest's work is an obvious improvement on previous work; however, if anything similar happens again, the promoter should never produce so much paperwork and should not expect people like us to have to pay for it.

I will let Mr Robertson finish.

**Kenneth Robertson:** We accept that significant consultation has taken place on the difficulties that have arisen in the project in so far as it affects Bankhouse Farm, and we are grateful for that consultation and for the negotiations that have taken place. However, it is regrettable that consultation and negotiation did not happen earlier—perhaps a year ago. Life would then have been made much easier for everyone who is involved.

I reiterate what Mrs Lofthouse said: the drawings are still inadequate. Land agents on both sides still do not have proper drawings by which they can assess values.

It is important not to lose sight of the fact that, in addition to the sterilised production land, 47 acres of land will be taken out of full production. Although those acres are not sterilised, the production from them will be very much reduced. There will be a knock-on effect on the remaining acres. Additional expenses will be incurred for extra feeding, bedding straw and so on for the reduced number of acres.

I will finish with a statement that has been made many times by various people associated with the

promoter: no owner should be worse off after the railway is constructed than they were before it was constructed. We are finding it difficult to believe that that will be the case.

**Alastair McKie:** On a point of order, convener. I refer to the plans that one assumes are in the envelopes. To comply with the standing orders and guidance, the promoter must serve the objectors notices, which may well be in the envelopes. I think that the promoter accepts that they are not easy to interpret, although steps were taken by the promoter at an early stage—when the point was raised—to interpret those plans for the benefit of these objectors.

**The Convener:** I hear what you say, Mr McKie.

I thank Mr and Mrs Lofthouse and Mr Robertson for coming today and for giving evidence. The committee members have visited the area and know the situation that you find yourselves in. You have our deepest sympathy.

We note what you say about consultation or lack of it and about the adequacy of maps and documents. We will reflect on that at a later stage. However, in view of the recent meetings that you have had with the promoter and the fact that they seem to be encouraging, we suggest that the promoter and the objector continue that dialogue. The objectors might feel that further meetings are needed and would be useful. We would expect the promoter to respond quickly and positively to such requests. If solutions can be reached, we urge you to reach them.

We would appreciate an update from the promoter on the situation with regard to SEPA and Scottish Natural Heritage. I remind you that time is ticking. Shortly, we will be concluding our evidence sessions and will then write our report. If these matters have not been addressed by the promoter yet, I suggest that you address them now.

I thank you all for attending.

13:41

*Meeting suspended.*

13:43

*On resuming—*

**The Convener:** The next group that we will deal with is group 44, relating to the objection from Mr and Mrs Scott. The objectors have chosen to rest on their written evidence, as contained in their original objection.

The witnesses for the promoter on the acquisition of land are Sam Oxley and Andrew McCracken. Mr McKie, you may invite one of your witnesses to give a brief outline of where matters

stand on the acquisition of land and question both witnesses.

**Alastair McKie:** Ms Oxley, could you give us an outline of how impacts are to be mitigated? In that regard, it might be useful to have plan 6 before us.

**Sam Oxley:** Mr McCracken will expand on the technical details in the plan. My understanding of the issue is that the objectors wished to avoid the loss of trees along the access road that leads south from their property at Allanshaugh. The track runs from the property towards the railway and is lined by mature trees, which the objectors want to avoid losing. Accordingly, the track has been redesigned with a turning head that will avoid any loss of trees.

**Alastair McKie:** Let us move briefly to Mr McCracken and ask him to interpret those plans for us.

13:45

**Andrew McCracken:** On plan 6, we have shown in the bottom right-hand corner that there was previously an at-grade crossing, serving the Scott farm, to the main road at Fountainhall. We are closing that level-crossing, and the reasoning that we gave in evidence last week in response to the Caunt objection will apply in this case too. Because we are closing the crossing, we will have to provide an alternative vehicular access to the farm area. What I have to say is also relevant to the group 42 objections, as there has been a lot of talk about bridges, including the suggestion of putting a bridge underneath the railway. We have not gone for that option but have provided an alternative road access coming in from the left, from the new A7 junction.

There are several reasons why we have not gone for a bridge structure. To have a bridge under the railway, we would probably have to go down 6m or 7m into the ground to retain full service vehicle height, which is not a particularly good idea on a flood plain near a river. For that reason, an underbridge was not pursued. An overbridge would have been possible, although the visual impact of creating a 5m or 6m high bridge at that location might have resulted in some objections from the Still Haugh residents.

Having ruled out the bridge crossing, we decided to create a new road access into Fountainhall and, to serve the Scott farm, a new road access that branches off the new road and is sandwiched between the Gala water and the river crossing. As Ms Oxley pointed out, what I have shown in blue on the plan, towards the right-hand side of that access track, is a circular turning area, which previously contained some mature trees. We have now redesigned that and have given an undertaking to alter the arrangement to save the trees.

**Alastair McKie:** Those are all the witnesses.

**Christine May:** Will Mr McCracken and Ms Oxley say how much of Mr and Mrs Scott's land they now intend to take?

**Andrew McCracken:** I could probably measure it to confirm that.

**Christine May:** It would be fine if you could confirm that to us in writing.

**Andrew McCracken:** That is no problem.

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

**Alastair McKie:** I do not.

**The Convener:** You now have five minutes to make a closing statement, if you so wish.

**Alastair McKie:** The promoter has sought to mitigate the effects, as you have heard, and will simply rest on the written and oral evidence.

**The Convener:** That concludes oral evidence for group 44.

We move on to group 48, for which the witnesses will be Andrew McCracken, Chris Bone, Andrew Rosher, Robin Forrest and Alison Gorlov.

ROBIN FORREST *took the oath.*

**The Convener:** This group relates to the objection from Mr L G Litchfield. The objector has chosen to rest on his written evidence. The first topic to be discussed is the acquisition of land and the impact on access to farmland and on the movement of machinery and livestock. Mr McKie, would you like, first, to invite one of your witnesses to give a brief outline of where matters stand on the acquisition of land, the impact on access and the movement of machinery and livestock, then question them?

**Alastair McKie:** I certainly would. The impacts in this case are a bit complex, but I invite Mr Bone to give the committee an update and to express his understanding of the issues in relation to the impact on farming operations.

**Chris Bone (Turner and Townsend):** I refer the committee to drawing 10 in the pack. The promoter last met with the objector's land agent and farm manager on 8 December 2005. At that meeting, they discussed the impact of the proposed works on four farms owned by Bowland Estate—Crosslee, Whitelee, Ferniehirst and Bowshank farms. The promoter discussed in detail the land-take proposals along the length of the track and the objector's agent discussed the farming issues that would potentially result.

Following that meeting and at the request of the objector's agent, the promoter issued a set of engineering drawings for the objector's agent to

mark up with proposed solutions to the issues. The objector's agent agreed to mark up the drawings and then meet the promoter's engineers and farm advisers on site to examine the proposed solutions. Despite the promoter chasing up the objector's agent and offering him various suitable dates for meetings, the agent has now postponed meetings on three separate occasions since the drawings were issued. The promoter is committed to continuing to pursue the objector's agent for a meeting.

I will summarise the issues that we intend to take forward, as we understand them.

**Alastair McKie:** Before you do that, will you briefly summarise the consultation and say how many communications, such as letters, e-mails, phone calls and the like, there were?

**Chris Bone:** Our records show that we have had 23 communications to date with this particular objector.

**Alastair McKie:** Thank you. You may continue with your summary of the possible farming issues.

**Chris Bone:** The issues can be summarised as follows: first, the track bed currently provides access between farms for the movement of stock and machinery. The promoter awaits the objector's agent to assess the potential severance issues that the railway will bring and is keen to meet on site to examine them. The second issue is the removal of an area of hard-standing that is used for the storage of equipment, machinery and animal feed. The promoter, again, awaits the objector's agent to propose a suitable location for a replacement hard-standing, which the promoter is happy to consider providing.

The third issue is the repossession of Bowshank tunnel, which is used for storage. The promoter awaits the objector's agent to propose a suitable location and size for a new storage shed, which the promoter, again, is happy to consider providing. The fourth issue is potential severance issues for various fields. Again, the promoter is keen to visit the various farms with the objector's agent to assess on site the extent of severance. The fifth issue is the potential reduction in the capital value of the farms and potential business loss. We refer the committee to the compensation policy for that one.

The sixth issue is the potential impact on farm buildings at Bowshank farm. In the parliamentary drawings, plot 516 covers the Bowshank farm buildings, which members can see on plan 10 in the area just above the tunnel. They are shown as being required, but the promoter has undertaken to reassess the requirement for that plot. It has no desire to take any land that includes farm buildings. Prior to concluding the land-take requirements, the promoter's engineers are keen

to visit the site in question to assess further the land-take that is required.

In summary, the promoter remains keen to meet the objector's agent to progress the resolution of these issues as soon as possible—we intend to do that.

**Alastair McKie:** Thank you, Mr Bone. Mr Robin Forrest is here as well and can deal with the more technical detail of the impact on the farm, but I do not propose to lead him in evidence. I think that Mr Bone eloquently summarised the issues.

**The Convener:** Thanks for that. Has the objector submitted plans for a road and a bridge?

**Chris Bone:** No.

**The Convener:** When did the promoter last pursue the objector for that information?

**Chris Bone:** I do not know the exact date, but we have phoned the objector on three occasions since the last meeting in December.

**The Convener:** Would the date be around 9 January or 10 January this year?

**Chris Bone:** No, I think that it is a matter of days or perhaps a week since I last spoke to the objector.

**The Convener:** As we have constantly made it clear that all parties must facilitate the settlement of objections, we are very disappointed that the objector is taking so long to provide information that at the 8 December meeting it undertook to submit. I suggest that we ask the clerk to try to progress matters urgently by writing to the objector. Are members agreed?

**Members indicated agreement.**

**The Convener:** What is the promoter's solution for ensuring full and continued access between farms?

**Chris Bone:** We are considering building another access track parallel to the railway. However, until we visit the site again and see whether that is feasible, practical and all the rest of it, I find it difficult to comment.

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

**Alastair McKie:** Mr Robin Forrest might want to make some comments at this point. I know that he has been trying to meet the farming agent on site.

**Robin Forrest (Robert Forrest Ltd):** We have been trying to set up an on-site meeting. However, at the moment, seven farms are going through a very big Scottish Executive cattle inspection. It takes roughly three days to inspect each of them and, at the moment, we are simply persona non grata. That said, I have arranged to speak to the

farm manager next week and am hopeful that we can set a date for restarting the process. I point out that the agent will not be involved—he lives in Lancaster.

**The Convener:** I sincerely hope that, if the clerk writes to the objector, we can help things along a wee bit.

On the loss of storage facilities, the promoter's witnesses are Andrew McCracken, Chris Bone, Robin Forrest and Andrew Rosher. Mr McKie, will you invite one of your witnesses to outline briefly the current position on this matter?

**Alastair McKie:** Mr Bone, I believe that the loss of storage facilities relates to the loss of the Bowshank tunnel, which is used for storage but will be needed for the rail project. What are the promoter's proposals for an alternative storage area?

**Chris Bone:** We propose to provide storage in a shed. However, we do not yet know what its exact location will be, because we are waiting for the agent to suggest a location that would suit his operation.

**Alastair McKie:** Thank you.

**The Convener:** What is the promoter's solution for providing on-site storage facilities on the objector's farm?

**Chris Bone:** As I have said, our solution is to provide a shed. However, its exact location will depend on the farm's operation. We are waiting for the objector to provide that information.

**The Convener:** Thank you. Mr McKie, do you have any more questions?

**Alastair McKie:** No, convener.

**The Convener:** We turn now to the impact on the value of the farm and business operations. Mr McKie, please invite the promoter's witness Alison Gorlov to outline briefly where matters stand on this matter.

**Alastair McKie:** The promoter rests on its existing compensation policy paper, which applies the law.

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

**Members:** No.

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

**Alastair McKie:** The promoter rests on its existing oral and written evidence, and appreciates the committee's assistance in getting negotiations moving.

**The Convener:** That concludes the oral evidence taking for group 48.

We move on to groups 49, 50 and 51, which relate to the objections of Mr and Mrs Thompson, Mrs Symon, James Kirkness and Mrs Myles and Robert Wilson. The groups have chosen to rest on their written evidence. The issues are, for the most part, the same, so the committee will hear evidence on the groups together.

We will deal first with the issue of the European convention on human rights, which relates solely to group 49. Mr McKie, please invite the promoter's witness Fiona Stephen to outline briefly where matters stand on this matter and then ask questions of her.

**Alastair McKie:** Good afternoon, Ms Stephen. The promoter has confirmed that it will purchase the property if the bill is passed. Do you have any comments to make on ECHR compliance?

**Fiona Stephen (Anderson Strathern):** Good afternoon. My evidence is that, if that is the case, the bill will comply with ECHR requirements in that the objector will be compensated for the property that is taken.

14:00

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

**Alastair McKie:** I do not.

**The Convener:** Okay. Before we move on to consider the impact on health, noise and vibration and pollution, we will pause to allow the witnesses to change over. The witnesses for the promoter are Steve Purnell, Steve Mitchell, Bruce Rutherford and Andrew McCracken. I invite Mr McKie to ask one of the witnesses to give a brief outline of where matters stand on those issues and then to question them.

**Alastair McKie:** It might be useful for Mr Rutherford to give an update on the current position of the objector groups, because all three of the properties to which groups 49 and 50 relate are confirmed for compulsory acquisition, whereas group 51 relates primarily to the primary school. I invite Mr Rutherford to update the committee on each of the groups separately.

**Bruce Rutherford:** Mr and Mrs Thompson occupy 37 Station Road. Originally, their house was not scheduled for compulsory purchase, but in a telephone call on 11 October of last year, Mr Thompson requested that both he and his neighbour at number 39, Mrs Myles, be bought out entirely. We reviewed the position.

Mr Thompson was going to be affected by the permanent acquisition of plots 337 and 340, one of which forms his access and the other of which makes up a large part of his garden. After a visit to the property, it was determined that it would be

appropriate to schedule numbers 37 and 39 Station Road for CPO, because a conservatory is built on the track side of those properties, which will have to be demolished. It also forms the only access to number 39.

Unfortunately, the conservatory was not shown on the survey plans when we originally submitted the bill to Parliament. On 7 November 2005, Mr Thompson was advised by telephone that his house had been scheduled for CPO. That was confirmed in a letter of 11 November 2005, the property was valued in December and the valuation figures were conveyed to Mr Thompson on 20 January of this year. Our most recent contact with Mr Thompson was on 2 March, when he confirmed that the only outstanding aspect of his objection was the price to be paid for his property and the date of entry. That depends on negotiations about the price and confirmation of an advance purchase scheme, if early entry is agreed.

**Alastair McKie:** Thank you. I invite you to deal with group 50, on which the points are related. I should have told the committee that it would be useful to look at plan 11, which shows the properties in question.

**Bruce Rutherford:** I will deal with objection 26, which is a multinamed objection in respect of 39 Station Road that was submitted to Parliament by Mrs Symon, Mrs MacDonald, Mrs Waddell, Mr J B Kirkness and Mr J M Kirkness. Mrs Myles occupies the property, but the objectors have indicated that they have an interest in it. Mrs Symon is Mr Kirkness's daughter and the wife of a Mr Symon who objected in the Midlothian area.

Unfortunately, we have been unable to ascertain the nature of the group's interests in the property because every time we have spoken to Mr Kirkness, he has refused to confirm what those interests are. We have written to Mrs Symon on five occasions, but the offer of a meeting to discuss the objection has never been taken up.

The most recent correspondence with Mrs Symon was on 22 November, but during an earlier telephone discussion, which took place on 28 August, Mrs Symon said that no meeting was needed. However, on 28 November, Mr Kirkness confirmed that he had the full authority of the multiple owners, so we are trying to deal with Mr Kirkness on the issue.

**Alastair McKie:** In summary, 41 Station Road—where Mr Kirkness lives—and 37 and 39 Station Road are scheduled for compulsory purchase.

**Bruce Rutherford:** That is correct.

**Alastair McKie:** Are the owners of those three properties aware of that, whatever their interest in the matter, by virtue of letters from the promoter?

**Bruce Rutherford:** Yes.

**Alastair McKie:** We turn to group 51. Will you update the committee on Mr Wilson's objection, which raised a slightly different issue?

**Bruce Rutherford:** Mr Wilson objected to the bill because the track would pass close to Stow primary school. He indicated that the siting of a station in Stow would help to reduce the risk associated with the closeness of the school. Early discussions took place with Mr Wilson on the detail of his objection, which led to on-going dialogue with Scottish Borders Council's education asset manager and the head teacher of Stow primary school. The most recent meeting to update those individuals took place on 5 December, during the consultation process on Stow station. An e-mail was sent to the asset manager and the head teacher on 1 March to update them on the position. Mr Wilson is away on business a lot and is difficult to contact, so to update him we invited him to a meeting on 1 March. Following that, Mr Wilson requested more information on pollution, noise and barriers. We wrote to him on 3 March with information and will send him further information when it is available. Confirmation has been given to the council's asset manager and the school's head teacher that the promoter will work closely with them to minimise the impact of the railway. The promoter will assist and support the school in any programme to consult parents and pupils.

**Alastair McKie:** On the proximity of the proposed line to the school playground, is there flexibility at the school to change the playground's location?

**Bruce Rutherford:** If we thought that the playground should be shifted for any reason, there is space at two sides of the school, which could be used to create an alternative playground or to enlarge the existing playground.

**Alastair McKie:** Convener, shall I deal with noise and vibration now?

**The Convener:** No. Do members of the committee have questions for the witnesses?

**Margaret Smith:** Can I ask about the impact of pollution on the school?

**Alastair McKie:** We will take evidence from a witness on that matter.

**Margaret Smith:** Will planting take place around the school to try to mitigate the effects of pollution?

**Steve Purnell:** Sam Oxley will be able to tell you more about planting, but I am not sure that planting would provide a solution to a perceived problem with pollution. In the environmental statement and our written evidence to objectors,



including the objector who expressed concerns about the school, we say that the trains emit only small amounts of airborne pollutants and that exposure is extremely brief. Concentrations would have to be very high indeed to cause problems. I understand that there is a perception that there might be an effect on children's health, but we are content that negligible amounts of pollutants would be emitted.

**The Convener:** I take on board your comments. However, would the presence of a station next door to the school mean that there were increased levels of pollutants in the atmosphere?

**Steve Purnell:** The honest answer is that exposure would be slightly longer. However, we still regard the exposure as very small.

**Mr Brocklebank:** We heard from Mr Rutherford that there is a possibility of moving the playground to a different position on the site. Are there any other safety measures that you might take if you decide to leave the playground where it is?

**Bruce Rutherford:** I ask one of my engineering colleagues to answer that.

**Andrew McCracken:** Are you talking about rail safety?

**Mr Brocklebank:** Obviously, yes. Given that the school playground will be adjacent to the railway line, are there any measures that can be taken—other than moving the playground elsewhere—to ensure safety?

**Andrew McCracken:** I suppose the key thing is that the children should be separated from the railway line. As I said, we will put in a full-specification fence. There will probably be both a noise barrier and a safety fence, so there will be additional protection.

**Mr Brocklebank:** From what Mr Rutherford said, it seems that the real alternative is to move the playground.

**Andrew McCracken:** Perhaps that is the best option.

**Alastair McKie:** Convener, I did not know that we had moved on to safety. I was about to ask questions on noise and vibration.

**The Convener:** Do not worry, Mr McKie. They just will not listen to me. [*Laughter.*] I think that Mr Rutherford wanted to say something.

**Bruce Rutherford:** One point that has been discussed with the head teacher and certainly the asset manager is the importance of children's awareness of the new environment and the involvement of parents. We offered to discuss how safety can best be employed and how we can increase the youngsters' awareness of the different environment. At present there are cars

but in future there will be trains as well. It may be that, working in partnership, we will need to go along and talk to the pupils. The police have road safety teams that go out to schools and it may be that we should consider doing something similar.

**The Convener:** Mr McKie, will you address the issue of noise and vibration now?

**Alastair McKie:** I will. Numbers 37, 39 and 41 Station Road are scheduled for acquisition and will be demolished as a result of the scheme. The individual objectors have raised some of the issues so I will not repeat them. I will simply ask Mr Mitchell about the noise and vibration impacts of the rail line as it passes the school. Have you investigated those impacts? Are you considering mitigation measures?

**Steve Mitchell:** We have certainly investigated them. In August 2004, we conducted a noise survey and a detailed inspection of the school's layout to find out where the sensitive rooms are. As it happens, several of the rooms that will face the railway are not as sensitive as the classrooms, although one infants classroom at the southern end will be exposed to railway noise.

Having done that assessment, we chose a noise standard for the school that is different from that of the other properties that we considered along the railway line. I am pleased to say that there is a recognised noise standard for schools. Building bulletin 93 states the peak noise that is desirable for classrooms and other teaching facilities and that is the standard that we set ourselves. To achieve it, we will need to have a substantial noise barrier adjacent to the tracks. The fact that there will be two tracks makes it harder to produce the screening benefit, so the noise barrier will be approximately 3m high or perhaps slightly higher.

The design of the barrier will depend on what the school wants. It is a modern building, so I suspect that it will be appropriate to put in place something more modern than the timber structures that I have mentioned before. We have not focused on the precise design yet, but there are many options and I hope that the school will choose its preferred one. With a noise barrier of that magnitude in place, we will achieve or get very close to the noise standard that we have set ourselves.

14:15

**Alastair McKie:** What is the higher standard to which you referred?

**Steve Mitchell:** It is in building bulletin 93. The value is 55dB inside. That is not quite a peak; it is called a 1 percentile—it is the top 1 per cent of the noise throughout the teaching period. We have assumed that figure as our peak, which is a rather

conservative assumption. The figure is based on speech interference and the avoidance of the need, even when the train is directly outside the property, for someone to raise their voice to communicate in a teaching situation.

**Alastair McKie:** Are there any vibration issues?

**Steve Mitchell:** I do not think that there are. We are not aware of anything particularly sensitive. The usual standard that we set ourselves in the noise and vibration policy will be adequate.

**Alastair McKie:** Thank you.

Mr Purnell, can you advise the committee how noise and vibration will be monitored and managed during the construction phase of the project?

**Steve Purnell:** The committee has received a recent memorandum from the promoter about the code of construction practice. People who live or work nearby will have the right to comment if they think that noise is exceeding the limits of which Mr Mitchell has advised the promoters. A telephone hotline will be in place and a service will also operate out of hours, so that people can get a response then. As the memorandum indicates, we will set a time limit for responses to complaints from members of the public. The response will be a lot faster for situations that we consider to be emergencies, if such situations arise in connection with noise and vibration.

**The Convener:** I wondered about a situation that might arise because there will be a twin track. If one train is going in one direction and another train is going in the other direction, will that have an impact on the maximum noise levels?

**Steve Mitchell:** Yes. Technically, if two trains coincide directly—I would not like to state the probability of that happening, but clearly it is a possibility—there will be more noise.

Theoretically, the peak would be 3dB higher, but in practice the nearer train tends to provide a screen for the one that is further away. Even if the trains were to coincide, the noise would not be very much louder than that of one train. We would not routinely design mitigation for such an event, because it is not expected to happen regularly; it will be a rare event, if it happens.

**The Convener:** Of course, as you explained to us in great detail previously, 10dB and 10dB do not make 20dB.

**Steve Mitchell:** That is right. We have designed the mitigation to achieve a peak of 55dB in the classroom. If we achieve that exactly, if two trains go by the level could theoretically be 58dB, not 110dB.

**The Convener:** We will not go there again.

**Steve Mitchell:** We will not go into the detail.

**Christine May:** You said that the theoretical maximum that you are aiming for inside the classroom is 55dB. What is the anticipated level? Will you give yourself some leeway?

**Steve Mitchell:** I said that I thought we could achieve that figure or thereabouts. The difficulty is that the barrier will be obtrusive. If we make the barrier higher and higher to reduce noise, that could create other issues: the playground would suffer, if it is not moved.

We will need to consider the design of the barrier very carefully. There is, if you like, a law of diminishing returns. As the height of the barrier goes up, the noise performance goes up more gradually. My feeling is that we would achieve between about 55dB and 60dB with a barrier that is about 3m high.

**Christine May:** You are talking about between 55dB and 60dB inside the classroom.

**Steve Mitchell:** Yes.

**Christine May:** Never mind where the playground is.

**Steve Mitchell:** The figure is effectively a peak value inside the classroom.

**Christine May:** Can you tell me about the visual impact of the barrier? You said that it will be 3m high or perhaps slightly higher and that the design might be agreed with the school. Will the barrier diminish light levels, particularly in the classroom that you or Mr Rutherford said is close to the line and will be particularly affected?

**Steve Mitchell:** The headmaster's office is on that side, as well as staff facilities and a classroom. Light may be reduced, because the noise barrier will be to the west, which will mean that the afternoon sunlight could create a shadow. That is why we have considered options. For example, the upper sections of noise barriers can be translucent, which is a possibility in this case. I must be careful not to stray out of my domain and into matters of design and visual impact but, as I said, because the school is a modern building, albeit in a more historic area, a modern structure with translucent material could solve the problem and look appropriate.

**Christine May:** What action can you take to mitigate noises such as station announcements and whistles? I realise that train doors do not slam any more, but what about the extra noises when trains arrive at and leave from stations?

**Steve Mitchell:** If the station is put directly outside the school, the good news is that the train noise levels will be lower than those that we have talked about, but the bad news is, as you say, that there will be other bits and pieces of noise from

time to time. As we know, the patronage at the station will not be massive, so people noise will not be a major factor. Our noise and vibration policy contains a commitment to consider carefully the public announcement system and to design it so that the levels are not unnecessarily loud. Public address systems at railway stations throughout the United Kingdom are often vastly unnecessarily loud—they can be heard perfectly well on the platform, but also down the street. With modern technology, that is simply not necessary.

**Christine May:** My experience is that, although the announcements can be heard halfway down the street, they cannot be heard at all above the noise of a train in the station. I have spoken to head teachers in Fife whose schools are directly below or alongside railway stations, so I know that noise from public address systems continues to be a problem. I hope that you will talk to people in Scotland who suffer from such noise to see what mitigation can be put in place.

**Steve Mitchell:** We should learn from bad designs or bad practice. At least our policy makes a commitment to consider the issue and design the system as optimally as we can. We are committed to considering the various technologies that are available—the obvious one is directional speakers, which direct the sound to where it is wanted and not into the community.

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

**Alastair McKie:** I do not.

**The Convener:** On the acquisition of land and property and the impact on access, the witnesses for the promoter are Alison Gorlov and Bruce Rutherford. Mr McKie, will you invite one of your witnesses to give a brief outline on where matters stand on the issues and then question the witnesses?

**Alastair McKie:** I think that the matters have been covered. All three of the residential properties in the groups are scheduled to be compulsorily acquired. In that event, I do not believe that the issues will arise. The compensation that will be due to the affected persons will arise from the operation of the compensation code, which is applied by the bill.

**The Convener:** As members have no questions, we move to safety and impact on traffic, on which the witnesses for the promoter are Steve Mitchell, Steve Purnell, Bruce Rutherford and Andrew McCracken. Mr McKie, will you invite one of your witnesses to give a brief outline on where matters stand on the issues and then question the witnesses?

**Alastair McKie:** If I may, I will put an initial question to Mr Rutherford. Concern has been

raised by Mr Wilson of group 51 about a potential conflict between persons attending what might be a railway station and traffic movements to and from the school. How might the council manage that situation?

**Bruce Rutherford:** If a railway station is built at Stow, it will give us an opportunity—through the demolition of the properties that we discussed—to provide a car parking area that is separate from most of the turning movements at the existing roundabout. The council's safer routes to school officer, Philippa Gilhooly, has told us that we could take the opportunity to improve the situation at the school. At present, so many people bring cars to the school that they tend to clog up the circulatory movement round the roundabout. If the council and the promoter were given the opportunity, they could solve a problem. That would be a benefit.

**Alastair McKie:** Mr Purnell, how will safety be ensured during the construction phase?

**Steve Purnell:** That is set out clearly in the early sections of the code of construction practice. The eventual contractors will have a contractual requirement to put in place safety measures—to assist children who are attending school, for example. The relevant part of the construction phase could take place only once the safety measures that had been developed were shown to be working.

**Alastair McKie:** Mr McCracken, on rail safety, will you acquaint the committee with your evidence about providing a barrier between the existing primary school playground and the proposed rail line?

**Andrew McCracken:** I refer to previous evidence. Rather than a barrier, a fence that is fully compliant with Network Rail design standards is proposed. As for other safety issues, Mr Wilson's evidence referred to concerns about the catastrophic effects of derailment at full line speed. It is perhaps worth pointing out that if we include a station at Stow with a normal service, all trains will stop at the station, so line speeds will start from 0 miles an hour. That would mean that the effect of a derailment would be considerably less, although I reiterate that derailments are highly uncommon.

**Alastair McKie:** Do the topography and character of the line make its safety different from any other part of the modern rail network?

**Andrew McCracken:** Nothing gives me particular concern about geometry or safety.

**Alastair McKie:** How will safety be ensured?

**Andrew McCracken:** Through HMRI's approval process.

**Alastair McKie:** Do you have any reason to believe that HMRI will withhold its consent?

**Andrew McCracken:** I have none.

**Alastair McKie:** Thank you.

**The Convener:** As committee members have no questions, Mr McKie has a maximum of five minutes in which to make a closing statement in relation to groups 49 to 51.

**Alastair McKie:** Thank you, convener. On groups 49 and 50, as I have said, the three properties—37, 39 and 41 Station Road—are all scheduled for compulsory purchase should the bill proceed. They would also fall within the category of potential advance purchases, about which we will hear at a later meeting.

On group 51, extensive consultation has taken place with Mr Wilson and—importantly—with SBC in its capacity as the education authority and with the head teacher to ensure that the impact on the primary school is minimised and managed during the construction and operational phases of the railway, should it proceed. That will be underpinned by the following measures. The first is continued close liaison with SBC as the education authority and with the head teacher, to ensure that potential conflict in road traffic movements is kept to the minimum. Measures will be enforced during the construction phase under the COCP.

We heard evidence about noise from Mr Mitchell, who confirmed that the promoter is committed to applying building bulletin 93, which is the new appropriate standard for noise when there is a sensitive receptor such as a classroom. He said that no particular issue of vibration arises.

On rail safety, I invite members to accept Mr McCracken's evidence that no particular safety issue arises from having the line in the proposed location. Safety will of course be enforced through HMRI in its approval of the project, should it proceed. It is important to note that a compliant safety barrier will be built. Mr Rutherford usefully stated that the promoter will undertake an education process with the school to ensure that children are aware of the existence and potential hazard of the rail line, should it proceed. If the amenity impacts on the playground were such, the playground could be relocated to the other side of the school. That would be done through consultation with SBC as the education authority and with the head teacher.

**The Convener:** Thank you, Mr McKie. That concludes our hearing of oral evidence for today. I thank all witnesses and participants for their assistance. During the meeting, the promoter has undertaken to come back to the committee on several items. I set the promoter a deadline of noon on Thursday 9 March for providing that information.

The committee will meet on Monday 13 March at the Langlee community complex in Galashiels. I invite members of the public, witnesses, broadcasting staff and official report staff to leave the room while the committee considers the evidence that it has heard.

14:31

*Meeting continued in private until 14:40.*

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