

EDINBURGH TRAM (LINE TWO) BILL COMMITTEE

Monday 28 November 2005

Session 2

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EDINBURGH TRAM (LINE TWO) BILL COMMITTEE 18th Meeting 2005, Session 2

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS

*Marilyn Livingstone (Kirkcaldy) (Lab)

*Kate Maclean (Dundee West) (Lab)

*Alasdair Morgan (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Malcolm Thomson QC (Counsel for the Promoter)

THE FOLLOWING GAVE EVIDENCE:

Barry Cross (Transport Initiatives Edinburgh Ltd)

Geoff Duke (Transport Initiatives Edinburgh Ltd)

John Hyde (FaberMaunsell)

Gavin Murray (FaberMaunsell)

Alasdair Sim (FaberMaunsell)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 2

Scottish Parliament

Edinburgh Tram (Line Two) Bill Committee

Monday 28 November 2005

[THE CONVENER *opened the meeting at 10:17*]

Edinburgh Tram (Line Two) Bill: Consideration Stage

The Convener (Bill Aitken): Good morning, ladies and gentlemen. Welcome to this meeting of the Edinburgh Tram (Line Two) Bill Committee. I ask everyone present to switch off mobile phones and pagers.

Under agenda item 1, the committee will continue to take oral evidence at consideration stage of the Edinburgh Tram (Line Two) Bill. Since the agenda was published, several objections have been withdrawn: in group 6, the objection of Norwich Union Life and Pensions Limited; in group 31, the objections of FSH Nominees Limited and FSH Airport (Edinburgh) Services Limited; and, in group 36, the objection of Meadowfield Developments Limited.

The fact that Norwich Union has withdrawn its objection means that, of the original seven objectors in the Haymarket Yards area, three have now withdrawn their objections. We know that three of the remaining four objectors would prefer the alternative route that is proposed by the promoter. Therefore, I invite Mr Thomson to comment whether he believes that the remaining objector—Versicolor Limited—would also benefit from that route.

Malcolm Thomson QC (Counsel for the Promoter): The position of Versicolor Limited is that its objection relates to the stretch of line opposite its premises in Haymarket Terrace, whereas the proposed amendment relates to the line further to the west. Therefore, the problem of which Versicolor complains will be quite unaffected either way by the proposed amendment. Versicolor's position would be the same for either route.

The Convener: Thank you, Mr Thomson. It is fairly clear that all the remaining objectors in the Haymarket Yards would benefit from the alternative route that is proposed. Accordingly, I remind the committee that the three objections that were lodged to the alternative route have all now been withdrawn. Does the committee agree that it therefore seems sensible for the committee to support an amendment to the bill at the next

phase of consideration stage to ensure that the alternative route is built?

Members indicated agreement.

The Convener: Mr Thomson, can I assume that the promoter supports such an amendment?

Malcolm Thomson: Indeed, sir. The promoter strongly supports the amendment.

The Convener: I am obliged for that. I now invite Mr Thomson to provide an update on group 46, which comprises BRB (Residuary) Limited and British Transport Police.

Malcolm Thomson: Both objectors are affected by the Railways and Transport Safety Act 2003, which abolished the Strategic Rail Authority. However, the 2003 act did not come into force until after the end of 2003 and after the Edinburgh Tram (Line Two) Bill had been lodged.

The amendments that are proposed in respect of both objectors are consequential on the abolition of the Strategic Rail Authority. In the case of BTP, a new police authority called the British Transport Police Authority will take over from the Strategic Rail Authority. In so far as BRB is concerned, it is proposed that, in effect, the objector will take over the role of the Strategic Rail Authority in the terms of the bill. No third parties will be affected by either of the proposed amendments.

The Convener: We have received correspondence from British Transport Police that confirms that it wants section 60 of the bill to be amended and that it would withdraw its objection if such an amendment were agreed. Likewise, we have received correspondence from BRB that confirms that it wants section 13 of the bill to be amended and that it would withdraw its objection if such an amendment were agreed. On the basis of all the written information and evidence before us, do members agree that sections 60 and 13 should be so amended?

Members indicated agreement.

The Convener: Can the promoter confirm that it is willing to support any such amendments that are lodged at the second phase of the consideration stage?

Malcolm Thomson: Yes.

The Convener: On that basis, I can confirm that the committee will support the lodging of those amendments. Consequently, I understand that the objections in the name of British Transport Police and BRB (Residuary) Limited will be formally withdrawn.

We now turn to agenda item 2. The committee has taken evidence on every objection outstanding from the preliminary stage. We expect to publish

our consideration stage report within the next couple of weeks. The report will contain the committee's decision on each objection and indicate where the bill will be amended at the next phase of consideration stage. Before we can finalise our report, the committee seeks clarification from the promoter on a few issues. Given the time pressures that we face, we have indicated to the promoter in advance what those issues are. I expect that they will all be addressed fully today.

The promoter proposes the following witnesses: Geoff Duke, who is a project manager for Transport Initiatives Edinburgh Ltd; Gavin Murray, who is a project manager for FaberMaunsell; Barry Cross, who is depute tram project director for Transport Initiatives Edinburgh Limited; and John Hyde, who is a noise and vibration consultant for FaberMaunsell. All the witnesses have previously taken the oath or affirmation at consideration stage. I remind them that they are still bound by that oath or affirmation when they give evidence today.

I will start by seeking an update from John Hyde. In the promoter's letter of 14 November, the committee was told that, in essence, the promoter's noise and vibration policy is being considered in the light of evidence from the objectors to the Edinburgh Tram (Line One) Bill and that, in response to that evidence, the policy might be amended either by reference to specific geographic areas or in relation to its general application.

It is likely that any amendments will make the policy more onerous for the promoter or authorised undertaker. Accordingly, any proposed amendments need to be considered and assessed carefully, especially in relation to potential financial impacts. As the policy covers both lines, any amendment to the general terms of the policy could have an impact on line 2.

Furthermore, the promoter has stated:

"From the outset of this project, it was envisaged that the Noise and Vibration Policy would be separate from the Bill. However in relation to the Edinburgh Tram (Line One) Bill, the promoter has offered to incorporate an amendment to the Bill introducing

- an obligation on the authorised undertaker not to operate the tram until the Noise and Vibration Policy has been approved by the Environmental and Consumer Services department; and
- an obligation to comply with the approved policy.

For consistency, a similar amendment will be sought in relation to the Edinburgh Tram (Line Two) Bill."

Given those statements and the fact that the issue of noise was raised by a number of objectors, the committee is keen to determine what the promoter's position is now.

To put the matter in context, I note that our latest version of the noise and vibration policy, dated November 2005, sets out the limit at which options for noise mitigation will start to be considered. It also states the noise level at which noise insulation will be provided for residential properties. However, sections 61 and 62 of the Edinburgh Tram (Line Two) Bill do not mention noise levels at all.

I invite Mr Hyde to update the committee. It would be useful if, in so doing, he could address two particular points. First, is the promoter willing to lodge an amendment to the bill to ensure that the noise and vibration policy is legally binding upon all relevant contractors? Secondly, is the promoter willing to lodge an amendment to the bill to make it clear that a noise insulation scheme will be provided if the noise level reaches the levels that are set out in the noise and vibration policy? If that were not to be the case, the committee would ask for an explanation.

John Hyde (FaberMaunsell): The noise and vibration policy has been amended, mainly in line with the requirements for line 1. There are a number of areas along line 1 where there are very low background noise levels. That has meant that the criteria that have been used have needed to be examined in a bit more detail. The amendments that have been proposed for the noise policy include some minor wording changes in sections 2 and 3. They make things a little clearer; they do not have any implications.

There are three main additions to the policy, all of which enhance the position for residents. The first is the addition of an L_{Amax} criterion in the compensation section. It ensures that if the maximum noise of a tram passing at night exceeds a certain level, there will be eligibility for application for compensation in the form of sound insulation. There are certain limits to that in terms of how high the level can be and how much it can be above the existing background. That relates to the concerns about sleep disturbance in quiet areas.

On the sensitive areas along line 2, such as Baird Drive, and possibly Ratho Station, where there are low background noise levels, there are currently high maximum noise levels due to trains. The criterion for sleep disturbance does not really apply there, because the current situation already involves L_{max} levels at or near the level of the criterion. There is not considered to be any additional impact along line 2. The mitigation that has been proposed to date for Baird Drive and various other places will be adequate to ensure that the maximum noise level is not exceeded.

The second aspect in which there has been some improvement concerns the addition of some vibration criteria. There has been a change to the

level of limit, which is in the first version of the earlier version of the noise policy statement. That has been reduced from $0.4\text{ms}^{-1.75}$ to $0.2\text{ms}^{-1.75}$ in terms of the criterion levels. The reason for that was that line 1 analysis has used the criterion of $0.4\text{ms}^{-1.75}$, whereas line 2 analysis has used a criterion of $0.2\text{ms}^{-1.75}$, which is a more sensitive criterion. The result of that was that no properties were likely to be affected by vibration. The reason for the change is to ensure that lines 1 and 2 have the same criterion, necessitating a reduction in the criterion for line 1 to $0.2\text{ms}^{-1.75}$, the same level as had been used for line 2.

The change was made for the sake of consistency, so the same criterion is used for both lines. Overriding that point, however, is the night-time criterion for vibration, which remains the same in the policy and which is more critical. In nearly every case, if the night-time criterion is met, the daytime criterion will be met. Therefore, the change will not have a great impact; it was made for consistency.

A limit on the emission of vibration from the tram system has also been introduced as a result of objections to line 1, to ensure that no vibration occurs that is likely to cause any type of damage to buildings. The limit that has been introduced is 2mms^{-1} at 2m. It should be no trouble for the tram system to comply with that criterion, which will ensure that no physical damage occurs as a result of tram vibration.

10:30

The third addition was to do with noise monitoring. A request was made that we ensure that the noise level of the tram system does not increase with the age of the system. Because of various reports of high noise levels on other tram systems, a concern was raised that, as the tram system ages, noise levels will increase. The monitoring, which will be annual, will ensure that any noise increase from one year compared to any previous year is dealt with through maintenance. The normal reasons for an increase in noise are either wear on the track or uneven wear on wheels. The solution is fairly simple: track re-grinding and wheel re-turning to give a much smoother interface between the wheel and the rail. The purpose of the section on monitoring is to add a scheme under which, once a year, noise levels will be monitored at agreed locations by the council's environmental health people to show the way in which the data vary from year to year. The process will identify either particular trams or sections of track that have led to noise increases, after which appropriate maintenance procedures will be instigated.

Those are the three main changes to the noise and vibration policy, all of which give additional

protection to residents, although none of them has a direct implication for the costs of line 2. The only additional cost will arise from the annual noise monitoring, which will be one or two weeks' work once a year to monitor and control noise levels in the system. Overall, the amendments to the noise and vibration policy in relation to line 2 have no severe implications.

The noise insulation scheme can be legally binding; it is the same as the scheme that is used in England and Wales as a statutory requirement. The noise limits and the requirements of that scheme can be incorporated into the bill, as can the noise and vibration limits in the policy. In fact, the current design of line 2 will meet all those requirements.

The Convener: Will you consider introducing an amendment to make the scheme legally binding?

John Hyde: Yes.

The Convener: There appears to be some doubt about the point at which the mitigation measures will kick in. For daytime noise, what will be the decibel level?

John Hyde: There are two different aspects to the limits that are given in section 3 of the policy. The first relates to the design stage. The noise levels will be calculated during the design stage and mitigation will be designed so that the system meets the limits. The second aspect relates to compensation through noise insulation measures, which would kick in after the scheme is built. If the limits are met during the design stage, there should be no need for insulation to kick in at the later stage.

The Convener: For the record, will you tell us what the actual levels will be?

John Hyde: The limits above which noise mitigation will be considered start at 55dB for daytime noise and at 45dB for night-time noise. Mitigation measures will be considered if those levels are exceeded by 3dB or more. That is purely during the design stage. If mitigation can achieve those levels and reduce any impact that is predicted at that stage, the compensation side of things, under section 4.4 of the noise and vibration policy, will not apply because people will have been adequately protected. That might not happen in certain situations, such as where trams run along busy roads and mitigation is not possible, but in those places the background noise is often higher than the tram noise is likely to be, so insulation will not kick in there.

The Convener: We are anxious to tie things down as far as possible. I refer you to section 4.4 of the noise and vibration policy, which refers to levels of 68dB during the day and evening and 63dB at night. I am concerned because there

seems to be a slight inconsistency there. Perhaps I am being obtuse.

John Hyde: Do you mean an inconsistency between those levels and the design levels?

The Convener: Yes.

John Hyde: There is a difference. The design levels are designed to highlight a position in which the predicted tram noise levels might be exceeded. If the 55dB and 45dB levels are exceeded, that will indicate that there is likely to be an impact due to the tram noise. If the background noise level at a particular location is above those limits and the additional tram noise increases the noise level by 3dB or more, that will initiate the consideration of mitigation.

The two sets of limits are separate. They are not designed to be compatible. One is to do with design and mitigation to minimise the impact on residents. The other is designed to be a fallback position if, for some practical reason, mitigation does not or cannot work. There is an option for noise insulation to be provided if those levels are reached. The levels are the same as the levels that are used in the noise and insulation regulations in England and Wales.

The Convener: So it is fair to say that 68dB and 63dB are the final noise levels that will trigger action.

John Hyde: Yes.

The Convener: This is a small point, but will you clarify why the noise and vibration policy sets out noise levels at which insulation will be provided only in relation to residential properties? The bill says that there may be a scheme for buildings in general, which would include commercial properties.

John Hyde: Commercial properties are normally omitted because they tend to be more substantial and they are perhaps less sensitive to noise. They tend to have air conditioning, sealed façades and good sound insulation. The need for sound insulation in commercial buildings could arise but it has not been part of regulations in the past.

The Convener: Finally, I want to clarify the fact that the promoter is willing to lodge an amendment to the bill to make it clear that a noise insulation scheme will be provided if noise reaches the levels that are set out in the noise and vibration policy. Is that the case?

John Hyde: Yes.

The Convener: Thank you.

We have a series of questions on other matters, the first of which is the code of construction practice, consultation on construction and working hours.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I address my question to Gavin Murray but other members of the panel may respond if appropriate.

Would the promoter have difficulty if the committee lodged an amendment to require the authorised undertaker to comply with the minimum standards set out in the code of construction practice?

Gavin Murray (FaberMaunsell): I do not believe that there would be problems in complying with the minimum standards.

Jeremy Purvis: Therefore, the promoter would not have a problem with such an amendment to create a statutory basis for complying with the minimum standards?

Gavin Murray: Correct.

Jeremy Purvis: Does the promoter have the same view about local plans having the same statutory footing as the overall code of construction practice?

Gavin Murray: It is not the current intention to have a myriad of local plans; the code of construction practice should be the key for the whole scheme. There are elements that tie up different aspects of the scheme in some of the objector agreements that have already been signed.

Jeremy Purvis: The question was whether you would have a problem with the local plans having the same statutory status as the overall code.

Gavin Murray: If a local plan is drawn up, it should have the same standing as the code.

Jeremy Purvis: How will the promoter ensure that local residents' views—on working hours, for example—will be taken into account in the drawing up of local plans?

Gavin Murray: Consultation is on-going in local areas and local residents' views have to be sought throughout that process. The promoter can seek input from local residents only to a certain extent. The process that has been used to date has been consultation, which has been relatively successful in gaining their input. That is the process that will be developed.

The process is open to improvement to make sure that the key areas are covered and that we pick up the exact details of the particular areas of concern. I am thinking of where the works are closest to specific areas, such as Baird Drive and out at the western end of the route where the line is adjacent to properties at the top of Station Road. There has been on-going consultation in those areas and we must ensure that it continues.

Jeremy Purvis: As I understand it, the code currently has elements to ensure notification, but not consultation, of residents. I presume that there would be no objection if the code stated explicitly that decisions taken about working hours would not be made without consultation of local residents.

Gavin Murray: That would be fair. The promoter intends that once the detailed design has been developed there should be a session in specific localities on the potential to achieve what is required in the construction process. The consultation has to take on board exactly what is required to ensure that the construction can be achieved.

There is no way in which the promoter can bow to the desires of every individual who lives along the route so that the construction process and its timings in particular are restricted so much that they cannot be achieved, but the promoter certainly expects that once the construction plan has been worked up in more detail, there will be a session with the local residents to say, "This is what we envisage" and to get them to buy in to it.

Jeremy Purvis: You will be aware of previous evidence to the committee about how meaningful the consultation process has been up to now and that amending the code to provide that local residents will have to be consulted in advance of decisions about the construction might give greater confidence that consultation will happen.

10:45

Gavin Murray: Yes. That is the point I was trying to make. The process is under review to ensure that we maximise the public buy-in to the process.

The Convener: We shall now explore the impact of the Crichel Down rules. Marilyn Livingstone will deal with the issue by questioning Geoff Duke.

Marilyn Livingstone (Kirkcaldy) (Lab): The committee has questioned you before about the application of the Crichel Down rules, with particular reference to group 33—Norwich Union Life and Pensions Ltd. You confirmed that the council will comply with the relevant amending circular.

Geoff Duke (Transport Initiatives Edinburgh Ltd): That is correct.

Marilyn Livingstone: Okay. That was concise and to the point.

Have you entered into a binding agreement with the objector on this aspect?

Geoff Duke: No.

Marilyn Livingstone: Why?

Geoff Duke: We have offered the same commitment to apply Crichel Down rules to this objector as we have to a number of other objectors. They have all accepted it, but Norwich Union did not sign the agreement.

Marilyn Livingstone: So you are unclear about whether the objector's request about its land being returned has been met to its satisfaction under those rules. Are you saying that there has been no dialogue?

Geoff Duke: No. We have had dialogue and we offered Norwich Union an agreement that covered a number of points and included the fact that we would apply the Crichel Down rules.

Marilyn Livingstone: So you are unclear at this stage whether the objector's requests about its land being returned are met?

Geoff Duke: Whether or not Norwich Union signs the agreement, which includes other points, the council will apply Crichel Down rules.

Marilyn Livingstone: Yes, but because you have not been able to enter into a binding agreement you cannot tell the committee whether all the objector's requests about land being returned are met. That is all that I am asking you—just for the record.

Geoff Duke: No.

Marilyn Livingstone: Okay.

The Convener: The question of honouring undertakings will clearly concern the committee. I ask Kate Maclean to question Barry Cross on the issue.

Kate Maclean (Dundee West) (Lab): To a certain extent, John Hyde answered the question earlier. Perhaps Mr Cross can tell us, for the record, what the promoter's view would be if the committee lodged an amendment that required the authorised undertakers to carry out minimum standards of mitigation, which were set out in the environmental statement.

Barry Cross (Transport Initiatives Edinburgh Ltd): I confirm the tenor of the commitment given by John Hyde. The promoter would be comfortable for such commitments to be mandatory and to be included within the contract process. I am not sure whether you hint at a linkage with what is set out in the environmental statement.

Kate Maclean: How would the promoter feel if the committee lodged an amendment to ensure that the minimum standards of mitigation set out in the environmental statement are adhered to?

Barry Cross: The promoter is happy to commit to the minimum standards set down in the

environmental statement. However, the promoter would feel uncomfortable about the adoption of the environmental statements lock, stock and barrel because it is now two and a half years since they were put together. Matters are now clearer in a number of areas—not least in Baird Drive. The promoter is entirely happy to commit to the generality of the environmental statement and the minimum standards set down in it.

Kate Maclean: Can you confirm how you will ensure that the undertakings you have given the committee on mitigation are honoured by people who do work on your behalf? Will you check? Will there be some kind of monitoring? Or will you depend on people raising complaints about the fact that the work has not been done?

Barry Cross: That is quite an important issue: I am conscious that the promoter has made a number of large commitments as well as a lot of relatively minor commitments during this process. The promoter treats such commitments in the same way as the council, as a public authority. A large number of the commitments are already enshrined in legal agreements with objectors and have been part of the exercise of negotiating with objectors to withdraw objections. There are a number of objections that I am sure the committee will be seeking to have explicit amendments written around. There are also the relatively minor amendments that have significance to individuals.

It is envisaged that all the commitments that have been made formally before the committee will take the form of instructions from the promoter to TIE, which TIE will take forward in two ways. In the detailed design work that is on-going, the designer is required to take on board the commitments that have been made during the process. In due course, the output of that, including those commitments, will be part of the construction contract that is entered into to build the tramway. There are three ways in which the commitments will be executed and guaranteed through the process.

Kate Maclean: I do not doubt the promoter's intention; the question was how you will ensure that the work has been carried out on your behalf. Will monitoring be done as part of each stage of the contract, or will you depend on members of the public objecting?

Barry Cross: Yes, absolutely: the outputs at design stage will be checked and approved against a host of criteria. One important strand will be whether they match the commitments made before the committee.

Kate Maclean: Thanks.

The Convener: I have just one sweeping-up question for Geoff Duke regarding Crichel Down rules. I am somewhat intrigued as to why the

objector has not agreed simply to proceed along the same lines as other objectors. Has the promoter indicated that it would be willing to do what the objector is asking it to do?

Geoff Duke: Sorry; I had not prepared for that question. On returning land to the objector, which is just one aspect of the objection, we have said that the Crichel Down rules will apply. The objector has not said that that is okay and that the objection will be withdrawn partially. The objector is still considering the objection in total. We do not know whether what we have said is acceptable and whether the other aspects of the objection are holding the objector back from signing the agreement. We are talking about a package of measures.

The Convener: There are no more questions for members of the panel. That concludes questioning as far as the panel are concerned.

Mr Thomson, we are in a position of some difficulty with which you might be able to help us. When will we be provided with the technical amendments to deal with the concerns that were put to you by the clerks and legal advisers in July? I understand that, despite a number of reminders being sent, the amendments have not been forthcoming.

Malcolm Thomson: I understand that they will be provided later today.

The Convener: I very much hope so. What has been the problem?

Malcolm Thomson: I do not think there has been a specific problem. Attempts have been made to deal with all the strands and bring them together.

The Convener: But we will get the amendments later today, which will resolve matters as far as we are concerned. I am obliged to you for that. That concludes the evidence session for this morning.

10:54

Meeting continued in private until 11:37.

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