AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL COMMITTEE

Monday 25 September 2006

Session 2

£5.00

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AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL COMMITTEE
5th Meeting 2006, Session 2

CONVENER

*Phil Gallie (South of Scotland) (Con)

DEPUTY CONVENER

*Alasdair Morgan (South of Scotland) (SNP)

COMMITTEE MEMBERS

*Janis Hughes (Glasgow Rutherglen) (Lab)
*Cathy Peattie (Falkirk East) (Lab)
*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Paul Baker (North Lanarkshire Council)
David Baxter (North Lanarkshire Council)
Andrew Blake (West Lothian Council)
Ian Bray (Scottish Natural Heritage)
Angela Burke (Scottish Environment Protection Agency)
Archie Craig (Airdrie and District Angling Club)
Alison Gorlov (John Kennedy and Co)
Karen Gribben (Network Rail)
Stephen Harte (MacRoberts)
Elaine Hunter (Network Rail)
Erica Knott (Scottish Natural Heritage)
Hugh Lucas (Airdrie and District Angling Club)
Andrew Macvicar
Cornelia Macvicar
John Manson (Royal Mail)
Alex McArthur (Monklands Sailing Club)
Ron McAulay (Network Rail)
David McDove (North Lanarkshire Council)
Ian McKay (Royal Mail Group)
Dr Bernadette McKell (Hamilton McGregor)
Jackie McLean (Ironside Farrar)
Odell Milne (Brodies)
Hannah Murray (Harrison Cowley)
Chris Norman (West Lothian Council)
Duncan Robertson (Scottish Environment Protection Agency)
Jeff Toner (North Lanarkshire Council)
Hugh Wark (Network Rail)
Andrew Wood (Royal Mail)

CLERK TO THE COMMITTEE
Fergus Cochrane

LOCATION
Committee Room 1

Scottish Parliament

Airdrie-Bathgate Railway and Linked Improvements Bill Committee

Monday 25 September 2006

[THE CONVENER *opened the meeting at 10:42*]

Airdrie-Bathgate Railway and Linked Improvements Bill: Preliminary Stage

The Convener (Phil Gallie): Good morning and welcome to the fifth meeting in 2006 of the Airdrie-Bathgate Railway and Linked Improvements Bill Committee. This will be our final oral evidence session at this stage of the bill. Once again, we have a full house of committee members and I am pleased to see that we also appear to have a full house of the witnesses who we anticipated would come.

The purpose of today's proceedings is for the committee to hear evidence from the promoter and a range of other witnesses on the accompanying documents to the bill. We will hear evidence on consultation; notification; the environmental statement and mitigation; land acquisition; compensation; permitted development; time limits; and advance and voluntary purchase schemes. We will also have a look at issues relating to the European convention on human rights. The committee is grateful to all those who responded to our request for written evidence on those and other issues.

Later in the meeting, we shall also consider two late objections to the bill and give preliminary consideration to all admissible objections. Following that, we shall consider our approach to the consideration stage and the appointment—or otherwise—and role of an assessor; our approach to objector groupings and lead objectors; and our approach to written evidence gathering.

We have a lot to get through today. As usual, we ask for succinct answers to succinct questions. We hope to break for lunch around 12.30, but that time is not fixed. Members of the public are welcome to leave the meeting at any time, but I ask them to do so quietly. Although the meeting is being held in public, it is not a public meeting. It is the formal work of the Parliament and I would appreciate the public's co-operation in ensuring the proper conduct of business.

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

I welcome the witnesses from the Airdrie and District Angling Club and two private objectors. The committee has prepared some questions.

10:45

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Good morning. How could the promoter have consulted more effectively? How would the witnesses define good consultation?

Archie Craig (Airdrie and District Angling Club): That is a difficult question. We were not consulted at all on the proposals that have been put to the Scottish Parliament, apart from at one brief meeting when we were shown draft proposals. There has been no consultation on the bill that has been put before the Parliament.

Hugh Lucas (Airdrie and District Angling Club): We were first consulted by the Babtie Group in January 2004. At that time, we were given an assurance that our fishing lodge would be relocated further along, on our own land. We heard no more until August 2005—more than a year later—when we had to initiate a request for information. At that meeting, we were shown drawings that showed how we were going to be relocated. We knew nothing more until August 2006, when we received notification from Network Rail that it wanted to speak to us about the matter.

On 27 September, we had a meeting with Network Rail at which it produced a completely different set of plans that we were never consulted on. We believe that, had we been consulted earlier, when Network Rail decided to make those changes, we could have made things a lot easier and we might not have been here today. We have had no consultation on the final proposals that have been submitted to the Parliament—the attitude was that we could take it or leave it.

Jeremy Purvis: Mr MacIver, what is your situation with regards to consultation?

Andrew Macvicar: My name is Macvicar.

Jeremy Purvis: Sorry.

Andrew Macvicar: I will pass the question to my wife. She will explain it better.

Cornelia Macvicar: All the information that we have received through the process has been sketchy. We have never received the full information and have never been told exactly what is happening. Any meetings that have been held have been repetitive; there has never been any new information.

At the public meetings that we attended for the residents of Millstream Crescent, where we reside,

no information about our street was given on any of the maps that we were shown. We had to pull somebody aside and tell them where we lived. They said, "Oh, you stay there," and then told us what was happening. Any questions that were asked during those meetings were not answered—the promoter could not give us sufficient information.

Jeremy Purvis: When you were given the information, were you happy with it?

Cornelia Macvicar: No, we were not. We felt that we could have been given the information at the beginning instead of our having to ask the same question all the time. The promoter's answers were always vague—people kept saying that they did not know what was happening.

Jeremy Purvis: Why do you think that they did not know?

Cornelia Macvicar: It is possible that they did not know what was happening but, for the past four years, we have had the stress hanging over us about what was going to happen to our homes. We felt that they knew what was happening but were not giving us the information because of the number of houses in our street that they are seeking to purchase compulsorily. We are 50 per cent of their compulsory purchase problem.

Alasdair Morgan (South of Scotland) (SNP): Mr Lucas, when did you say that you heard about the proposals in their current form?

Hugh Lucas: On 27 September—no, sorry. It was August 2006.

Alasdair Morgan: Last month?

Hugh Lucas: No, sorry. I am looking at the wrong year. We were given the new set of plans on 27 March 2006. We had no prior knowledge of any changes that had been made by Jacobs Babtie to the original proposal to relocate the fishing lodge.

Alasdair Morgan: But that was before the publication of the bill.

Hugh Lucas: No. It was after the publication of the bill. When you talk about the bill, are you talking about the feasibility study or the bill in Parliament?

Alasdair Morgan: I am talking about the bill that we are examining, which was introduced on 30 May 2006.

Hugh Lucas: The bill was submitted to the Scottish Executive on 30 May—is that correct?

Alasdair Morgan: Yes, and you heard about the plans in March.

Hugh Lucas: On 27 March.

The Convener: I ask members to keep the two issues separate by putting questions to the angling club first and then picking up various points with Mr and Mrs Macvicar.

Jeremy Purvis: Okay.

For clarification, were there two meetings prior to the meeting on 27 March 2006?

Hugh Lucas: Yes. The first meeting, which took place on 13 January 2004, was with the Babtie Group, which was carrying out the feasibility study for the working group. The next meeting took place at our request. On 11 August 2005, I wrote a letter to the Babtie Group because we had received no information at all about the project's progress and were beginning to hear rumours.

Jeremy Purvis: And that meeting took place on 27 September 2005.

Hugh Lucas: Yes.

Jeremy Purvis: I want to be clear about this, because I think that Mr Craig said that only one meeting had been held. The very first meeting took place on 13 January 2004 and a second meeting took place on 27 September.

Hugh Lucas: Yes—on 27 September 2005.

Jeremy Purvis: And the third meeting took place on 27 March 2006.

Hugh Lucas: Correct.

Jeremy Purvis: And at that meeting—

Hugh Lucas:—we were presented with a completely new set of plans.

Jeremy Purvis: Did you ask for any more meetings than that?

Hugh Lucas: Yes. When we received the new plans, the club's executive committee examined them there and then. The committee made it quite clear that it was not happy with them as they would have very detrimental long-term effects on the club. However, at the promoter's request, we took the plans back to our management committee and eventually to our membership. After all, the proposals will affect all club members and, as a democratic organisation, we thought that we should seek an overall view from our members at one of the club membership meetings that we hold every two months. That is what we did.

Jeremy Purvis: As a result of that, there was a meeting on 9 June.

Hugh Lucas: Yes.

Jeremy Purvis: I will come back to that—I just want you to confirm it for now.

Did the promoter make any concessions or change the proposals as a result of those discussions?

Hugh Lucas: No. At a meeting on 9 June, when we asked why relocation was not being considered, the promoter made it quite clear that under no circumstances would it discuss the relocation of the fishing lodge.

Jeremy Purvis: What happened at the meetings leading up to that?

Hugh Lucas: The same applies to the meeting on 27 March 2006. When we asked about relocation, we were told to consider the new plan instead.

Archie Craig: Which we rejected in totality.

Jeremy Purvis: So you were unhappy both with the proposals in the initial feasibility study and with the final proposals.

Hugh Lucas: I should perhaps clarify that we were under the impression—[*Interruption.*] I am sorry, convener. Did you want to say something?

The Convener: I was going to seek clarification myself on a point, but I will let you continue with your own clarification.

Hugh Lucas: Over the two years and two months from 13 January 2004 to 27 March 2006, we were under the impression that the fishing lodge would be relocated further along the loch on our own land. That was why we were so dismayed when we were told that that would not be happening.

Jeremy Purvis: And you had not been told that in any of the previous discussions.

Hugh Lucas: No. The first intimation that we would not be relocated was at the meeting on 27 March 2006, at which we were told we had to consider the new plan.

Jeremy Purvis: Over this whole period, has the quality of consultation by the promoter improved? How would you describe the quality of consultation right from the beginning?

Hugh Lucas: We are of the opinion that it was not a consultation, but a dictatorial meeting. As our objection mentions, several comments were made that we felt were inappropriate for the person concerned to make.

Jeremy Purvis: And there has been no change in the process.

Hugh Lucas: There has been no change.

Jeremy Purvis: I mean in the quality of the consultation—there has been no change in that.

Hugh Lucas: That is right.

Jeremy Purvis: Your objection refers to a meeting on 9 June. Do you stand by what it says about the comments that Mr Macmillan made at that meeting?

Hugh Lucas: Yes; we stand by that fully. Five members of the club's executive committee were at the meeting and we all agree that those comments were made. We refuse to withdraw what we said in our objection—I have made that clear to Mr Macmillan and the chief executive of Network Rail.

Cathy Peattie (Falkirk East) (Lab): I am interested in the change from the original plan. How was that achieved? Was there a suggestion from the angling club or was it the promoter's suggestion?

Hugh Lucas: We had no input into the new plan that was submitted on 27 March.

Cathy Peattie: What about the original plan?

Hugh Lucas: We had no input into that, either. The first paragraph in section 2 of our objection mentions a requirement for an alternative site for Hillend lodge. To clarify, we did not make that suggestion or proposal; it came from a Mr Joe Magee who was a projects manager for the Babtie Group. He said clearly that the fishing lodge would be far too close to the railway line and that it would have to be relocated.

Cathy Peattie: That is what I wanted to know.

Hugh Lucas: The proposal came from Babtie—it was made clear to us that we would have to find an alternative site. We own part of the land in the area—28 acres of it. Two of my colleagues went with Mr Magee and his colleague when he walked the length of that part of the loch, until they came to a section that Mr Magee said would be a suitable alterative site, provided that foundations were put in. At our next meeting, in August 2005, representatives of what was then Jacobs Babtie provided us with plans for the proposed relocation. During that time, we were under the impression that the lodge would definitely be relocated. It was a shock to us when, on 27 March 2006, we were presented with different drawings and a take-it-or-leave-it attitude.

Cathy Peattie: I presume that you were happy with the suggested relocation.

Hugh Lucas: When we looked at the new plans, we could see clearly that the proposal was not reasonable. We could see faults in it. We thought that relocation was the best alternative for us. Since then, we have engaged Bell Ingram, a reputable firm of quantity surveyors, to work on a scheme and to show that considerable savings could be made. On the costings that we have received, the relocation was to cost Network Rail £2.5 million—

The Convener: At present, we are talking about communication, on which you have made your case well. However, we must not get involved in the objection. I realise that you have an objection, which will be considered as we go along, but at present we are talking strictly about communication.

Hugh Lucas: With respect, convener, I was trying to make the point that if, when Network Rail decided to change the plans, it had entered into the type of consultation that we are now having with Bell Ingram, we would not be here today.

Cathy Peattie: So the first proposal did not really involve a consultation, but you were happy with it, whereas you are not at all happy with the second proposal, which you feel is not helpful.

Hugh Lucas: It is not a workable proposal—we can prove that.

11:00

Archie Craig: It is not what we were initially consulted on. At the meeting on 27 March, we thought that Network Rail was coming along to dot the i's and cross the t's, but the opposite was true. It threw down a new set of plans at the finishing post and said, "Take it or leave it." That was the attitude.

Cathy Peattie: Was there no opportunity for you to negotiate or to discuss the proposals?

Archie Craig: Network Rail would not discuss the first set of plans. It was prepared to discuss only the new proposals.

The Convener: Before we move on to Mr and Mrs Macvicar, I would like to sum up what we have heard so far. You were first made aware of the promoter's intentions back in 2004, and you were happy with those proposals, given the discussion that you had had.

Hugh Lucas: Yes.

The Convener: However, by 2005, you were beginning to get a bit worried. The promoter did not come to you, and you had to go to the promoter. At that point, the promoter was still standing by the 2004 commitments. Then, in March 2006, a month or two before the bill was introduced, you were advised that everything had changed—that was the first communication with you about that.

Hugh Lucas: Yes.

The Convener: Did you have any chance between that date in March 2006 and the date when the bill was introduced to discuss the matter? Did the promoter come back to you?

Hugh Lucas: No.

The Convener: So the promoter failed to—

Hugh Lucas: As we said in our objection, the first we knew of the bill having been presented was when we got word from Brodies, a firm of solicitors in Edinburgh, saying that we could expect to have compulsory purchase orders put on our land because the bill had been presented on or after 29 May. I think that that was the date; it is written in my notes somewhere.

The Convener: That is okay.

Hugh Lucas: That was the first knowledge that we had of it. At the meeting on 27 March, Elaine Hunter, the project manager, told us that Network Rail was late in submitting its proposals but that it expected to do so sometime in April. In any case, what we were presented with were draft proposals. Nothing was finalised. That gave us the impression that there was going to be more consultation, but that did not happen.

The Convener: Thank you. That is clear. If no other members have questions for Mr Lucas, I shall invite Jeremy Purvis to put questions to Mr and Mrs Macvicar.

Jeremy Purvis: Mrs Macvicar, will you recap what you said about when you were first notified about, or when you first became aware of, Network Rail's intentions? Can you remember the date?

Cornelia Macvicar: I do not actually have any dates. It was a few years ago. There has always been talk of the railway reopening, so it has always been hanging over us. At various times, we contacted our MSP, who could not tell us anything either. The first that we knew about the proposals was when the first public meeting was held in the town hall to show people the plans and the model that was laid out. Unfortunately, we did not make it to that meeting, as we were on holiday at the time, but we attended all the other meetings after that. Any time that we asked about the proposals, the promoter could not tell us anything. We were just told, "We'll speak to you later and you'll hear all about it at the meeting. There will be time to ask questions at the end." However, whenever we asked questions we did not feel that they were answered properly, because we still did not know what was happening. The promoter was looking to take half of our garden, but could not give us a proper definition of what it intended to do.

Jeremy Purvis: At what point did you become aware that there were now firm proposals concerning your land?

Cornelia Macvicar: We found out the firm proposals on Wednesday. That was when we found out that the intention is now to take the house instead of the land. It had always been the plan to take the land itself, leaving the house

where it was—we were going to have to put up with the train, although we tried to explain to the promoter that leaving us with a 3.9m garden so close to a railway line just was not feasible.

Jeremy Purvis: Was that on Wednesday last week?

Cornelia Macvicar: We found out last week that the house would definitely be taken, and that the promoter was looking to advance purchase it.

Jeremy Purvis: Are you happy with that? I am mindful that we are concerning ourselves this morning not with the objection but with the consultation. Let me rephrase my question. Do you see that as a response by the promoter to your objection of 24 July? Is it in response to those discussions that the promoter has changed their plans with regard to the outright purchase of your property?

Cornelia Macvicar: The promoter has always been approachable; I would not say that it has not been. When I have had any queries or even when I have seen something in the paper, I have contacted the promoter's people and they have always answered fine—they have never rejected anything that I have said. They have been easy to talk to but could not confirm anything for us; as homeowners, we wanted confirmation of exactly what was going on, but they could not give us that. It was more infuriating than anything else, because we felt that they knew but were not at liberty to say.

Jeremy Purvis: Has the quality of the consultation improved, in as much as you can now get more firm information?

Cornelia Macvicar: It has improved since last Wednesday, but not really before that, because we still did not know what was happening. As I said, however, the promoter has been approachable.

Jeremy Purvis: I am sure that it is a coincidence that you were informed only a few days before you were attending a parliamentary committee, but there we are.

Cornelia Macvicar: It is an amazing coincidence.

Alasdair Morgan: You say that you felt that the promoter knew but could not tell you. Did that depend on how far up the organisation you went? Did you feel that people had made up their minds some time ago but did not want to tell you, or that they had not made up their minds and were still weighing up options?

Cornelia Macvicar: The promoter had two plans on the go for the railway. One was for the line to go away up at the back of the fields, where the quarry and everything is. The other was for the line to run along the existing route, which is where our homes are. We are not engineers, but we knew from the gradient of the land where the railway would go, as there was nowhere else that it could go. To get the railway open and make it easily accessible for people who live in the village, it had to go where it was previously. I did not need to be an engineer or a scientist to work that out for myself, so the promoter must also have known that.

Alasdair Morgan: From the day that the bill was introduced at the end of May this year, the route of the line was effectively fixed within a couple of metres either way. Should the promoter have been more forthcoming at that stage about precisely what that meant for you?

Cornelia Macvicar: We should have known from the very beginning. The promoter could just have said, "The line will go along the original route," and we could have known what the situation was a few years back. That would have been fine as we could have got ourselves set for it, but there was always a doubt in our mind that it might go somewhere else and might not go by our house. We were therefore shellshocked when the promoter told us at the meeting that there was nowhere else that it could go.

Andrew Macvicar: At least two of our neighbours in the cul-de-sac are structural engineers. They said that because the bill was so close to coming before Parliament, the engineering studies must all have been done, so the promoter must have known where the line was going—the bill could not have been so close to that stage without the promoter knowing where the line would go. It is a major issue, as the line will run right through the houses. Our neighbours said, "They must know. We are structural engineers, and if we said to our company that we had a wee bit of doubt about where a line should go, we would not be doing our job properly." The promoter always knew where the line was going, but it did not tell us until almost the last minute. That is the issue. The promoter should have told us from the start, "The line will definitely go here, but give us time and we will work out exactly what will happen for you." That did not happen.

Jeremy Purvis: Am I correct to think that you have two concerns? One is about the consultation on the final route of the railway and the second is about the promoter's intentions with regard to your house rather than your garden. The lines of deviation in relation to the bill and your own objection indicate that the promoter will take away about $20m^2$ of your garden.

Andrew Macvicar: It will take 2.7m from a 7.5m garden, which leaves us with 3.9m for a family house.

Jeremy Purvis: Was the promoter first made aware of your request that the whole property be bought outright when your objection was lodged, or had you spoken to it previously?

Andrew Macvicar: The promoter knew that from the first public meeting. We stated that we did not want to live as close as that to a railway. My back fence is screwed on to where the old platform was for what used to be a single line.

Jeremy Purvis: You cannot remember the date of that public meeting, but we should be able to find that out. Was it held in Caldercruix?

Andrew Macvicar: Yes. At our request, it was held in a local church hall because we wanted all the residents of the street to be present.

Cornelia Macvicar: Mr Macmillan told us that the land would definitely be taken, but that the house would not be needed for the purposes of the bill. I said at the time, "If you take the land, you take the house." I was told that the two normally go hand in hand.

Andrew Macvicar: We stated that we did not want to live so close to a railway as it was, let alone with it coming 2.7m closer to the house, especially as we have two young children.

The Convener: Staying on the subject of communication, given that public money is to be spent on the project, would you accept that options were available to Network Rail, which might not automatically have had to purchase the whole house? Might it have been difficult for Network Rail to give you an outright commitment and raise your expectations but then, sometime in the future, find that it was not able to deliver? Would it be reasonable to think that?

Andrew Macvicar: That is possible.

Cornelia Macvicar: Yes, I can understand the situation from Network Rail's point of view: it might not want to give out full information in case that backfired on it. However, Network Rail should put itself in our position. We have had this concern hanging over us for a number of years now, without anybody telling us outright what was happening. Even the local MSP has been absolutely no use to us whatever. Any information that we have asked for has either not come across to us or has been contradicted. Between Network Rail and everybody else who is behind the project and the MSP, we have got no further forward at all.

The Convener: To be fair to them all, it was only in May this year when the final proposal came forward. It was more of an aspiration before that. I am quite sure that your local MSP did not know what was happening. Your local MSP will still not know, on the basis that this committee must decide whether the project goes ahead. I will leave you to judge whether that is likely or not. At this point, however, nobody can give you the final assurance that you require.

I stress that we are discussing communications. However, we certainly recognise your anxieties, and we understand that you feel that you could have had certain information before you eventually received it.

Andrew Macvicar: We accept that the local MSP probably still does not know whether the proposal will go through. All that we were looking for at the time, however, was for her to come and see us and explain to us the avenues that we might be able to go down if there was a chance of the compulsory purchase happening and people taking our land. We asked repeatedly for help, but we could not get through on the number. We phoned up another MSP, even though she had nothing to do with this. Within 30 seconds, she gave us virtually all the answers that we needed.

The Convener: All right. That is a difficult matter for us to get into. You have to consider various aspects, but we will stick with the subject of communication with the promoter at this point. Do the witnesses have any more comments about that?

Andrew Macvicar: No.

Hugh Lucas: Following our meeting on 9 June 2006, we managed, through our MSPs, to get a meeting with Mr Ron McAulay of Network Rail, and we put our case. That was arranged by an MSP, and it was held on 14 August.

The Convener: So your MSPs, along with you, initiated the meeting that we discussed earlier.

Hugh Lucas: Well, Network Rail did that. We were not satisfied with the outcome of our meeting of 9 June and approached our MSPs, who contacted the chief executive of Network Rail. It organised a meeting so that we could put our case to it. I just wanted to let you know that a further meeting was held.

The Convener: Thanks very much for coming along. We will deliberate on the issues that you have put before us. I invite you to retire to the public gallery, and I ask the witnesses from Monklands Sailing Club to step forward.

I welcome Mr McArthur and Mr Hendrie. We are sorry to hear that your colleague Irene Bennie is ill today.

11:15

Janis Hughes (Glasgow Rutherglen) (Lab): Good morning. When did you receive notice of the promoter's intention to introduce the bill to Parliament?

Alex McArthur (Monklands Sailing Club): At Monklands Sailing Club, we always have difficulties with receiving deliveries of mail. Sometimes the mail is delivered to the Owl and Trout; sometimes it is delivered to Hillend farm; and sometimes it is delivered to the cottage at the head of the access road. We received the notification in July. The second notification was issued by Brodies on 7 July. That was presented to the club committee later in July and we then put in our objection, which was dated 24 July.

Janis Hughes: You said that you received the second notification. Was there a problem with the first one?

Alex McArthur: That is correct. There was a problem with the initial one.

Janis Hughes: So you did not get the initial one, which was sent out via—

Alex McArthur: The initial one turned up late. We think that it appeared from the cottage at the head of the lane. That shows the problem with not having a permanent secretary or a clubhouse that is open for, say, five or six days a week. The delivery of mail is always a problem.

Janis Hughes: But that is perhaps a difficulty for your organisation rather than for those who—

Alex McArthur: I accept that. We certainly received the notification in July and we responded to it. If the notification had been delivered to the address on the envelope, perhaps it would have been with us earlier. The fact that we received it in July made it difficult for us to put together a detailed objection in the time available. We have had considerable discussions but, like Airdrie and District Angling Club, our first notification was on 15 June 2004. We received a plan showing that the line of the cycle path would be 30m south of the railway line; that was fine, as it would not affect our club at all.

The next notification that we received was on 4 August 2005. We had a meeting with Jacobs Babtie to discuss the alignment, which we thought was still going to the south, but it turned out that it was now proposed to run the alignment through the clubhouse. On 31 January 2006, we had a detailed discussion with Jacobs Babtie about the route and we explained the difficulties—I do not need to go into those at today's meeting—and it agreed to look at the route again. Jacobs Babtie went off and had a meeting. An architect and an engineer appeared on the site. They had a look at the route and came back with an alternative.

In the intervening period, we met Karen Whitefield on 6 March. We then heard that the alternative proposal was to take the cycle path round the back and squeeze it between the railway line and the clubhouse. In a letter to Karen Whitefield dated 15 March, Ron McAulay said that Network Rail was looking into the land behind the club, between the club and the railway line, and claimed that it would not be taking any land by CPO. We were therefore very surprised when in came the notification indicating that it was taking land away from our car park. It is very difficult.

I was then asked on 4 September if I would look at the proposal—I am a chartered civil engineer. I met representatives of Jacobs Babtie and Network Rail on 19 September, when we went over the history of the consultation and the detail of the engineering work that had been given out. At that time, it became obvious that the line was fixed but that no detailed engineering work had been undertaken. Enough information had been gathered to identify the land take that they thought they would need, but more engineering work was required. As far as I could ascertain, no evaluation of alternative routes had been undertaken. The original route to the south seemed to have been discounted because of objections from North Lanarkshire Council about the proximity of the cycle track to the A89. A local developer had also objected. The arguments did not seem to be reasoned. I expected to hear that the promoter had considered alternative lines, done cost benefit analyses, and then settled on a line.

Janis Hughes: So, leaving aside the fact that you did not receive the official notification until slightly later than planned, you feel that generally your ability to put your case has been hampered by the fact that you have not been getting the appropriate information from the promoter.

Alex McArthur: That is correct. The plans that were delivered to us are thumbnail sketches. I am sure that more detailed plans are available with Jacobs Babtie. As with any major project, the initial alternative alignments would have been engineered and evaluated at a small scale and then the selected line would have been developed further. Evaluations would have been done of alternative lines, so the promoter cannot just say, "We have had objections."

The club feels let down because the alternatives have not been properly investigated. It is not enough simply to say to Monklands Sailing Club that North Lanarkshire Council and a local developer who is about to build a house with stables and kennels have objected. I would like to see the engineering evaluation of the alternatives.

We agree with the angling club that detail has been lacking. Jacobs Babtie and Network Rail have been talking to us, although there was a gap in the consultation when we involved Karen Whitefield. From March through to May, there was a gap when consultation could have taken place, but we were awaiting the results of Karen Whitefield's investigations. We have picked up on

the consultation and, as I said, I had a very good meeting with Jacobs Babtie and Network Rail on 19 September. However, that was after the stable door had been left open.

Janis Hughes: Do you think that communication and relationships have improved since you were officially notified and expressed your concern?

Alex McArthur: I do not think that you could say that there was a bad relationship; it is just that there was a lack of detail and explanation. The original route that was decided on in 2004 was eminently sensible in relation to where it passed the clubhouse. I have been looking at the situation only in relation to Monklands Sailing Club, but I think that the original 2004 route was excellent. It would have satisfied many objections that have been made and would have been further away from the railway line. As Airdrie and District Angling Club and the Caldercruix householders have said, the railway line will be squeezed. The cycle path is being taken immediately behind the clubhouse—3m from the clubhouse, there will be a wall, then there will be a 3m path and then there will be a drop straight down on to the railway line.

Janis Hughes: We cannot go into the details of your objection today, although we could do so in the future. Today, we must ascertain whether you did not receive on time official notification containing information that you did not know previously and whether that has left you on the back foot and unable to prepare your case fully.

Alex McArthur: Discussions could have taken place several months ago, at the beginning of the year, long before the bill reached the Parliament. I stress that Monklands Sailing Club has no objection to the line; the issue is the proximity of the realigned cycle track.

Janis Hughes: Okay. Thanks.

The Convener: I thank you very much for your clear exposition.

Alex McArthur: May I make one more point?

The Convener: Certainly.

Alex McArthur: A letter from MacRoberts does not appear to have been delivered. The commodore of the club lives in Baillieston. MacRoberts sent a letter by first-class post that advised us that our objection had been received. I would like to record in the *Official Report* that that letter, which was sent by recorded delivery, was not received. A definite address was given, but the commodore did not receive it, although a copy has been received. Unfortunately, it merely acknowledged that our objection had been received and would be considered.

The Convener: I presume that the promoter used Royal Mail services to deliver the letter.

Alex McArthur: I would say so. The acknowledgement letter was sent by MacRoberts, which is a firm of solicitors that works for Network Rail.

The Convener: The letter would have needed the recipient's signature.

Alex McArthur: It would.

The Convener: Is there any reason why the recipient could not have signed for it?

Alex McArthur: To be honest, I do not have a clue. I have asked the man whether he, his wife or child had received the letter and signed it, but he has denied any knowledge of having done so. It is possible that it went astray, but I do not know about that. Perhaps the committee can raise the issue with the Royal Mail.

The Convener: Okay. What is the preferred address for communications with the club?

Alex McArthur: Communications should be sent to the commodore, John Dawson, at 10 Bredisholm Drive, Baillieston, Glasgow, G69 7HZ.

The Convener: Is that the club's official address?

Alex McArthur: That is the address to which correspondence on the Airdrie to Bathgate line should be sent. The club has set up a sub-committee to deal specifically with issues relating to the line and all correspondence on those should be sent to that person.

The Convener: Okay. That is clear. I thank you for coming to the meeting.

I ask the Royal Mail witnesses to step forward. We shall move straight to questions.

11:30

Alasdair Morgan: The promoter has told us that it gave you two weeks' notice that it would post 4,000 recorded delivery letters for delivery on or around 23 May. Will you confirm that and that you were given adequate notification?

Ian McKay (Royal Mail Group): We pointed out in our submission that we would contest that we were given adequate notice. The notification process is important. In our written submission, we have tried to give the committee confidence that the letters have been delivered. However, notice implies that we were in some way a sub-agent of the promoter. We were not. There was no business contract for the mailing. The promoter made use of our services, as 21 billion people a year do, but no prior notification or discussion of

the project, as might have been expected, took place.

Alasdair Morgan: You are not saying that the promoter did not talk to you at all beforehand and one day went out and posted 4,000 letters.

Ian McKay: We have read the promoter's submission to you. It has said that it talked to someone on one of our generic helplines, which are there for anyone to use. The promoter works with a business adviser, who was not contacted beforehand. As we have said in our submission, it was very much a case of the material appearing within the network and having to be dealt with at that point.

Alasdair Morgan: When you say "very much a case", are you saying that that was the case? It just came out of the blue. Recorded delivery letters have to be handed in at a post office, do they not?

Ian McKay: No, it was done as a pick-up from Brodies in the normal way. We normally have a pick-up from Brodies every day.

Alasdair Morgan: Okay, and on the day in question there were 4,000 letters.

Ian McKay: There were about 15 sealed sacks. As you will see from our written submission, a lot of the procedures that should have been carried out were not. More important, though, there had been no initial discussion of the mailing or any setting up of a procedure to handle it. A delivery of that size over such a small area would be important enough to be discussed beforehand.

Alasdair Morgan: Absolutely. That is what I am trying to understand. That day was the first time you became aware that you were going to get 4,000 letters.

Ian McKay: That is when it hit us.

Alasdair Morgan: When did delivery of the notices—there were about 3,800, so slightly less than 4,000—start? When did you finish delivery of them?

Ian McKay: The delivery started the day after the notices were received by us. Because there were so many recorded signed fors, which were hitting a very small number of walks—a "walk" is what we call the delivery area for one postal worker—we staged it out a bit more than we would have had there been less of a challenge. It meant that the deliveries were made over two or three days. You have also got to remember that that was a bank holiday weekend, so there was a delay in the delivery. However, even under the circumstances—not knowing about the mailing and having to make special arrangements—we would have hoped that the letters would have been delivered three or four days after we received them.

Alasdair Morgan: You refer in your written evidence to the special delivery service as opposed to the recorded delivery service. Even if someone just takes the next day special delivery service, I think that it costs about three or four times as much as the recorded delivery service. What extra would the promoter get for that price increase?

Ian McKay: I emphasise the need for prior notice because that allows us to sit down with whoever the agent is and work out the best way of doing a particular mailing. To put the matter into the context of the Parliament's work, for the parliamentary elections next May we are already sitting down with various parties, such as returning officers, to work out the procedures that will be used for tasks such as delivering postal votes and candidates' communications.

That is the kind of work that we do when there is a big mailing such as the one for the elections. Although the posting of 4,000 letters in this case seems small compared with our annual deliveries of 21 billion a year, they hit a concentrated geographic area and a small number of routes. For a delivery as important as that, particularly when it is something for the Parliament, we would have expected some kind of prior notice and discussion with us.

On what our product would have been had such proper discussion taken place, I refer members to page 11 of our submission. Members will see reproduced there exactly the same table that appears on our website comparing the different products. It compares the two kinds of special delivery with the two kinds of recorded signed for product. I do not know whether you want a moment or two to find that.

Alasdair Morgan: No, I have got that.

Ian McKay: We can compare the special delivery columns with the recorded signed for columns. The "Guaranteed Delivery" line has "YES" for special delivery but "no" for recorded signed for; the "Secure network" line has "YES" for special delivery but "no" for recorded signed for; the "Priority handling" line has "YES" for special delivery but "no" for recorded signed for; and the "Tracked through network" line has "YES" for special delivery but "no" for recorded signed for.

It is evident from the table that there are different levels of confidence and security for the two different products. Clearly, because of the procedures that we use for it, the special delivery product is much better. That is why we suggested in our submission that the problems that arose in this case necessitate consideration of the notification process. Two other railway bills have come before the Parliament through private bill

committees: the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill and the Waverley Railway (Scotland) Bill. The promoters of the bills used special delivery for the notification procedure, which clearly set a precedent. If the promoter of this bill had discussed the matter with us in advance, it would have been very surprising if we had not offered a more secure and bespoke service for something as important as the notification mailing.

Alasdair Morgan: I suspect that you would always want somebody to use the most expensive product. However, if someone knew exactly to whom they were sending out letters, using recorded delivery, after a week or so they could come along to you and say, "Tell me which of those have been delivered." You say that you give confirmation of delivery for recorded delivery. Therefore, the sender can work out from the letters for which you cannot confirm delivery that particular people have not had the letter and they can send it out again. Is that the case?

Ian McKay: You are asking two questions, the first of which is on expense. The £4,000 or so that was involved in the notification mailing will clearly not make or break the Royal Mail Group and you are right to say that. I imagine that that would also be the case for the original £16,000 or so that it would have cost to use special delivery. I have no idea what the overall expense was to the promoter for using other arrangements. That is a matter for this committee and not for us.

As we said at some length in our written submission, our view is that an inappropriate product was used. As you say, a customer using recorded signed for can go to our website some time after the event to check whether the item has, in fact, been delivered. However, there is an important difference between checking whether it has been delivered and checking where it is in the system.

The special delivery product allows a customer to check where an item is in our network and is better for that purpose. We have said that, because of initial problems and—granted—problems that arose in our handling of items because of the concentration of deliveries all at one time without notice, we believe that in some instances our normal system found it difficult to cope with the mailing. That is why the appearance was given of the customer losing track of where its letters were.

Members will see from its submission that Brodies said that it had phoned and found that 730 or so letters could not be accounted for. That was because the customer was looking at what was available to it with that product. Had Brodies contacted us at that time, we could have gone beyond that system internally and used our internal procedures to try to track down the 730 letters with which Brodies had difficulties. We did that for the committee. From paragraphs 11 to 26 in our submission, members will see in full detail what happened to the items that were unaccounted for. That is why we are happy to sit here and say to members that we have confidence that the initial mailing that Brodies sent was put through letterboxes and was delivered.

Alasdair Morgan: So nothing still awaits delivery.

Ian McKay: We have checked our whole system and there is nothing there. I apologise for the fact that our submission is quite full, but the matter came rather out of the blue to us in eight pages of what were in some cases accusations. We tried to explain in our submission what happened, but we also owned up to the mistakes that we made in the system and explained why those mistakes arose. That is why we take the perhaps unusual step of suggesting to the committee, with respect, that a role could exist for the Parliament in considering how such mailings should be gone about. I am aware that notification has been an issue with one or two other private bills.

Alasdair Morgan: Notification is a matter for the promoter rather than the Parliament.

Jeremy Purvis: Good morning. Ian McKay said that a liaison manager is in place. Does that manager work with the promoter, Network Rail, or with Brodies?

Ian McKay: I am trying to remember the job title.

Andrew Wood (Royal Mail): We have an account manager with Brodies, which we deal with frequently, so Brodies is one of the customers in a sales representative's portfolio.

Jeremy Purvis: I presume that the surprise was that Brodies just rang a helpline rather than contacting your account manager about such a large mailing. However, that is the responsibility of Brodies and not you.

Andrew Wood: The account manager should be contacted and should tell somebody such as me about the situation. We have special events managers for occasions such as Scottish Qualifications Authority results being issued. Such events are planned in detail.

The mailing was important; that is why we are sitting here today. The event could have been dealt with better if internal communication between Brodies and us had been handled a bit differently.

Jeremy Purvis: Mr McKay mentioned other schemes, such as the Waverley line. What procedure was followed in those cases?

Ian McKay: I cannot honestly describe the full procedure that was used, but I know that a

different product was used. You heard my description of the two products. I imagine that the other product in itself went some way towards meeting the requirement. From my reading of standing orders, my view is that a bespoke solution that was in between the two products would have served the purpose.

Jeremy Purvis: A large number of items would still have required to be delivered.

Ian McKay: Yes. The logistics of the situation are that many items require staff to knock on the door and get someone to sign; the postman or postwoman would not be doing a normal job. In such a situation, we simply deploy more people or handle the mailing differently. In other cases, a mailing could be dealt with in a particular way—for example, different coloured envelopes could be used. All that is possible when we know that a mailing is happening and can prepare for it sufficiently.

11:45

John Manson (Royal Mail): To answer your question, we would need to know who was representing the promoter on the occasions to which Ian McKay has referred, because the account management varies according to the amount of revenue that a company generates for Royal Mail over the course of a year.

Jeremy Purvis: In at least one of those cases, the promoter was the local authority, so the revenue it generated would have been extremely large.

John Manson: That being the case, the promoter would have had an account manager and a bespoke mailing would probably have been set up.

The Convener: You said that the recorded delivery items in question were put through every door, but when postmen arrive at doors, it is frequently the case that they cannot obtain a signature because no one is behind the door. What is the procedure then?

Ian McKay: Andrew Wood will answer that.

Andrew Wood: The procedure is that the postman should deliver a piece of documentation called a P739 that states that there was no one available to take the signature. The straightforward instruction is that the postman should record the fact that there has been no reply at the door and bring the item back. Does everyone follow that protocol 100 per cent of the time? No, they do not—that is evident from what happened in this case.

Monklands Sailing Club is an excellent example of the fact that the situation is not always black and white. I was brought up in Caldercruix, so I know that facility. Getting to it involves going 200m down a little track and over the railway bridge. The club is on the right and has a 15ft secure fence all around the premises. Traditionally, the postman would deliver items for the club to the pub, which is at the end of the lane, or to one of the surrounding cottages. The postman can decide to do that because it is standard procedure to try to obtain a signature and get the item delivered.

To answer your question, the proper process is that a P739 should be delivered to the addressed location, but the postman will make a judgment at the delivery point.

The Convener: What does the P739 say? Does it give an instruction to the householder?

Andrew Wood: You have probably had a P739. It is a little card that says that the item is back at the delivery office. To use the example of Monklands Sailing Club, the relevant office is about 6 or 7 miles away in the centre of Airdrie. Undelivered recorded delivery items are taken back and held at the delivery office, with which the intended recipient is asked to make contact to arrange delivery. Usually the intended recipient will come and collect it, but we might attempt to deliver it again.

The Convener: For how long will such an item be held?

Andrew Wood: Seven days.

The Convener: What happens to it after that?

Andrew Wood: In cases in which the address is on the back of the envelope—as would have been the case with the notices that we are discussing—it is returned to the sender. If the address is not on the back, the item will be circulated via Northern Ireland, where the process of opening it and trying to identify the sender will be gone through.

The Convener: How long does that process take?

Andrew Wood: Up to three weeks.

The Convener: Could it take up to six weeks?

Andrew Wood: Yes, it could take longer. There is no guarantee. An important point that has not been made is that the recorded delivery product basically amounts to a first class stamp with a signature. The special delivery product guarantees delivery—with special deliveries, the quality of service that we work to is 99 per cent plus. If that is what people want, that is the product that they should buy.

The Convener: You would expect a company such as Brodies to know the difference in quality of service between the two products, particularly if the company has a Royal Mail account manager.

However, it might come as a surprise to the public to find that recorded delivery items can take up to six weeks to deliver.

Andrew Wood: That is not what I said. I said that if such an item does not have a return address on the back of the envelope and is circulated via Northern Ireland, the process can take that length of time. The point that I was making is that we will go to extreme lengths to ensure that we get an item back to the sender if we can. We also go through hoops to get the item delivered in the first place.

The Convener: Could the fact that you have a process whereby, if no one is in and there is no address on the back of the envelope, the item is sent elsewhere have accounted for some of the failures to deliver that we are discussing?

Ian McKay: There are a number of reasons why that would have been the case. If we had had prior knowledge of the mailing, we would have used our database to check that the addresses were accurate. I do not wish to harp on about Monklands Sailing Club, but two items that were sent there had different addresses on them, neither of which is the club's official address. Even though that was the case, we have recorded signatures that show that they were delivered. The difficulty relates to trying to find the best way of delivering something when you are faced with a 15ft fence.

Our procedure would have allowed us to check those addresses to ensure that an accurate address was being used by the sender in the first place. An awful lot of difficulties arise from things being wrongly delivered. From your experience of using the electoral register to track voters, you will be aware that people have often moved from the address that you have for them. That is why we offer customers the service of performing an accurate address check using our database, which is probably the best address database in the country.

Alasdair Morgan: We visited the sailing club and know the fence that you are talking about. Would it be fair to say that—notwithstanding the existence of a 15ft fence—a large proportion of your customers would prefer a signed-for item to be left somewhere convenient, such as at a next-door neighbour's house, rather than taken back to some inaccessible sorting office?

Ian McKay: Again, I do not want to focus in on this one case, but you have to bear it in mind that, as you heard the people saying, the delivery was made to the local pub.

As far as we are concerned, a product has a particular specification. If you buy that product from us, we will attempt to keep to that specification. Part of the specification of the product that we are talking about today is that the delivery is signed for; nothing is simply posted through the door. It would be wrong of a postman or postwoman to break with that specification off their own bat. In our submission, we say that we believe that that happened in this case because of the particular set of circumstances and because some of our people thought that they were doing the best thing. Of course, the difficulty is that the recording system that you are relying on breaks down at that point. That is why, after the committee got in touch with us, we went back to the postmen and postwomen who were on those routes and sought from them written statements that tell us what happened on the day. That is why we can say what happened with some confidence. The last thing that we want is for us to be unaware of the situation.

The Convener: In the final comments in your submission, you recommend that Parliament has a look at its procedures. I presume that we have details of the various services that you and, no doubt, others offer. Perhaps future private bill committees will take that into account.

Jeremy Purvis: In paragraph 9 and onwards in its submission, the promoter says that it was difficult to track some of the items that we are talking about. You have responded to that point in your submission but I would like to be absolutely clear about the situation.

On your website, it is clear that first and second-class recorded deliveries are not tracked through your system, whereas special deliveries are. Am I correct in thinking that that is obvious to people who seek information about the services that you operate?

Ian McKay: It is very obvious, yes. Your question suggests that a customer should decide what they want to do in a situation such as the one that we are discussing. In our submission, we have attempted to say that part of the difficulty in this case was that the procedures that the customer followed in order to try to find out more were not the procedures that we would have recommended. The fact that the customer tried to chase things up by calling up delivery offices out of the blue and so on added to the confusion at that point. Had the customer been able to contact our customer services or, even better, the account manager, we would have been able to go behind the public system and into our own networks to do the tracking that we have subsequently done for the committee, given the committee's importance.

On the website, the product specification is very clear that through-the-network tracking is not available if you use recorded, signed-for delivery. As Andrew Wood said, all you get is a first class post service with a signature at the end.

Janis Hughes: You have said that you did not have prior notification of this bulk mailing, and that, had an account manager been contacted, you could have negotiated some kind of bespoke service. Would that service have fallen in between a recorded delivery and the signed-for service that is often used elsewhere? Had a bespoke service been provided, would there have been tracking, and would it not have been possible to track the delivery very easily?

Ian McKay: It is almost certain that the service we would have offered would have been a bespoke service. Although we are talking about a big mailing, it is not one that would have broken the bank. The task is not enormous, especially if we compare it with what local government does, or indeed with what the Parliament or the Executive does.

Given the importance of the mailing, we would have wanted to ensure security and trackability. It would have been possible for us to find a service that fitted the bill—literally, although I am sorry about the pun. As you suggest, that service would probably have been in between the two that you mentioned.

Most of the procedures involved in our special delivery product are, I would have thought, what the promoter was looking for. If we had known that it was coming, we would have made special preparation for it and everybody would have known what was happening all the way through the process. As it happened, the wrong product was used, but the most important thing missing was prior notice.

I have read the promoter's submission. In my view, a couple of phone calls to a generic helpline would not be sufficient. Something more solid than that is required for an exercise of this kind.

Andrew Wood: Such mailings happen often. For example, we deal with season tickets from football clubs, tickets for big football matches, and tickets for big concerts. We have experience of such things and we ensure that our people understand how many items are coming, when they are coming, and when the pick-up will take place. That can allow us to use one vehicle to get the mailing to a mail centre where it will be handled as a specific item. That is routine for us—and a process as important as the one we are talking about should have been dealt with in that way.

The Convener: I thank the witnesses very much—and thanks for going back through all your logs in order to give us information.

I invite the witnesses from Scottish Natural Heritage and the Scottish Environment Protection Agency to the table. I am grateful to you for coming. Cathy Peattie will begin the questions.

Cathy Peattie: Good morning. Has the promoter sought your views on its work in determining the effects of the scheme on the Firth of Forth special protection area?

Ian Bray (Scottish Natural Heritage): Yes. We were contacted in late 2005 regarding the proposed scheme and potential impacts on Natura sites, including the Firth of Forth.

Cathy Peattie: Are there potential impacts?

Ian Bray: No.

12:00

Cathy Peattie: SNH refers in its written evidence to the Conservation (Natural Habitats, &c) Regulations 1994, the Parliament's role as the competent authority under those regulations and its duty regarding European protected species. Are you of the opinion that the Parliament must undertake an appropriate assessment of the scheme under the 1994 regulations and, if so, why?

Erica Knott (Scottish Natural Heritage): The appropriate assessment is required only for Natura sites where there are likely to be significant impacts. We do not think that there are likely to be significant effects, so we do not think that there is a requirement for an appropriate assessment under that legislation.

Cathy Peattie: I am not sure that I need to ask you all these questions, given that you said that there is no real problem, but I will do so. SNH describes the licence arrangements that are in place regarding European protected species and goes on to say that the species must also be considered as part of the consent process, failing which there might be a breach of European directives. What parts of the directives are you referring to? Are licensing arrangements not sufficient in themselves to ensure compliance with European law?

Erica Knott: That was quite a long question, so I will answer it in several phases. Although we said that there were not likely to be any significant impacts on the Firth of Forth, that might not necessarily be the case for European protected species—different parts of legislation cover those different aspects. There are European protected species along the proposed railway line, such as bats and otters. Although the environmental statement was thorough and has identified impacts, some of which would be adverse to those species, there is nothing in the bill about how the mitigation of those impacts would be implemented and enforced, which we are concerned about.

Cathy Peattie: What would put your mind at rest about those species?

Erica Knott: During our involvement in previous bills, such as the Waverley Railway (Scotland) Bill and the Edinburgh Airport Rail Link Bill, we asked for some sort of mechanism relating to the bill and the code of construction practice. We have seen a draft code of construction practice, but we have not been asked to comment on it formally. If there was a mechanism, with which the Parliament was satisfied, that would allow the mitigation that is proposed in the environmental statement and the code of construction practice to be implemented and enforced we would be satisfied.

Cathy Peattie: Would you have a role in monitoring the implementation?

Erica Knott: We would try not to be seen as a regulatory body, but we would be there to provide advice if it was required, particularly as the draft code of construction practice was implemented.

The Convener: From my experience of other private bills, I know that such things as badger runs become important, emotive issues. I am sure that otters, too, create a great deal of emotion. Are there pressures in any specific areas along the route?

Erica Knott: A number of such sites along the route have been identified. There are otters at Hillend reservoir, which also has other issues connected with it. A badger survey is being carried out, which has identified badgers along the route. However, given that there would be a delay between the consideration of the bill and its receiving royal assent, we would have to ask the developers to do further survey work to ensure that we were up to date on where the species were.

I want to return to the point about licensing. There is a role for the Executive with regard to European protected species. How the committee and the promoter interact with the Executive and with us needs to be considered further.

Cathy Peattie: Is there a precedent for that?

Erica Knott: Yes. There are European protected species on the Waverley and EARL routes. Of course, we are not yet at the stage where any of the projects are being constructed.

Cathy Peattie: So there are no examples of that working in operation.

Erica Knott: Not in the private bill process, but there are such examples in the normal town and country planning developments.

The Convener: Are you saying that there will be a continued high level of contact between SNH and the promoter on that in the future, if the bill is passed?

Erica Knott: Yes, that is our intention. We find that it is much easier to manage risks to natural heritage for developments on which there is continued dialogue.

The Convener: Okay. Thanks very much.

Let us move on to SEPA. You highlight concerns about the lack of flood risk assessment in the environmental statement. Has the promoter responded to you on that? Where do matters now stand?

Angela Burke (Scottish Environment Protection Agency): We still lack information on flood risk. We had a liaison meeting with the promoter in June at which we raised the issue of the lack of flood risk information. The promoter was aware of our concerns and said that it would address the matter at a later stage, possibly towards the end of the year, when there would be further drawings. The promoter assured us that we would be consulted at that stage, but we have not yet received any further information.

The Convener: So, once again, you anticipate an on-going liaison with the promoter on a subject that will be fully examined.

Angela Burke: That is correct.

The Convener: What about contaminated land and site investigations? What have you done before now and what do you intend to do in the future? What are the requirements?

Angela Burke: SEPA has only a liaison role; the local council is the lead authority with respect to contaminated land. We have highlighted a lot of concerns in our written statement, but I am still unaware of those matters being addressed and coming to SEPA.

The Convener: In the main, the line follows an existing former transport route—a railway. Would those contaminated land issues have been addressed in the past, albeit a long time ago?

Angela Burke: I am not aware of that.

The Convener: What involvement have you had in the preparation of the promoter's draft code of construction practice, which is now lodged with the committee?

Angela Burke: SEPA has been involved with it at many stages and we have had lots of meetings on it. We commented on the draft environmental statement in February and raised lots of concerns at the scoping stage. We also had lots of liaison meetings with the promoter at that stage before formalising our final comments in June.

Cathy Peattie: What is SNH's response to the oral evidence that was given by the promoter on 11 September with regard to the preparation of a public access management plan for the proposed cycle route?

Ian Bray: We have not seen a copy of that document.

Cathy Peattie: I was going to ask you for an assessment of the impact of relocating the cycle route and whether you feel that the promoter has adopted best practice; however, you have not seen the plan.

Erica Knott: We saw some plans when the bill was introduced, in May, but we have not seen the further evidence that you are talking about. We could look at it and provide comments, but we have not yet seen it.

Cathy Peattie: Do you have any general observations on the location of the revised cycle route or, indeed, the need to maintain the cycle route?

Ian Bray: The existing cycle path is of a very high quality. The replacement path should be of an equally high quality, and any interim arrangements during construction should maintain the quality of both the experience and the signage along the route.

Cathy Peattie: What is your assessment of how the promoter is progressing the mitigation of environmental impacts?

Erica Knott: The promoter's approach is sound. It has prepared a thorough environmental statement that has identified all the impacts and the magnitude of those impacts. Our only outstanding problem is the fact that what the promoter is proposing and what the bill currently has in it do not marry up. There is currently no enforcement of the proposed mitigation.

The Convener: From what I have picked up, you seem a bit surprised to hear that the route of the cycle path has been changed. Is that right?

Erica Knott: If it has been changed since the bill was introduced in May, we have not heard about it.

The Convener: So you are fully aware of changes that have been made in the cycle path route since the original draft proposals were made.

Erica Knott: The cycle path is on the railway solum and back in May we received a proposal to realign it. We assessed that proposal and our comments are based on the impacts of the new route, as set out in the bill introduced in May.

The Convener: Thank you. Cathy, you are looking puzzled.

Cathy Peattie: I am just concerned about the current situation. After all, environmental impact is an important issue, and it might be helpful if at some point you could provide us with an update on your view of the plan.

Erica Knott: We would be happy to do so. As I said, we did not know that there had been any changes to the cycle route to comment on. Our letter to the committee makes it clear that issues such as access and recreation fall within our remit, and we are keen for the current—and enjoyable—route to be replicated as much as possible.

Cathy Peattie: On our site visit, we were impressed by the cycle route and the public access along it. It would be a real pity if that were lost.

The Convener: As far as we are aware, the route of the cycle path has not been changed since the plans were submitted in May. The changes that we mentioned earlier related to the original plans that were presented to some objectors along the route.

Cathy Peattie: That is what has been confusing me.

The Convener: Of course, that might raise the slightly different matter of communication.

Erica Knott: In March, we were involved in discussions about realigning the route at Hillend reservoir. I should say that we are in a tricky situation, because we have a broad remit, which also includes looking after any species that might be affected. As I said, there are otters at Hillend. When the route realignment was proposed, we visited the site and tried to give the best advice that we could, based on the various elements of our remit.

The Convener: I am sure that you will be involved in future discussions.

Has SEPA been involved in the production of the environmental statement? Did it express any strong views or concerns about it? What are its on-going intentions in that respect?

Angela Burke: We have been involved with the environmental statement at various stages and are pretty happy that the promoter is carrying out proper mitigation measures to ensure that the environment in general and the water environment in particular are protected. Like SNH, we are concerned about the enforceability of such measures and feel that the bill should contain a commitment to ensure that they are enforceable.

The only important issue that we raised was the risk of flooding. However, the promoter has assured us that that will be addressed and I hope that we will be able to comment on it in due course.

Duncan Robertson (Scottish Environment Protection Agency): As the reinstated railway line will cross a number of small streams and clip part of Hillend reservoir, it will involve a number of activities that will constitute controlled activities

and that SEPA will seek to regulate through a licence. We have had initial discussions with the promoter about those activities and various areas of concern, and would seek to ensure that mitigation measures form part of that licence and would be enforceable. For example, we would want the water environment to be monitored before, during and after construction to ensure that the licensing conditions were being adhered to.

The Convener: Do you have any final comments? For example, has the level of contact with and accessibility to the promoter been enough to guarantee the well-being of wildlife, the environment and everything else along the proposed railway line?

12:15

Erica Knott: I have one minor point, which is that, although we have been happy to date and although the draft code of construction practice is a bulky document that covers many of the issues that we have raised, we have not been asked to provide formal comment on it. We will go back to the promoter and ask what it would like us to do.

The Convener: The committee notes your comments. I thank the witnesses for coming.

The final panel this morning is made up of witnesses from North Lanarkshire Council—I welcome you, once again. It is good to have you with us. Jeremy Purvis will do the inquiring.

Jeremy Purvis: A draft of the code of construction practice has been lodged with the committee. What involvement did you have in its preparation?

David McDove (North Lanarkshire Council): We have not been involved in writing the code, but we have seen drafts of it. From recollection, the first version that we saw was given to us at about the same time as the bill was lodged. That early draft was based on the code that was produced for the Waverley Railway (Scotland) Bill. We have had some follow-up on that. The draft code is bulky, so I have not been through the details, but the general concept seems to be fine. However, I highlight that the draft code suggests that the local authority and others will be consulted on matters such as remedial measures. We wish that to be a bit stronger, such that the local authority must be consulted and must approve any measures. The code of construction practice covers a range of environmental measures such as traffic control and noise and vibration during construction, so we would as the enforcing agency obviously like strong involvement in such matters.

Jeremy Purvis: You said that you have had some follow-up. Do you have in place a mechanism to meet the promoter to discuss any issues and concerns?

David McDove: We have had follow-up information on the control of noise and vibration under the code of construction practice. Network Rail has supplied us with documents on that for information, so that we can look through and comment on them. We have had no specific discussions on the code of practice, but we are having on-going discussions with Network Rail on various aspects. I hope that, through those, we can make progress.

Jeremy Purvis: Are you happy with the level and quality of the discussions so far?

David McDove: Yes. North Lanarkshire Council has, along with West Lothian Council, been involved for the past few years in general meetings and in specific issues, such as environmental structures beside the track. We have had a lot of involvement and discussion with Network Rail.

Jeremy Purvis: In your written evidence, you state that you hope that several concerns about environmental mitigation will be addressed in the code of construction practice. Can you update us on that? From your initial assessment, will the draft code provide the environmental mitigation measures that you seek?

Paul Baker (North Lanarkshire Council): At present, there seems to be a little confusion in that the draft code of construction practice and the environmental statement use different terminology. The draft code of construction practice states that contractors' environmental plans will be produced to address the site biodiversity plan. The environmental statement states that a habitat and landscape plan will be produced, along with specific management plans such as a swamp and marginal plant translocation and habitat creation management plan. It would be nice to tie all of that together. It is as if different people are writing different things and perhaps not reviewing them as if they apply to the same thing.

We still have concerns about the mitigation that has been recommended. Some of it is quite good, but we believe that it is not as extensive as it should be. As public bodies, we have a statutory duty under the Nature Conservation (Scotland) Act 2004 to uphold biodiversity and ensure that it is not degraded.

Jeremy Purvis: Have you said that to the promoter?

Paul Baker: The promoter has received extensive comments, but has not been particularly forthcoming with responses and has failed to provide additional information that has been asked

for. It has been difficult to get information from the promoter without quite a battle.

Jeremy Purvis: Can you help the committee by telling us when the promoter would have received those requests or when you sent them?

Paul Baker: Communications went from me, through our planning department and thence to the developer and their agents.

Jeremy Purvis: When was that?

Paul Baker: That work was on-going during the summer. Just today, I received the figures for the badger report, which we have been requesting for some time. The figures are only for viewing—they are not being provided to the local authority as a statutory consultee. We think that such information should have been provided with the environmental statement at the time of the initial consultation, in order to enable us to make a full assessment of the ecology and key interests in the area and how they might be affected by reopening the line.

We think that reopening the line is a good thing, but we want to ensure that the mitigation benefits the biodiversity of the natural environment in North Lanarkshire.

Jeremy Purvis: I appreciate those additional comments, but my question was about the response to the code of construction practice. In your view, the promoter has not responded fully. If we are to ask the promoter about that, we need to know when the promoter received the response.

David McDove: I will clarify: we have seen the draft code of construction practice but we did not comment specifically on it. There has been continuing dialogue on environmental issues because various elements have gone back and forth and we have expressed concerns. The badgers are one aspect. We were waiting for information on that, but we have some details now.

Jeremy Purvis: Have you had any contact or meetings with the Scottish Environment Protection Agency about flood risk? You might have seen the comment about flooding in its written evidence, which states that the promoter has not included a detailed flood risk assessment as part of the environmental statement. We will ask the promoter about that.

David Baxter (North Lanarkshire Council): No, we have not as yet.

David McDove: We, too, highlighted the flood risk. We accept that something needs to be developed to mitigate flooding, possibly involving sustainable urban drainage systems. It might also involve environmental work to recreate wetlands and so on. We have highlighted that we would like to see more of that work.

Jeremy Purvis: Mr Baker said that you have "not as yet" had meetings on flooding with SEPA. Does that mean that you intend to discuss the matter with SEPA? I am aware that you do not represent the promoter, but you have joint concerns.

David Baxter: In terms of the code of construction practice, we probably have a joint concern about how to enforce such mitigation. We would normally consult SNH or SEPA on an environmental statement. We usually like to consult the promoter on the formation of the code of construction practice and then to discuss with perhaps SEPA and SNH whether we have covered all the bases.

Jeremy Purvis: I will come back to monitoring and the code of construction practice in a moment. I would like now to move on to noise. I understand that the promoter has suggested that it is unrealistic to specify maximum construction noise levels. Do you agree? Do you have any comments on construction noise?

Jeff Toner (North Lanarkshire Council): It is probably unrealistic to specify a maximum level, as the promoter says. As far as the code of construction practice is concerned, we have not as yet had the opportunity to come back with specific comments, although we have seen the draft. The promoter asks for the use of section 61 of the Control of Pollution Act 1974, but we would prefer to be flexible and to control construction noise through North Lanarkshire Council, probably through hours of working.

Regarding the Airdrie to Drumgelloch section—the current operational section of track—passengers could easily be bussed, which would allow people who live beside the track not to have to put up with construction noise during the night. For construction of the new track, it is just as easy to ensure, through tenders to the promoter's contractors, that the contractors do not do any night-time working, that they do no work on Sundays and that they do no work for a half-day on Saturdays. That would give residents who live adjacent to the track a bit of a break from the noise. We feel that that could easily be achieved in North Lanarkshire, and that section 61 agreements should not be relied upon. It would probably be a bit easier for Network Rail to contract out the work and get set tenders, and it would be better for both Network Rail and North Lanarkshire Council to rely on an hours-based approach.

Jeremy Purvis: I want to ensure that I am clear about that. In effect, you would be looking for the code of construction practice to devolve to the local authority issues regarding noise and the hours of working.

Jeff Toner: Yes.

Jeremy Purvis: You would have your existing policies and—

Jeff Toner: We would just use our existing guidelines, without relying on the code of practice with regard to section 61 agreements.

Jeremy Purvis: I am not sure that the committee has your existing policies in this regard. If we do not, could you furnish the committee with them?

Jeff Toner: The existing policy is, where it can be managed, to control all noise through hours of working. We have suggested that.

David McDove: There is a summary version; if you are looking for fuller information, we can supply it.

Jeremy Purvis: That would be helpful. If you are asking for the code not to include such agreements, the committee would like to know the details.

You are having discussions with the promoter, but are you content with the level of engagement from the promoter in seeking to address the issues that you have raised in relation to the wider environmental impact of the project. I think that Mr Baker said that there had not been a substantive response. Does the local authority have a strategy for working through the issues with the promoter and to get its responses? Are you more reactive when it comes to the information that you receive from the promoter?

David McDove: The approach has, substantially, been reactive up to now. We have highlighted a number of issues and we have had a lot of discussion with Network Rail. We have raised concerns and received comments back. The promoter has the right to change something or to decide that a certain option is best, but there remain a number of environmental issues that are of concern to us and which we would like to work through. However, we are discussing the general principles now, so there is a question about how much detail we should get into. SEPA and SNH have been mentioned, as have issues in respect of voles and badgers. We have also raised various other matters and would like to be involved in continuing discussions on such matters.

Jeremy Purvis: If you remain unsatisfied with regard to some of the environmental concerns to which you have referred, what powers are open to you, as the local authority? What will happen if you continue to believe that your concerns have been inadequately addressed?

David Baxter: The answer probably relates to how the code of construction practice can be enforced. Our concern is that only structures are considered through the planning powers of prior approval—the environmental impact of those structures is not necessarily examined.

12:30

Jeremy Purvis: What role are you anticipating in monitoring and compliance with the code, and what discussions have you had with the promoter on that?

David McDove: We have not had specific discussions, but we would like the code to dictate that, as the planning authority, we will be consulted and have to sign off the work after considering environmental and other concerns. We would hope to reach agreement through that mechanism, as would SEPA and SNH in West Lothian, which David Baxter mentioned.

Jeremy Purvis: Are you aware that for other projects, the private bill committee has in effect stated that the promoter should either contribute to the funding of monitoring and compliance or have local authorities in those roles?

David Baxter: I do not think that we have seen any project begin with a code of construction practice in place. The Waverley railway project would probably be the first.

Jeremy Purvis: I read that you think that local authorities should take the monitoring and compliance roles.

David McDove: Yes, we certainly want the monitoring role. Enforcing compliance is another issue and is still to be clarified.

Jeff Toner: Monitoring will have a considerable effect on our department. There will be resource implications if we have to put officers out during the day and at night to monitor construction. Cost is a concern for North Lanarkshire Council.

Jeremy Purvis: I would like to fully understand the issue. Am I right that compliance would be a duty on the builder or promoter and that, rather than have a compliance role, the local authority could effectively be a prosecutor? Is that the concern about what would happen if the code was not being followed?

Jeff Toner: The local authority could be the enforcer, but we would hope to work with Network Rail so that such a situation did not arise. However, if it did, we would be the enforcer.

The Convener: Having listened to what you have said, I am most concerned by Mr Baker's comments. I note that the council is keen to have the railway, but safeguards must exist. We were talking about communication this morning—it seems to me that communication on the code of construction practice is lacking. You also have some queries about the environmental statement.

If you, as North Lanarkshire Council, would not mind listing the issues that you feel are of principal importance and submitting them to the promoter at an early date, the committee will have an opportunity to determine whether the promoter's answers and your satisfaction with them are acceptable. Without that satisfaction, it may prove difficult for the committee to allow the bill to proceed, despite the desire for it that seems common across the community. It is important to ensure that things are done properly and that documents are in place and are satisfactory to all the powers that be.

David McDove: We can certainly do that. We reiterate our overriding desire for the line to be reopened. We have expressed a lot of concerns, and we can jot them down, specifically the environmental one. As I said, we have had some discussions and we have been satisfied on some points, but we would like others to be developed further. We can identify them all clearly.

The Convener: If you could do that very quickly, it would give the promoter a serious chance of meeting our deadline of the end of October. Thank you for coming once again.

We now adjourn for lunch.

12:35

Meeting suspended.

13:38

On resuming—

The Convener: I welcome from West Lothian Council Mr Malcolm, Mr Norman and Mr Blake. We start right away with Janis Hughes.

Janis Hughes: Good afternoon. What involvement have you had in preparing and drafting the promoter's code of construction practice, which has been lodged with the committee?

Andrew Blake (West Lothian Council): We know of and have seen the code of construction practice, the noise policy, the best practicable means policy and the standard maintenance procedure. From seeing all those documents, we are confident that they have the content that we would expect and we are comfortable with them. They are drafts, but at this stage in development we expect to see only drafts. We expect to work on the fine detail as the project develops and as contracts are issued.

Chris Norman (West Lothian Council): In our submission in July, we set out a detailed appraisal of the environmental statement and highlighted certain matters that could be resolved or mitigated either through the code of construction practice or through the prior notification procedure. In its response to our submission, Network Rail confirmed that it will have no difficulty with the code of construction practice assimilating our requirements. My colleagues and I are looking forward to meeting Network Rail to examine the first draft in detail.

Janis Hughes: Do you plan to meet Network Rail in the near future?

Chris Norman: Yes.

Andrew Blake: I have spoken to a representative of Network Rail and have arranged that we will have those meetings.

Janis Hughes: I have a copy of the comprehensive document that you produced in July. As well as your evidence, it contains some of your concerns about the code of construction practice, for example your concern about the loss of a woodland area, but it appears to have been addressed. I will not ask you to go through each of your concerns, but are you confident that they have been addressed satisfactorily? Will any concerns that have still to be addressed be covered in your meetings with the promoter?

Chris Norman: Woodland reinstatement is a key issue. Some people have been worried that woodland will be lost to construction site compounds. One issue that I would like to be developed in the code of construction practice is site reinstatement and aftercare. We and the promoter are not miles apart on that, but we would clearly like a commitment from Network Rail that it will replant sites that have been cleared and will properly reinstate them. I have every confidence that that will happen; it would be a matter of course in a normal planning application.

Janis Hughes: We heard from SEPA earlier. What meetings have you held with SEPA about its concerns about flooding at certain sites along the proposed route? What is your assessment of the flooding risk?

Chris Norman: SEPA is the statutory authority on such issues. I have seen what the environmental statement says about flooding, but I have not commented because SEPA is the guiding authority.

Janis Hughes: Have you held discussions with SEPA? I understand your point that it is the leading authority on such matters, but you as the local authority will know your area and will know where problems might arise.

Chris Norman: I have no specific knowledge of any highlighted flooding problem on the West Lothian part of the route. As a matter of course with environmental statements, SEPA is the statutory consultee, so we will be guided by SEPA.

Janis Hughes: You have raised the issue of maximum noise levels during construction. The promoter believes that it is unrealistic to specify maximum noise levels, but where residences are near construction works you have specified the times during which construction work should take place. Do you agree with the promoter that it is unrealistic to specify maximum construction noise levels, or do you have concerns?

Andrew Blake: It is difficult to set maximum levels for this type of construction, but the noise could be mitigated by the steps that have been suggested, which involve design, screening and, as a final step, insulation.

As for regulating the hours of work, we would prefer there to be no Sunday working and perhaps only half-day working on Saturday. There should be no night-time working. We will discuss these matters with Network Rail to ensure that we agree on the hours of work.

Janis Hughes: Have you already had discussions with Network Rail about the issue? The restrictions that you describe seem to be those that would normally apply in a construction project of this magnitude. Will the local authority stipulate the minimum level of restrictions that would be acceptable?

Andrew Blake: Yes. Through the planning process, we have normal hours of work for construction projects and we will apply those hours. We have not spoken to Network Rail about the issue, but the draft document that we have refers to working hours, and that is the level of hours that we would expect.

Janis Hughes: And you have no reason to believe that that will not be achievable.

Andrew Blake: We have worked with Network Rail on other projects, such as the extension of the railway at Linlithgow, and we have found that we can work with the organisation and reach compromises.

Janis Hughes: Are you happy with the level of engagement of the promoter in addressing the other environmental impacts of the project and in seeking to mitigate them? Do you have a strategy to mitigate those effects?

13:45

Chris Norman: There are two issues in your questions. On the relationship between the council and the promoter, my letter to the private bills unit of 21 July 2006 details the council's involvement with the project from the end of 2003. The council provided a scoping report on the proposed scheme in February 2004 and has carried out detailed work on the inventory of planning permissions that have been granted subsequent to the lifting of the track. We were taken through the legal procedure clearly at a meeting in December 2005 and we commented on the draft environmental statement of February 2006. We were heartened by the fact that all our comments were fully addressed in the environmental assessment that accompanied the bill in May 2006. I have dealt with many environmental statements for major projects in my career and the one that we are discussing is one of the most comprehensive that I have seen. I am satisfied with the mitigation measures that have been described.

I am looking forward to discussing more fully with Network Rail compliance and enforcement, which are important parts of the procedure. I have already discussed those matters with it and I am aware that it is trying to promote a system that is analogous to the planning permission system. An enforcement procedure that is akin to the breach of condition notice procedure in the Town and Country Planning (Scotland) Act 1997 will be considered. I look forward to working with the company and its legal advisers on that.

I have dealt with major projects such as the Black Law wind farm project and regeneration at Polkemmet. The council's approach involves an independent compliance assessor who reports to it each month to ensure that the terms and conditions of a planning permission are fully complied with. Monitoring and enforcing a project as big as the project that we are discussing will clearly be quite a task for the council, and I look forward to considering with Network Rail how an independent compliance assessor could report to us each month on mitigation compliance.

Janis Hughes: Thank you.

The Convener: Your comments contrast with those of your neighbouring local authority, which had reservations about the level of communication that has taken place, particularly on the code of construction practice. That is interesting. We want to hear about everybody's experiences.

No other members have questions to ask, therefore I thank you for giving evidence.

I invite the promoter's witnesses to the table. I welcome Mr McAulay, Ms Hunter, Ms Murray and, in particular, Ms Gribben, who has taken the place of Alan Macmillan, who is unwell.

Cathy Peattie: What would you like to say in response to the comments made by our first panel of witnesses this morning? I am particularly interested in issues around consultation.

Ron McAulay (Network Rail): I would like to say a lot.

Cathy Peattie: I thought that you might.

Ron McAulay: First and foremost, we recognise that a project such as this will have what must be a life-changing impact on many people. Finding that your house has to be purchased as the result of such a project must have a major impact on anybody's life. In the case of the Macvicars, who were here earlier, we have done what we can to keep them as well informed as we are able. That has involved lots of meetings, including public meetings that the Macvicars have attended, meetings with the residents of Millstream Crescent and meetings with the Macvicars themselves, in their house and elsewhere. We have held a lot of such meetings, and we have every sympathy with the Macvicars and appreciate the impact that the situation is having on them.

Mrs Macvicar mentioned that information is somewhat sketchy, and she is right. The rules that apply to setting out the limits of deviation and to what we need to take by way of land suggest that we need to take part of her garden—full stop. They do not suggest, at the moment, that we need to take the house itself. Another reason why we have been unable to comment in detail is that, in the area of the old station at Caldercruix, the design will involve taking the solum—the ground—down quite a distance, and we have to think about how we restrain the embankments, whether we need to put in retaining walls and what else we might have to do. Those issues have had to be considered in relation to the detailed design.

Recently, at the beginning of September, we agreed with the Scottish Executive our advance purchase scheme, which has given us the ability to give a firm commitment to the Macvicars and to advise them that, as was said this morning, their house will qualify for advance purchase. We have had that conversation with Mrs Macvicar and her husband, and we can give them some certainty.

I shall ask Hannah Murray to take you through some of the consultation issues. I believe that we have conducted an extensive, comprehensive consultation exercise—one that would probably be cited as an example of best practice.

Hannah Murray (Harrison Cowley): Harrison Cowley's job was to come up with a robust consultation strategy that adhered to the parameters of the Scottish transport appraisal guidance. I know that members will have read the promoter's memorandum, which covers the consultation in more detail, but, to put it simply, our consultation strategy involved engaging with communities and encouraging them to feed back to us, as well as communicating the facts as the project progressed and as information became available.

As Ron McAulay said, we feel that we have done that well. We have responded to more than 1,400 requests for information and have held 12 public meetings and 15 public exhibitions, which were attended by more than 3,000 people. We have had 54 visits to our website—that is visits rather than hits—and we have communicated back 40 changes to the project plan as a direct result of consultation. At all stages, we have endeavoured to use a variety of methods for consultation and communication, including the public meetings and exhibitions that I mentioned, and leaflets with feedback forms. We have also encouraged people to use the website where they can, and if they are unable to do so we have a manned 24-hour helpline. All that information has been documented, so we have a clear audit trail of the consultation strategy, going back to early 2004.

Cathy Peattie: Yet we heard this morning from two panels of witnesses who felt that they had not been consulted appropriately. Although it is not our role at this meeting to look into objections such as that of the Airdrie and District Angling Club, we should note that the objectors thought that they were aware of the situation but were suddenly told that something completely different was happening, although they had not been aware that there would be any changes.

Ron McAulay: It is fair to say that the time between the angling club being advised of one proposal and us telling it of another proposal was too long. I accept that criticism. We changed the original proposal because we could not see justification for going with it. There is a danger that I will stray into the objection here, but the cost of what we propose to do for the angling club is still high. We believe that we are giving the club a workable solution that will meet its need for access. The cost of the proposal, however, is significantly cheaper than what was originally on the table.

Cathy Peattie: Have you learned anything from the consultation exercise that would lead you to change your consultation strategy?

Ron McAulay: No matter how good the consultation exercise, if the message is one that people do not like or do not want to hear, it can be extremely difficult. Colleagues such as Elaine Hunter, who is sitting on my right, have probably spoken to every person involved on numerous occasions. She has done a tremendous job. My other colleague, Alan Macmillan, who could not be here today, has also done a tremendous job and, for the record, has been wrongly quoted in what the anglers said—I shall not go any further into that. There will always be lessons that one can learn from exercises such as this, but we have done a comprehensive job of getting a message across to a large number of people.

Cathy Peattie: Presumably, that consultation will continue.

Ron McAulay: Absolutely. It is nowhere near finished. It is an on-going process that will continue beyond the commissioning of the railway.

Alasdair Morgan: Leaving aside the anglers' dissatisfaction with the proposal, the other point that they were trying to make is that they view the situation not as a consultation but as just the presentation of a plan. The first plan was presented almost at the inception of the project then, near the publication of the bill, the anglers were presented with a totally different plan. They do not see that as consultation; they were just told about the first plan then, late in the day, they were told about the second plan. Each plan was effectively a fait accompli.

Ron McAulay: I am not convinced that that is the case. If the angling club could put an alternative to us, we would be happy to consider it, but as yet it has not done so.

Elaine Hunter (Network Rail): The anglers were presented with the second plan in March and it was tabled for consultation with the club, which was then going to take it back to its committee. The club was sent a letter in April saying, "This is the proposal we're going with in the bill." We invited it to discuss the plan and how it would like it to be developed, but it did not take us up on that opportunity. Since April, we have had at least three meetings with the club to try to engage it in discussion about what we can do for it in terms of the design. Our proposal would provide the club with quite a number of benefits.

Ron McAulay: We have addressed a number of the club's concerns about our proposals. It has referred to the inability to use parts of the south side of the loch because of the embankment where the new road will be. We are happy to talk to the club about how that could be constructed, so that there are facilities there for it to use.

Alasdair Morgan: How would you characterise the three meetings? Have they been constructive? Have useful points been made by both sides?

Elaine Hunter: While we would like to pursue the proposals in the bill, we have given the club the opportunity to take forward its own proposal. On 7 September, we furnished it with all the information that it needs to do that. If it wants to progress with an alternative clubhouse, it can come back to us after it has assessed that proposal. In the meantime, we are confident that the proposal in the bill is the one to go ahead with.

Karen Gribben (Network Rail): At one of the meetings to which Elaine Hunter referred, we stressed that we were willing to take part in any working groups or other forums that the club might have to discuss proposals relating to the future of the club.

Cathy Peattie: So no take it or leave it.

Elaine Hunter: No. It is very much an on-going discussion.

The Convener: Mr McAulay, we accept your comment that there was quite a long delay; perhaps we will move on from there. The current situation is that there is on-going discussion. Perhaps Network Rail has a finite amount of money available to provide a clubhouse, but that would not preclude relocating the clubhouse if the Airdrie and District Angling Club decides to go down that route.

14:00

Ron McAulay: The Airdrie and District Angling Club would have to come to us with a proposal. We have provided it with the information that will enable it to do so if it wishes.

The Convener: Assuming that the clubhouse is to remain where it is, are discussions still on-going to find improvements to the current proposals so that they meet the club's requirements?

Elaine Hunter: We would like them to be, but the club has not come to the table yet to discuss the current proposal; it is progressing with its own proposal at the moment.

The Convener: Perhaps the club has to discuss it with its members.

Alasdair Morgan: What have the three meetings that you have had been about if you have not been discussing the current proposal?

Elaine Hunter: The first meeting was an outline of the proposal and of what we would like to do for the club, including getting the British transport police on board to address security concerns, as well as getting North Lanarkshire Council on board.

At the second meeting, which was driven by the MSPs, we undertook to provide the Airdrie and District Angling Club with the information that would enable it to consider an alternative proposal. The third meeting was to hand over that information.

The Convener: If we consider the consultation and communications on the proposals, there are remarkably few objections. I am pleased to note that you have taken seriously the objections that have been made.

Ron McAulay: As a result of the consultation exercise, we made just short of 40 significant changes to the proposals that went into the bill. We took the consultation seriously. We consulted extensively and, as a result, we changed some things before the bill was introduced.

The Convener: Okay, thank you.

At this point, we are looking for a change of panel. We are due to have Mr McAulay, Ms Hunter, Ms Gorlov and Odell Milne.

Alasdair Morgan: My questions are about the Royal Mail issues. I think that we are considering what we can learn for the future rather than doing anything retrospectively.

You heard what Royal Mail said this morning. Do you want to say anything in response?

Ron McAulay: I am in danger of falling foul of my legal adviser here, but I was frankly astounded by Royal Mail's evidence, which was, "Don't bother phoning our customer helpline; you'll not get the right advice there". That seems to be a bit odd.

If you were to ask me who Network Rail's Royal Mail business adviser is, I would not have a clue. I hope that if I had reason to phone Royal Mail and speak to one of its customer advisers, they would suggest that I contact my business adviser or even give me the name and phone number of the individual; better still, perhaps they would contact the individual for me. I was quite shocked by the evidence I heard today.

I am going to ask Odell Milne from Brodies, who was heavily involved in the process, to say a few words.

Odell Milne (Brodies): I have a cold, so I hope that everyone can hear me.

I appreciate that the witnesses from Royal Mail were not present at the time, so they are acting on what people have told them. However, my team and I were there from the beginning, and I know what the telephone calls were about, what was said and what happened.

We gave the Royal Mail more than two weeks' notice. We phoned to discuss the products with the customer services helpline. We discussed special delivery and recorded delivery. We chose not to use special delivery specifically because it involves a three-week delay between the date on which a card is left because the intended recipient is not in and the date on which it will be returned to the sender because it has not been collected. We felt that that delay would cut into the objection period by too much, given that we expected that there would be a significant number of returns as a result of people not being in. With the recorded delivery process, an item is held for only a week. We hoped that that would mean that when the undelivered notices came back to us, we could re-serve them and people who wanted to make an objection would still get them in time.

We discussed what we were looking for with the customer services helpline. We were told that special delivery offers compensation, but we said that we did not need compensation, because the letters were not valuable. What was important to us was evidence of delivery, which recorded delivery offers. Mention was made of tracking through the system, but we were not looking for that; we wanted evidence of delivery and we knew that we could get that from recorded delivery.

Given what recorded delivery offers, I still feel that it was the correct product but, unfortunately, things went wrong. The first time that we were informed by Royal Mail that there were missing letters was when it handed 538 letters back to us. Those letters had been kept for longer than seven days. I do not know why that was the case; Royal Mail says that it had many letters. I should have said that we told Royal Mail that we would be using recorded delivery two weeks beforehand, after we had discussed the products that were available. We had two conversations with Royal Mail at that time. We said that the mailing was important, because it related to parliamentary proceedings, and pointed out that the letters were all going to the same geographical area. We asked Royal Mail whether it would need to take on more staff to deal with the notices, but it said that it would not because it dealt with billions of letters. We were told that we did not need to make special arrangements on two separate occasions. We tested that position this month when we phoned to ask the same question. Again, we were told that special arrangements were not necessary.

We gave Royal Mail the recorded delivery items. The organisation's driver knew that they were coming, because a special van had to be sent—there were 15 sacks of mail rather than our customary two or three sacks. In other words, Royal Mail had notice again at that stage.

When we realised that letters were missing and had not come back after seven days, we got in touch with Royal Mail to express our surprise. We were told where the letters were and we collected them and re-served them. We were committed to getting them re-served as quickly as we could, so that people would receive their notifications. At that stage, we thought that everything was okay and that we could use the website to check that notices had been delivered. On 29 June, when we noticed that an awful lot of them were still not accounted for on the website, we contacted Royal Mail and spoke to its customer services department. In its evidence this morning, Royal Mail told us that that was the right point of contact for such a query and questioned why we contacted the delivery offices. We contacted the delivery offices because the customer services department told us to do so. The delivery offices could not account for the missing items.

At that stage, Royal Mail's representative, Mr Jackson, said that the organisation did not know what had happened to the 730 items and could not

trace them. We were not offered the internal tracing that has now been done. We did not learn about the internal tracing until we saw Royal Mail's submission to the committee, which was some time after the notices had to be redelivered. We took the view that we had to be confident that all the people who were entitled to notification received notification so, because 730 notices were missing, we prepared fresh notices and re-served them. Unfortunately, some of them were late. I think that that sums up what happened with Royal Mail.

Alasdair Morgan: Many of us would accept that if a customer needed help, their first instinct would be to phone the customer helpline.

Royal Mail made the point that your firm has an account manager.

Odell Milne: We do.

Alasdair Morgan: Was that person contacted?

Odell Milne: Not until later. If Royal Mail had told us that we had to make special arrangements, we would have contacted our account manager. We told the organisation that we would be giving it 4,000 important letters that would have to be delivered to a small area as part of a parliamentary process. We asked whether we needed to make special arrangements and were told that we did not, so we did not. If we had been told to contact our account manager or someone else, we would have done so.

Janis Hughes: Regardless of whether you agree that you should have called your account manager in the first instance, surely it would have made sense to do so when you realised that there was a problem, which was when you found out that there were letters that had not been delivered. Would it not have been better to contact your account manager at that stage and let that person investigate on your behalf? You seem to have had to go round the houses to find out what happened to the letters.

Odell Milne: With hindsight, possibly. At the time, we were anxious to find the letters and sort things out as quickly as possible so that we could re-serve them, if necessary. You will appreciate that we are always up against the clock. We were conscious of the fact that the affected parties who might want to object needed their notices and we wanted to get them to them. We were trying to find out where the notices were, what had happened to them and whether we needed to re-serve them. The way in which we dealt with the matter was sensible at the time. The customer officer said that he could not help at that stage—although he did get involved later—and did not know where the letters were. I do not know whether he could have helped if we had contacted him earlier, but that was not the route that we chose.

The Convener: This cannot have been a unique experience for Brodies. Have you always used the recorded system?

Odell Milne: It is the required product for service of court documents and compulsory purchase acquisition documents, so we use it regularly.

The Convener: Without any serious problems.

Odell Milne: Without any problems, as far as I am aware. I am aware of the special delivery product, but it is not what we would use for legal documents as a matter of course.

Alison Gorlov (John Kennedy and Co): Brodies will have experience of court documents and similar, but I hazard a guess that it is unlikely to have experience of mass mailings in the context of private legislation, of which I have experience on both sides of the border.

Contrary to what the committee might have supposed from what Royal Mail said this morning—it might not have intended deliberately to give this impression—the course that it advocated is far from the norm.

I am a parliamentary agent and solicitor, not a referencer. However, on occasion, parliamentary agents go in for mass mailing, so I can speak from a limited amount of frontline knowledge, but also from experience of speaking to the two dedicated referencing firms with which I have worked a great deal over several decades. On occasion, people sending mass mailings have popped round to Royal Mail and said, "Excuse me, please. Could you get another chap on the desk because we're going to have a lot of letters that will need to be stamped." However, more often what happens is that the office junior pops round with a sack of letters and a long address list at quarter past 5—for 5.30 closing—and some resentful counter clerk is left with a load of rubber stamping for a 20-page postal list. I have not seen that happen, but I have seen the postal list come back and have heard the articled clerk, or whoever, give proof that the list was simply stamped up.

The difference with the Scottish Parliament system is that one has to be prepared to prove delivery, as opposed to simply posting. However, that is a separate issue and is what the website and the track and trace system are for.

With regard to what is under the promoter's control, what Brodies did was absolutely dead regular—in fact, it was above and beyond the normal call of duty, in that it told Royal Mail that it was going to get a few thousands letters that were to be delivered to the same place.

Contrary to the suggestion that Royal Mail made, special delivery was used for the Stirling-Alloa-Kincardine Railway and Linked

Improvements Bill. It caused problems, with a three-week delay, and was used for a reason that is no longer applicable to the recorded delivery service. That has all gone by.

I can say with absolute certainty that for all the other works bills that have come before the Parliament the service used was recorded delivery. With my experience of all the projects but the two Edinburgh tramlines, I can say that what has occurred here is exceptional. Letters do come back. There are mis-services, letters get wrongly delivered and one spends a few weeks re-serving notices. However, having a comprehensive chunk of letters go absent without leave in the way that happened here is not something that I have come across before. I will not say that it has never happened, but I have not come across it.

The Convener: Thanks for that. One of the things that the committee must do is to learn from what has gone before. It seems to me that, in this instance, there was no way that the promoter could guarantee that everyone had been served, given that there is no feedback on the delivery of such letters. I point out once again that, in many instances, if people are not in their house, a notice is left that, for whatever reason, is not picked up in time. Perhaps the Royal Mail's recorded delivery system is inappropriate for future promoters.

14:15

Alison Gorlov: It is worth bearing in mind the fact that the recorded delivery service is the one that is mentioned in the Parliament's guidance on private bills. That is consistent with virtually every other proceeding that one can think of, including compulsory purchase, court processes, private bills and the old Scottish provisional orders. All those systems homed in on recorded delivery. Incidentally, under those procedures, recorded delivery was used because there was no option to do anything else.

Of course recorded delivery has its downside, but so does special delivery. The recipient might not be there and might deliberately not open the door to the postie—lots of people know that they do not always want to receive post that comes by recorded delivery. The referencers have told me that if they do not get a taker first time round, they send it by ordinary post and it does not come back. There are all kinds of ways in which to deal with the problem of people who are often away or who, for whatever reason, are not in to open the front door, but I do not honestly think that we can overcome it. No postal service can deal with that.

I have just one more point, and then I will be quiet. Hand delivery does not quite overcome the problem either. In some other proceedings, the requirement is to post by hand delivery—to deliver by putting the letters through the letterbox. The Parliament is unusual in that it requires proof of receipt, which of course means that even hand delivery would not necessarily produce the desired result, because it does not guarantee that somebody will be behind the door to receive the letter. That said, as Odell Milne mentioned, Brodies redelivered the notices, a great deal of which involved hand delivery. However, if people did not answer the door, all that could be done was to put the letter through the letterbox, which did not strictly provide the proof that the Parliament requires.

Jeremy Purvis: I have been looking through the Royal Mail's written evidence, paragraph 52 of which mentions the mail being handed to the driver. I appreciate Ms Gorlov's comments about comparable schemes. The Royal Mail stated:

> "it was not possible to check what sort of mail it was as it was given to the … driver in sealed bags. In normal circumstances, Royal Mail would provide trays for large mailings such as this to make it easier to transport and to meet Health and Safety guidelines".

If you hand over mail in sealed bags, it seems a bit tough on the Royal Mail to expect the driver who collects them to be clairvoyant and to know what they are. Were the bags marked clearly as being for recorded delivery?

Odell Milne: Yes, they were. As I said, the Royal Mail arranged for a van to collect the 15 bags, which contained only the notices for the project. In fact, the bags were ready the day before with the recorded delivery slips on them. They were ready to go, but they could not, because a delay occurred in deciding whether the project was to go ahead. The driver knew that they were for recorded delivery—we arranged with him that he would come especially to collect them.

Jeremy Purvis: So they were clearly marked as being for recorded delivery.

Odell Milne: Yes. When the 730 items went missing, we gave the Royal Mail all the counterfoils from the sticky labels, which enabled it, eventually, to trace the items, for you.

Jeremy Purvis: When I send out my annual report to 25,000 households in my constituency, which is paid for from public funds, I phone up the Royal Mail and speak to an individual, so that, from the beginning to the end of the process, I know that there is a contact person. Why does your firm of solicitors not adopt the approach of dealing with an individual person from beginning to end, even if they are in a call centre?

Odell Milne: Because when we phoned the call centre to ask whether we needed special arrangements, we assumed that, if so, we would be told whom to contact. However, we were told

that we did not need to make special arrangements.

Jeremy Purvis: Why did you not wish to have that in the first place? If you send out 4,000 pieces of important mail, should you not want an audit trail for your company, from beginning to end, and so seek an individual named person with whom to deal? Is that not normal practice?

Odell Milne: We send recorded delivery items the whole time and rely upon the Royal Mail to deliver the service that it offers, so we do not usually expect an audit trail. We have the counterfoil and we trace it through the website to see whether it has been delivered. We do not usually need to talk to an individual about such matters.

Jeremy Purvis: Bearing in mind Ms Gorlov's comments about comparable schemes, you were aware at the outset that under the recorded delivery system guaranteed delivery is not included in the service for which you pay.

Odell Milne: Royal Mail does not offer guaranteed delivery but it offers proof of receipt, which is what we were looking for. We required proof of receipt and we required the notices to be served so that, if necessary, we could get them back quickly. That is why we did not use special delivery, which would have meant a delay of three weeks.

Jeremy Purvis: For my own information—I should be aware of this but am not—what day marked the start of the notification period?

Odell Milne: The notices were handed over on 25 May.

Jeremy Purvis: What was the actual day on which the notification period started?

Ron McAulay: Do you mean the day of the week?

Jeremy Purvis: What was the date on which the notification period started?

Odell Milne: It would be the day after that. It would be the day on which the bill was introduced.

Jeremy Purvis: Did the notification period begin on the day on which the letters were posted?

Odell Milne: No. It began on the assumed day of receipt.

Jeremy Purvis: Right. So the notification period for the individual—the interaction period—begins when they have receipt of the letter.

Alison Gorlov: The period was calculated starting from the assumed date of receipt. The fact is that anybody who did not receive a notice in the post received it after the four days that it took Royal Mail to deliver some of them. Some people received their notices within the 24-hour or 48-hour window, but some of them received notices late either because they were delivered late or because they were re-serves.

For the promoter, the important issue was, first, that the letters were received and, secondly, that they were all received within what I accept was a shortened period but a period within which there was time for the affected people to object should they so wish. The problem with special delivery would have been that one would not get the notice back for a minimum of four or, more likely, five weeks, by which time it is most unlikely that people would feel that they had anything like enough time if they wanted to object.

Jeremy Purvis: Yes, but the assurance would have come from the fact that the Royal Mail offers guaranteed delivery. With the 9 am service, the guarantee is that the mail is delivered and there is no need to wait for the confirmation back. Is that not sufficient?

Alison Gorlov: We had considered the matter before and I have some experience of it. The problem with recorded delivery is that, as you rightly suggest, it does not guarantee delivery. There is the same likelihood that the piece of mail will be delivered as there is for the ordinary post. One understands that and nothing will ever be 100 per cent successful. I am sure that Royal Mail could tell us the percentage, but let us say that the success rate is 80 per cent. If we know that there is the risk of a 20 per cent failure rate, at least we also know that the letter will come back within a sufficiently short period to allow for effective remedial action to be taken in respect of the affected landowner.

If one goes for the guaranteed delivery period, it might increase the 80 per cent figure to 90 or 95 per cent, but it will mean that, whatever the failure rate is, we can say with certainty that those affected will be subjected to such a long delay as to jeopardise their chances of having any time to prepare objections should they want to do so. That was borne out by the Stirling-Alloa-Kincardine project. In that case, the service used was special delivery because at the time the special delivery service offered the ability to have a copy of a signature, which at that time recorded delivery did not. That has now completely changed and is no longer relevant, so the reason for using special delivery in that case no longer applies. However, there was a failure rate. I could not tell you offhand what it was, but it gave rise to real problems because those letters came back very late. The few that failed to be delivered came back inconveniently late for the people concerned.

If one is looking at having a failure rate, is it better to have a lower failure rate in which the failures are inconvenient, or is it better to have a

higher failure rate but know that one can get the replacement letters out in time? I think I might favour the latter, but I appreciate that there are two views.

Jeremy Purvis: How did you know what the return rate was going to be in this case?

Alison Gorlov: One does not know what the rate will be; one knows only that it will be something, because it always is—nothing is 100 per cent.

Jeremy Purvis: But the time period for getting the response—sorry, it is not the return rate. I am referring to the responses, which is when you get the report back from the Royal Mail.

Alison Gorlov: One knows only that that is what the Royal Mail service offers, which is to hold the mail for only seven days. Therefore, we know that if the service works as it is supposed to, it should take 48 hours for the mail to be delivered and another 48 hours for it to get back to the sorting office if it is not delivered. The Royal Mail hangs on to the undelivered mail for a week and we get it back after 10 days.

Jeremy Purvis: Yes, but the Royal Mail has guaranteed tracking, which is not available for recorded mail that is signed for.

Alison Gorlov: Yes, but we do not need tracking—that is the whole point. One is interested only in whether the mail has been received or whether we have got it back.

Jeremy Purvis: Forgive me, but you cannot criticise the situation of not getting back, after a number of weeks, something that has not been delivered, while also saying that not requiring tracking was one of the main reasons why you did not use the special delivery service. The whole point of having tracking is that someone can know straightaway whether a piece of mail is guaranteed to have been delivered. The Royal Mail offers a tracking system that lets someone know that straightaway—that is what they pay for.

Odell Milne: The Royal Mail recorded delivery service also offers that response in that we can check the website after 2 pm on the day following delivery.

Jeremy Purvis: Yes, but that is if the mail has been signed for. That service is not for tracking the mail through the system, which is part of the dispute that you have had with the Royal Mail.

Odell Milne: No. The information on the website also tells us whether a card has been left at an address, which tells us whether the mail has been returned to the sorting office.

Jeremy Purvis: Yes, perhaps.

The Convener: I think that we will terminate the discussion at that point. The committee must take note of what has been said. However, it is worth saying that the Royal Mail does not guarantee to give information back within the timescale that the witnesses suggested, because a Belfast factor is involved. We heard that today and we will consider the matter in due course. I thank the panel for giving its evidence.

We now lose Ms Milne and Ms Hunter, and we gain Stephen Harte. Next, we will consider European convention on human rights aspects; I have the privilege of asking the questions on this one. The promoter's response to article 8 of the ECHR assumes that, with mitigation, the railway will not interfere with private and family life. Assuming for the sake of argument that there was some interference with article 8 rights, how would such interference be justified under article 8(2)? I can expand on what article 8(2) says, if that is any help.

Stephen Harte (MacRoberts): I am happy to answer your question, convener. First, we are of the opinion that our combination of mitigation, compulsory purchase and so on will be enough to address any issues that will substantially affect anybody's private and family life. To the extent that that did not become the case—we believe that it is the case—members will know that member states have a wide margin of appreciation in deciding whether things fit within article 8(2). Scrutiny of the bill by this committee, the Parliament and the other stakeholders to whom the bill has been circulated is enough to determine whether it sufficiently furthers the public interest to meet the tests of article 8(2).

The Convener: In certain circumstances, article 8(2) places the wider public interest above the rights of individuals. Is that correct?

Stephen Harte: That is right.

14:30

The Convener: We had an instance earlier today of the rights of an individual coming into play. However, Mr McAulay explained that particular sensitivities were involved and that there could have been a misleading raising of expectation or aspiration, which could have been distressful, if the promoter had not waited before confirming relevant details. With respect to the ECHR, will you confirm that that situation is likely to be resolved?

Ron McAulay *indicated agreement.*

The Convener: Was that a yes?

Stephen Harte: As far as I am aware, the answer is yes.

The Convener: Okay—thanks very much.

Section 7 provides for reverse compulsory purchase and gives the authorised undertaker an unrestricted power of compulsory sale of land on which private roads have been built under the scheme. Under the provision, people could be forced to accept ownership of land that they do not want, to which conditions that were determined by the authorised undertaker would be attached. Would that be a determination of civil rights and obligations that raised article 6 issues? If so, what safeguards could be put in place to ensure compliance with article 6?

Ron McAulay: My colleague Alison Gorlov will answer.

Alison Gorlov: First, I will throw a different slant on section 7. The section does not compel anybody to buy anything—no money changes hands, except the compensation that Network Rail will have to pay if it acquires the land for the new roads. In that case, Network Rail—not any landowner—will pay.

The second issue is what section 7 does. It does not thrust on anybody a chunk of land that is useless to them and which they do not want. The private roads are replacements for roads that will be interfered with as a result of the scheme and the bill. They are replacements for severed access roads and realigned access roads.

The committee will have noticed that the idea of section 7 is that the land vests in the person in whom the authorised undertaker intends to vest the road. That sounds rather wide, but the formula has been accepted in the past. The idea is to replicate what is on the ground at the moment. If X owns a road that goes off at 6 o'clock and over which A, B and C have rights, and that road needs to go off at 2 o'clock, the realigned 2 o'clock road should be subject to the same ownership and interests as the existing road. That is what section 7 attempts to achieve in the best way that can be managed.

The Convener: Will conditions be arrived at after consultation with people whom the road serves—the owner and other service users?

Alison Gorlov: Indeed. The way in which those people are found out about starts with the referencing process. All those people who have rights and land ownership could of course be entitled to compensation if they are deprived of those rights. To the extent that the loss of rights is mitigated by having a new road, that is a counterbalance to the compensation claim.

The idea is to maintain the status quo so that a series of access roads replaces any access roads with which the railway will interfere. Stupidly, I do not have section 7 with me, but it says that the land vests subject to rights whose purpose is to reflect existing rights in the land in question. That is how the system is intended to operate. The rights will not be the same word for word—that will probably not be possible—but the idea is that the same people will be able to use the replacement roads.

The Convener: Roads that are replaced might fall under someone else's ownership. Will that be dealt with under section 7 and the same conditions?

Alison Gorlov: When the same person is to be involved, I am bound to say that we have had approaches from several landowners who have said, "What's the point in taking our land off us, building a road, then giving it back to us?" The answer is that the notion is daft and that what we will do is ask landowners to let us into their land to build the road, after which we will walk off, leaving everything as it is now.

When a road is to go outside the existing landowner's land, land will be acquired from a third-party landowner to provide a replacement road. That is being done in several instances.

I am aware of at least one case in which there is a proposal to take a bit of land—including a third party's land—in order to provide a new access track for somebody, and the third party said that they do not mind their next-door neighbour using the new access track but that they do not want to lose ownership of the land. That is not a problem for us. As long as the road can go down there, and as long as the various people have the same measure of access that they have today, that is all that matters to Network Rail.

The idea is that section 7 will be a way of maintaining the status quo, so there is no human rights issue here. To the extent that the status quo is not maintained, perhaps because the access route is not regarded as quite as convenient, there is a potential compensation claim. However, we do not regard that as an article 6 issue or as a human rights issue at all.

The Convener: Might there be some benefit for those who will gain new access roads? I do not know all the roads that are involved, but some of them might not currently come up to council standards. To what standard will Network Rail supply the roads?

Ron McAulay: If you are asking for a specification, I am afraid that I will have to go away and ask somebody about that, but the roads will be of good quality. They will not be of motorway standard, but they will be built properly to stand up to the level of usage that they will have.

You are right—in some cases, the road that is provided might well be of better quality than the existing track, which might have potholes or whatever. A road at Plains springs to mind. There, the road quality might be improved, but the road will be longer because it will have to go round the back. In that case, although there might be an improvement to the road quality, there will be an inconvenience because of the length of the road.

The Convener: I thank Mr Harte.

For the next panel, Ms Hunter joins us again, as does Ms Gribben. This time, we are talking about land acquisition, compensation, permitted development, time limits and the advance and voluntary purchase schemes.

Jeremy Purvis: As I understand it, section 26 is about cases in which the authorised undertaker purchases the whole of a property rather than just part of it. The section refers to "material detriment" and to serious effects on amenity. Will you give some examples of the material detriment and serious effects on amenity that would require the use of section 26? You might have heard some of those this morning, but I ask you to give some examples for the record.

Alison Gorlov: As you possibly appreciate, section 26 is not new. It replaces section 90 of the Lands Clauses Consolidation (Scotland) Act 1845 in a way that is intended to reflect modern usage and is common throughout the United Kingdom.

The railway might require only two thirds of somebody's small back garden, but, if the railway perimeter fence is 2ft from their back window, the house will be awful to live in. That is material detriment. Obviously, there are gradations, but that is an extreme example of the circumstances of material detriment.

Jeremy Purvis: I draw your attention to paragraph 2 of a document entitled "Annex D", which, I believe, is a response from the promoter to further questions from the committee. The whole document, which is also headed "Other issues", is on the subject of ECHR. I realise that that is not a very good reference, but, when you hear my question, you might find that you do not need the paper.

I simply seek confirmation whether the Lands Tribunal for Scotland will decide compulsory purchase issues, because that seems to be the implication of a table in the paper that I mentioned. Do you expect objectors to take such matters through the whole tribunal process or will you seek to cover them with a voluntary purchase scheme?

Alison Gorlov: My colleagues will outline how the VPS will operate. However, I point out that no one would want to take such matters to the Lands Tribunal for Scotland. It is like fetching up in court. At the same time, agreement cannot be guaranteed.

Karen Gribben: There is a distinction to be drawn. We have given the committee details of our advance purchase scheme, and we have contacted and commenced a dialogue with each of the affected home owners.

We have considered using a VPS. However, after assessing the environmental statement and after taking into account our technical experience and ability to mitigate such matters, we do not think that any properties will require to be purchased under such a scheme. That said, we stress that if that situation should change we will introduce a VPS and operate it on the same basis as we operate the advance purchase scheme.

We hope that such matters will not go to the Lands Tribunal for Scotland. We are operating under the statutory regime, and we hope that through dialogue the affected home owners will understand that what we are offering is consistent in that respect and that we will work with them to deal with the problem. However, if the home owner does not reach agreement with us, referring the matter to the Lands Tribunal for Scotland for an independent decision is a long stop that is—and should remain—open to them.

Jeremy Purvis: In your written documentation, which might be slightly out of date, you say that you are discussing the voluntary purchase scheme with Transport Scotland. I take it that you have now agreed with Transport Scotland that the VPS will be the same as the APS.

Karen Gribben: Based on our current assessment, we do not think that any properties will be affected in that respect. However, we continue to keep an open mind. Of course, home owners can have a dialogue with us on the matter.

Jeremy Purvis: Have you communicated to objectors that the permitted development and compulsory acquisition powers under the bill might be exercisable for up to 10 years? If so, what response have you received?

Karen Gribben: To my knowledge, I do not think that anyone has asked any direct questions about the 10-year period. However, on that matter, I would need to defer to other colleagues who are not at the table.

Elaine Hunter: I confirm that we have not communicated that to objectors.

Ron McAulay: I attended the full round of consultation meetings earlier this year, and the issue was not raised by either side. There was no attempt to cover it up; it simply was not discussed.

Alison Gorlov: I might be taking a little bit too much for granted, but I think that the matter

involves a degree of public knowledge. Ten years—or certainly a period of years—has become an accepted norm for the operation of compulsory purchase powers. I am not suggesting that landowners on the route will automatically think that compulsory purchase orders last for X years—of course they will not—but there is a degree of public knowledge that compulsory purchase powers last for some time.

Jeremy Purvis: So, even though you want the line to be open in just four years' time, why have you have opted for this 10-year period in the bill? Is it because you wanted it to be consistent with other schemes?

Alison Gorlov: The short answer is: the Scottish Executive and Transport Scotland. I think that you raise two separate questions. First, how long should compulsory purchase powers last? Secondly, should they be operated over a fixed period or should there be a minimum period that can be increased?

We took the view that a fixed period was beneficial to landowners. They might not like the period, but at least they would be certain about how long the sword of Damocles would be hanging over them. That is not a view that has commended itself in the past, but it is the view that Network Rail took. It is up to the Parliament to decide whether it is a view that it cares to follow. Network Rail's decision might have something to do with its funding arrangements; I know not. However, it wants there to be the possibility for those powers to continue for 10 years. I put it in that way because, as the committee might well know, other bills and acts have ended up with an overall 10-year period, which has been made up of a fixed period followed by a further period during which the powers can be extended.

14:45

Jeremy Purvis: Would you have no problem if this bill were to be amended similarly?

Ron McAulay: The preference would be for it to be left as it is. However, that is something that the committee has to consider.

Jeremy Purvis: What representations have been made to you on home-loss payment levels?

Alison Gorlov: We have advised the objectors and people who were involved in the consultation process about home-loss payments and the possibility that that will be part of a compensation package.

Jeremy Purvis: Have you outlined to them what the current levels are?

Alison Gorlov: Yes.

Jeremy Purvis: On what basis, legal or otherwise, do you state that the Crichel Down rules are

"neither necessary nor appropriate"?

Alison Gorlov: As we say in our submission, the Crichel Down rules do not apply to Network Rail. They are for public bodies and they require public bodies to consider whether they should exercise a discretion. The powers that the committee will have seen in other legislation that has been passed by this Parliament remove that discretion. However, they do so in relation to public bodies. Network Rail is not a public body, which means that the requirement to consider whether to exercise a discretion is not there in the first place.

The point of that is that public bodies take land on a certain basis for the public and are publicly accountable in terms of how they deal with that. That is why there are those rules that give them a discretion that they might not otherwise have. By contrast, Network Rail is a commercial organisation that is free to exercise its commercial judgment in whatever way is appropriate. That is why the Crichel Down rules do not come into play.

The important point is to do with whether there will be surplus land and, if so, what will happen to it. The last thing that Network Rail wants is to be left with odd bits and pieces of land. Sections 6, 7 and 8 are designed to ensure that that does not happen. Network Rail runs railways; it does not want odd bits of roadside verge. Because of the limits having been tightly drawn and because of the fact that, by the time that land assembly starts, design will have taken place such that, if those limits can be drawn in again, they will be, the promoter's view is that those circumstances will not arise in the first place. We will not acquire land that will become surplus.

Jeremy Purvis: The Crichel Down rules are designed to ensure that land that is acquired through compulsory purchase is disposed of on an equitable basis as surplus land. What would be the problem of the committee stating that the Crichel Down rules should apply to Network Rail? We are giving Network Rail the powers to purchase in the first place. That would not pose a problem for the undertaker, would it?

Alison Gorlov: I will ask Network Rail to discuss the specifics of implementing a Crichel Down type of scheme. If there were to be surplus land, Network Rail would be obliged to sell it at the best price that was reasonably obtainable and to account to Transport Scotland for that. It is not as if Network Rail will walk away with the profit. If the purchase has been funded out of public funds, as is the expectation, the money will go back to public funds if any surplus land is sold. It is not a

question of Network Rail holding on to the money. The Network Rail witnesses might be able to tell you about implementing a Crichel Down scheme.

Jeremy Purvis: Before Mr McAulay does so, you might be able to correct me on my understanding of the Crichel Down rules. The rules apply if someone has their land compulsorily purchased. Is the offer that is made to them the first offer, even if it is made according to market rates? It is. First refusal goes to the person whose land has been compulsorily purchased. If the purchase is made on the open market through a commercial venture, that is not the case, however. That is the distinction. Is that correct?

Alison Gorlov: There are two distinctions to make. First, the land is offered back to the original owner from whom it was acquired. Secondly, it is offered back at market value—that is market value at the date of the offer back, not, for example, the price for which the property was acquired.

Jeremy Purvis: So there would be a difference according to the first of those distinctions. I suppose that this comes back to Mr McAulay's points. If something about this were to be inserted into the bill, the requirements on Network Rail with regard to the rights of the person who has had their land compulsorily purchased would be the same as for a consortium of local authorities that had promoted other schemes.

Ron McAulay: We would have difficulty with that from the point of view of convincing our regulatory bodies that we had maximised any income that we had received from selling properties. I could well have the terms wrong, because I do not claim to be a land surveyor, but the market values might not be the same as what someone would get in an open competition for purchasing properties back. We are trying to minimise the likelihood of such a thing happening by ensuring that we are doing as much of the detailed design as possible before we get into situations of purchasing land that will not be required once the railway is commissioned.

The Convener: I seek clarification on that point. I do not think that you would have difficulty convincing your regulator if the committee and the Parliament built such a condition into the bill. You would have to comply with such a condition.

Ron McAulay: I would not be able to argue with you on that.

The Convener: That is fine—I think that the point has been made clear.

Karen Gribben: There are two general issues for the committee in that regard. We have explained why we believe that the Crichel Down rules do not apply to Network Rail. We have started a dialogue with the home owners affected about an advance purchase scheme, and we are mindful of the committee's wish to be satisfied that the public funds that would be used to purchase the properties concerned can be accounted for in the event that the bill does not receive royal assent or does not proceed for any reason.

We have reached an agreement with Transport Scotland that the costs and revenues associated with that will be ring fenced from our normal income for property that we own. We have also agreed that we will account to Transport Scotland for that revenue after the deduction of expenses associated with maintaining the property while matters proceed. However, as Ron McAulay and Alison Gorlov have said, we draw and apply our limits in such a way that we do not believe that we should have any additional land.

Jeremy Purvis: My understanding is that the Crichel Down rules protect the interests of those who have had their land compulsorily purchased so that the public authority cannot compulsorily purchase land and then sell it on the open market to raise funds for itself. If that is indeed the case, we may well consider placing the same requirements on Network Rail.

Is your rationale exactly the same for disapplying it to the advance purchase scheme and equivalent of a voluntary purchase scheme?

Karen Gribben: Sorry—I do not understand the question.

Jeremy Purvis: With an advance purchase scheme or voluntary purchase scheme outwith the compulsory purchase powers, to which the Crichel Down rules would normally apply, you indicate that you would not have them apply in those situations as you would with the bill in relation to compulsory purchase.

Alison Gorlov: I am not sure whether I am answering the right question, but I will try. The advance purchase scheme is aimed at properties that are directly affected by the bill in the sense that all or part of those properties will be lost to the scheme. Those are cases in which, under the bill, compulsory purchase is going to happen. All that the APS does—as the name implies—is accelerate the receipt of the money in the hands of the landowner. It accelerates the purchase so that it happens now rather than sometime hereafter. Voluntary purchase is similar. The only difference with a voluntary purchase scheme is the fact that the properties are somewhat more remote and it is not definite that they would be subject to compulsory purchase under the bill.

In the case of an APS, there will be accelerated purchase; in the case of a VPS, it will be recognised that people ought not to be forced into owning properties that are completely untenable due to our scheme. That is somewhat different

from the Crichel Down situation, whereby one looks not at the effect of the scheme but at what has happened after the landowners have received full compensation for their land.

Jeremy Purvis: Under the terms of the bill, there may be areas of land within the extent of the deviation and what is done in the bill that become surplus. There may also be situations in which there has been a compulsory purchase outside the limits of deviation. You do not consider that the Crichel Down rules should apply in either of those situations—I would just like you to confirm that.

Alison Gorlov: There could not be a compulsory purchase outside the limits; the only compulsory purchase would be within the limits.

Jeremy Purvis: That is why I asked about the voluntary purchase scheme.

Alison Gorlov: Anything outside the limits would be purchased by agreement with the landowner concerned. It would be quite likely that the landowner would have approached us.

Jeremy Purvis: Section 8 concerns two plots of land to vest in English Welsh and Scottish Railway Ltd on completion of the relevant works. The explanatory note indicates that that is to replace an existing depot that will be lost to the company as a result of works that are conducted under the bill. How will section 8 work in practice with regard to those plots of land?

Alison Gorlov: In terms of the legalities of vesting?

Jeremy Purvis: Yes.

Alison Gorlov: We have spoken to the Registers of Scotland about the matter. Karen Gribben may be a better person to speak about it, as I am not a Scottish property lawyer.

Karen Gribben: I am a Scottish lawyer, but I am not a property lawyer, so I am probably not the best person to answer. I would be happy to provide you with a written response. I apologise for the fact that we are unable to answer your question at the moment.

Jeremy Purvis: That is all right. It is a specific question. You can read the *Official Report* and respond to the committee in writing.

Karen Gribben: We will, indeed.

Alison Gorlov: We could perhaps get the property lawyers to provide samples of the kind of form that one fills in to register a statutory vesting. The Registers of Scotland has confirmed that it has no difficulty with statutory vesting. We will show you what the pieces of paper look like.

Jeremy Purvis: Thank you.

The Convener: We look forward to receiving that piece of paper, believe it or not. Thanks.

We reach another witness changeover. Mr McAulay will remain. We will lose the ladies and Mr McLean, but Ms McKell and David Bell will join us. Cathy Peattie will begin our questions.

Cathy Peattie: The environmental statement proposes nearly 4km of acoustic barriers at 11 locations, yet it states that acoustic barriers are not the promoter's preferred solution. It refers to "other techniques" that could be used to reduce the impact of noise. Can you explain the mixed message regarding acoustic barriers and expand on what those other techniques might be?

Ron McAulay: I will ask Bernadette McKell to answer as well, but I can say that there is effectively a hierarchy of options for dealing with noise and vibration. If we can design out noise and vibration in building the railway, the problem does not occur, but if we cannot, we have to consider the next stage of protection, which would be acoustic barriers.

15:00

Dr Bernadette McKell (Hamilton McGregor): The statement that acoustic barriers are not the preferred option is due to problems with maintenance and vandalism. A barrier not too far from here on the Granton link road has been burnt down. Although barriers work well for acoustics, they sometimes have other problems.

Other measures will be considered during design, including track damping, which can further reduce noise. The project is only at the preliminary design stage, so we will need to wait until we reach the detailed design stage. The noise that is generated has a direct relationship with speed, so any changes in speed will affect noise levels. When we go from the outline to the detailed design stages, we will examine other factors so that we can finalise the noise levels that are likely to be generated at the properties and then consider whether they can be mitigated, if not by design then using acoustic barriers.

Cathy Peattie: Why did you not make provision in the bill for noise insulation schemes that are similar to that in section 61 of the Edinburgh Tram (Line One) Act 2006, given that noise is a possibility and that insulation should be considered?

Ron McAulay: We see insulation as being the last line of defence against noise and vibration. As Bernadette McKell said, we will kick off by trying to design out noise and vibration, and prevent them from happening. If that does not work, we consider acoustic barriers, and if they do not work, we will consider insulation of properties, as you suggest.

Cathy Peattie: Is that the normal route?

Ron McAulay: Yes—I imagine so.

Cathy Peattie: It is not just a reaction to noise that has not been anticipated.

Ron McAulay: Our normal process for addressing issues that arise in respect of noise and vibration would be to try to prevent them from happening in the first place and, if they did, to look at less intrusive ways to resolve them. Failing that, we would come to things such as insulation and double glazing.

Cathy Peattie: Why have you taken a different tack from that which was taken for the Edinburgh tramlines?

Dr McKell: Noise insulation and the noise and vibration policy are referred to in the environmental statement. There was more of a tiered approach to noise and vibration in the Waverley railway project, while the policy for the Airdrie to Bathgate scheme looks for mitigation to be considered where the significance of the impacts will be moderate or worse. The approach is simpler than for Waverley. It is explained in the environmental statement and is referred to in the noise and vibration policy.

The Convener: I should point out that the question was about the mitigation measures in the Edinburgh Tram (Line One) Act 2006. Have you looked at that mitigation, and does the same comment apply?

Dr McKell: Yes. The mitigation for tramline 1 also followed a more tiered approach. The approach in this scheme is simpler in that mitigation will be considered where the significance of impacts will be moderate or worse.

Cathy Peattie: Electric multiple-unit rolling stock will operate on the proposed line, but you refer in section 3.9 of the environmental statement to standing diesel units. How many diesel trains do you expect to operate on the line, and has the noise and vibration impact of such units been assessed?

Ron McAulay: At the moment, one diesel freight unit comes up from Edinburgh to Bathgate. It would continue to Boghall, which is just a bit further along the line and is the site of the English Welsh & Scottish Railway car depot. That is all the freight traffic that we currently anticipate being on the line.

Cathy Peattie: It is not a major freight route, but could your requirements change in the future?

Ron McAulay: It will be more a case of trying to find paths for freight at the west end of the line—I can see that being very difficult.

Cathy Peattie: In its written evidence, SNH expressed concerns about the provision for planting along the proposed cycle route. What commitments can you give on the level of planting, and with whom will you engage when developing your plans?

Ron McAulay: I will ask Jackie McLean to comment in a moment, but we have been consulting SNH and all the statutory consultees. A great deal of thanks must be given to all the organisations for their contributions to the document that we have given to the committee. They have played a big part in shaping it.

Our consultations continue: this morning, a lot of time was spent discussing the code of construction practice. That code is in draft form and there will be further discussions on it.

Jackie McLean (Ironside Farrar): I add merely that the impact on the landscape along the cycleway, and the planting that would mitigate that impact, will be covered in the code of construction practice. That will affect the local authorities along the route.

Cathy Peattie: SNH has referred to the public access management plan that is to be developed and adopted. How will that plan come about, who will be involved in it, and when will it be produced?

Jackie McLean: Again, that plan will be developed in consultation with the local authorities. When we worked on the sections of the environmental statement that deal with access and the effects on communities, we consulted West Lothian Council and the other local authorities that will be affected. West Lothian Council gave us details of its core paths—the Land Reform (Scotland) Act 2003 requires the development of core paths networks. We worked closely with the council in introducing link paths to ensure that the core paths network would not be compromised by the rail scheme. That is the kind of work that will be carried forward by the code of construction practice—from the construction period through to the operational period. We will ensure that footpath links are maintained as reasonably as possible.

The Convener: The level of communication with SNH and SEPA appears to have been reasonable, but both organisations have suggested that some issues have still to be resolved. SEPA did not foresee any great risk of contamination to land, but it still had some concerns over flood risks. What do you feel about that, and what will you do?

Ron McAulay: Such issues will be picked up during the more detailed design stage. We have discussed flood risks with SEPA, and we will probably do a fair amount of improvement to the drainage on the existing solum. There will be new culverts and drains; we will be replacing, renewing

and basically just clearing out. We will have to wait until the detailed design stage, but all that work should improve the flood risk situation.

If we had done all that work before introducing the bill, we would have had to revisit it, because some legislation and some additional information are coming to light that will affect the work. For example, SEPA has recently made flood risk maps available, which will help to inform our decisions. There are also the new regulations on controlled activities, which came into force earlier this year. We will consider all such things when we work on the detailed design and examine the risk of flooding.

The Convener: I do not want to put words in your mouth, but I would sum that up by saying that you acknowledge one or two problem areas but feel that, by the time the rail link is provided, the risk of floods will be much less than it is at present.

Ron McAulay: I am not sure that the risk will change much, but I hope that the situation will be improved. I do not think that the rail scheme will have an adverse affect on the risk.

At this stage in the scheme, I would not expect to be able to say, "It's all done and dusted." I genuinely believe that the scheme will develop at the detailed design stage.

The Convener: Okay. Thank you for that. We move to the final session with the promoter, on mitigation measures. The panel will consist of Mr McAulay, yet again, Mr Wark, Ms Gribben and Ms Gorlov—the ladies have been regulars this afternoon.

I want to touch briefly on wildlife and mitigation. We heard the witnesses from SNH refer to otters and bats along the line. Badgers were also mentioned. What knowledge and experience do you have and what mechanisms are there within Network Rail to provide solutions in line with SNH's wishes?

Ron McAulay: We rely on colleagues in consultancies that have helped to pull together the environmental statement to give us expert knowledge. Network Rail has an environment team with that knowledge. One of my colleagues, who is sitting behind us, could join the panel if need be. We have in-house expertise.

The Convener: If your colleague feels that he has something to add, we have no problem with his joining the panel.

Hugh Wark (Network Rail): Mr McAulay has said most of what I was going to say. It is our intention to continue using the people who have been involved in producing the environmental statement.

The Convener: Does Network Rail have to deal regularly with impacts on wildlife in its operations?

Ron McAulay: Yes. We have to take such impacts into account—that is part and parcel of any major project. I was going to say that it has become routine, but that is not the right word. I mean that it has become a key element of any major project.

The Convener: The draft code of construction practice states that your hours of work are between 7 o'clock and 6 o'clock Monday to Friday, with similar hours on Saturdays and Sundays. In other projects such as this, constraints have been placed on the hours of work. This morning, both local authorities expressed different preferences for hours of work, but both were also much stricter than the hours that you have suggested. What impact will strict limitations on hours of work have?

Hugh Wark: During the construction process we will be using a lot of expensive equipment, which we will want to make best use of. We also want to minimise the amount of time that we are there doing the job. When we produced our draft code of construction practice we felt that it was better to work longer hours at the weekend to give us the facility to make best use of the equipment and resources that we will have on site. We will be there for a relatively short time. We normally do extensive works at the weekend. We find that when we consult people and give them notice of how long we will be there, they do not generally have too much of a problem with that.

Ron McAulay: It is important not to apply blanket rules across the job. Much of the project will be constructed out in the country. I would not have thought that working the hours that we have suggested, including Saturdays and Sundays, would cause disruption to people, given that we will be several miles from anybody's house.

It is important to ensure that there is enough freedom to enable us to get on with the job and to deliver the project as efficiently and quickly as possible. As I said, the code of construction practice is very much in draft form. We have put the document to the councils, SNH and SEPA and we intend to discuss it with those organisations before it is finalised.

15:15

The Convener: It is fair to say that Network Rail is used to carrying out works at weekends, however, the project could involve prolonged working in certain areas. You seem to suggest that, under certain circumstances in specific areas on the line, you are prepared to modify your working arrangements to take into account local conditions.

Ron McAulay: We are willing to consider special situations and to try to work as best we can to minimise inconvenience. However, part of the project involves working on the operational railway. In those locations, we will have no choice but to go on during the night, for example, to erect stanchions for overhead cables.

The Convener: I accept that there may have to be some night work. However, you say that normal working time will start at 7 o'clock in the morning. Does that mean that work on sites will commence at 7 o'clock or that there will be half an hour when machinery is starting up and people are preparing for the day's work?

Ron McAulay: I would love it if all our teams walked out of the yard at 7 o'clock and started physical work. Unfortunately, it does not always happen that way.

The Convener: So the answer is no: 7 o'clock will be the start time.

Ron McAulay: We are saying that the work will be carried out from 7 in the morning to 6 in the evening.

Hugh Wark: The code of construction practice states that the times are when noise will be allowed outwith site boundaries. We could start preparing earlier, so that we were ready to start physical works at 7. However, we have not determined the detailed site hours. Much of that will be done during the detailed design stage and when we appoint our main contractors to do the construction work.

The Convener: With similar bills, restrictions have been placed on construction times. You are asking the committee to consider you as a special case.

Ron McAulay: We do not think that hours of 7 o'clock in the morning to 6 o'clock in the evening are unreasonable.

The Convener: The work will be on Saturdays and Sundays, too.

Ron McAulay: As I said, it depends on locations. We are willing to consider specific locations, in discussions with the councils and the communities, and to make special arrangements in those places. However, on the sections that are on the operational railway, we will have much less freedom.

The Convener: That takes us on to noise levels. You have said that it is unrealistic to specify maximum construction noise levels. Why? Maximum noise levels are set for many construction sites when projects are just aspirations, way before anyone ever gets on to the site.

Hugh Wark: Our experts advise us that, in many cases, it is the difference in noise levels that is important to the receptors—the people—in the area where noise is created. Our approach is to use relative noise differences to determine the actions that we will take.

The Convener: We will consider that in due course.

Alasdair Morgan: Is not it the case that the code that is in place for the Waverley railway project specifies maximum noise levels?

Alison Gorlov: There are certainly noise levels in the ES and the noise and vibration policy for the Waverley line, but I am afraid that you are overtaxing my memory on that specific issue. We can give you a note on that.

Alasdair Morgan: I have been told that the code of construction practice for that line contains noise levels. We have talked about rurality and the distances to the nearest house, but I suspect that, on large chunks of the Waverley line, those distances are even greater than they will be on the Airdrie to Bathgate line. If it was thought acceptable to place noise limits on the Waverley line construction, why not place noise limits on the construction of the Airdrie to Bathgate line?

Ron McAulay: Correct me if I am wrong, but I thought that at least one of the councils and, perhaps, SEPA—I am not sure whether it was SEPA—concurred with our view that it would not be realistic to apply noise limits.

The Convener: That does not mean that the view is right.

Ron McAulay: It shows that there is support for our view and our approach.

Hugh Wark: We believe, as far as construction is concerned, that it is more effective to get the contractors to agree specific and detailed noise mitigation measures. We are encouraging our contractors to go through the section 61 process as defined in the Control of Pollution Act 1974 or, failing that, to use the best practical means to minimise noise.

The Convener: Okay. It seems to me that, even at a later stage, after the objection period is over, a noise level requirement could ultimately be set by the committee or by Parliament. Such things will be addressed even after this stage of the bill.

What discussions have you had with local authorities and others on the code of construction practice and other mitigation documents?

Ron McAulay: We are very much in the early stages of that process. We have passed copies of the document to the councils and, as you heard this morning, to SNH and SEPA. It is our intention to enter discussions with them, but we are at an

early stage with the code of construction practice. As I said earlier, I am not sure that I would have expected to be further down the road with it at this stage.

The Convener: To an extent, that contrasts with what we heard from North Lanarkshire Council this morning. I felt some sympathy with the comments that its representatives made about the code of construction practice. I asked the council to provide details of its concerns, and the presumption is that you will be quite anxious to respond to it and to us in due course. Is that a fair assessment?

Ron McAulay: That is a fair way of describing the situation. We have held numerous meetings with each of the councils. I personally hold meetings with their chief executives and senior teams at which a range of issues are discussed. I was, therefore, rather disappointed to hear about a lack of communication—I do not think that that is correct.

One gentleman raised an issue about receiving information and held up a sheet of paper that I think related to badger setts along the line. SEPA is the body that we have been dealing with on the badger setts, and we have been keeping the locations of the badger setts confidential simply because they could be subject to a request under the Freedom of Information Act 2000, which could open up opportunities for people to take part in badger baiting. We have correctly withheld the information from the gentleman who raised the sheet of paper. We have not provided it in e-mail format. We have allowed him to look at it, but we have then taken it away again. What was said was a slight misrepresentation of the facts.

The Convener: We accept that there are sensitivities in such matters and we appreciate your comments. However, I would like to think that you and the councils can come together to ensure that codes of construction practice and all other matters are fully addressed. It would be helpful if, when North Lanarkshire Council raises a question, you could respond by about the middle of November. That would allow us to pick up on your responses at our next meeting.

Ron McAulay: We will be happy to respond. I reassure you that we have a very good dialogue with the councils and that we meet them regularly.

The Convener: We got that impression in earlier encounters, which is why what we heard today was a bit disappointing. Does any member of the committee have any further questions?

Members *indicated disagreement.*

The Convener: Alison Gorlov has a question or a comment for us.

Alison Gorlov: I amplify what Mr McAulay said about environmental mitigation and our discussions with local authorities. You did not ask us much about the enforcement of environmental mitigation requirements, but quite a lot was said about that earlier by others. The committee will know that that was legislated for in the Waverley Railway (Scotland) Act 2006 and the two acts on the Edinburgh tramlines. We are well aware of the provisions on environmental mitigation in those acts and we are also aware that, at the moment, there are no such provisions in the Airdrie-Bathgate Railway and Linked Improvements Bill. That is because of the way things fall out when complex provisions are drafted and processed, but the committee should be aware that the issue is uppermost in the councils' minds and in our minds. We are discussing it with them, and in our answers we have publicly made a level of commitment that is comparable with that of the Waverley railway and other projects.

The matter is not in the bill, partly for the technical reasons that I mentioned, but also because the implications for the local authorities have to be sorted out. The precise detail should be sorted out with them before anyone seeks to impose it on them. We certainly could not seek to impose it on them or to put specific details to the committee without first being content that the local authorities were moderately satisfied with what was on the table.

The Convener: That is a fair comment. I thank the panel again.

Late Objections (Consideration)

15:26

The Convener: Agenda item 2 is consideration of two late objections. The committee is required to consider the objections and decide whether each objector has shown good reason for not lodging their objection within the specified objection period, which ended on 31 July. If the committee agrees that the objector's reason is acceptable, the objection will be allowed to proceed.

I invite comments from committee members on the objections, which are annexed to paper AB/S2/06/5/2. The first objection, which is found in annex A, is from Professor Stewart.

Alasdair Morgan: There seem to be special circumstances.

Jeremy Purvis: Agreed.

Cathy Peattie: Agreed.

The Convener: We will accept the objection.

The second objection is on behalf of Ferntower Estates Ltd, which suggests that there have been difficulties with communications. Perhaps we should take that on board.

Alasdair Morgan: I am not totally convinced, but I suppose we should err on the side of caution and allow the objection. It is not a strong argument for Ferntower Estates to say that it advised Jacobs Babtie at a meeting that communications should be sent to another address. I suspect that, had the boot been on the other foot and the promoter mentioned something at a meeting but did not confirm it in writing, that would have been a problem for the promoter.

The Convener: With those reservations, we will allow both objections to stand.

Objections (Preliminary Consideration)

15:28

The Convener: The committee is required to give preliminary consideration to the objections that are mentioned in papers AB/S2/06/5/2 and AB/S2/06/5/3. I invite members to express their views on the objections. Should we allow them to proceed to the consideration stage? A quick nod of heads would be gratefully accepted.

Alasdair Morgan: Our heads are nodding.

The Convener: Thank you.

Consideration Stage (Assessor and Approach)

15:30

The Convener: We move on to agenda item 4, which is perhaps more controversial. It concerns the appointment of an assessor to consider the objections. The committee's consideration of the matter in no way pre-empts the recommendations that we will make in our preliminary stage report or the Parliament's decision about whether the bill should proceed to the next stage. We are working to a tight timetable and, in the interests of good planning and with the interests of the objectors and the promoter in mind, we simply seek to indicate how the bill might be handled at the next stage, should it get that far. That will allow the objectors and the promoter to plan accordingly.

Paper AB/S2/06/5/4 is clear on the matter. It sets out provisional groupings and suggests lead objectors and a provisional timetable. If the bill proceeds to the next stage, we shall then formally consider and agree groupings, lead objectors, the approach that will be taken and the timetable.

Do members agree to direct the Scottish Parliamentary Corporate Body to appoint an assessor to report to the committee at consideration stage?

Cathy Peattie: Is that the norm with private bills? I am thinking about the number of objections that have been made to the bill that we are discussing.

The Convener: It is a new norm. In the past, members undertook long and detailed assessments of objections to private bills and dealt with nearly all of them. Somebody will correct me if I am wrong, but I understand that an assessor can now carry out an overall assessment of the objections and report back to the committee; we would then decide whether we were satisfied with his assessment of them. We could then clear the objections or invite the objectors back. I did not think that any committee had used the new procedure, but I have been told that the Glasgow Airport Rail Link Bill Committee has used it and that the Edinburgh Airport Rail Link Bill Committee will use it.

Cathy Peattie: What is the timescale for identifying an assessor?

The Convener: It is hoped that an assessor would be approved once—and if—the Parliament agrees to the bill at preliminary stage, but we must first produce a report on the bill to submit to the Parliament.

Cathy Peattie: What timescale is involved? Will the assessor have enough time to do what he or she must do before the bill is brought back to us?

The Convener: Yes.

Cathy Peattie: That is fine.

The Convener: Do members therefore agree to direct the Scottish Parliamentary Corporate Body to appoint an assessor to report to the committee at consideration stage?

Members *indicated agreement*.

The Convener: Do members agree that the assessor should undertake the role at consideration stage that is set out in option 2 in paper AB/S2/06/5/4?

Jeremy Purvis: I have a question that may be easily answered. Option 1 is to ask the assessor to deal with the groupings and the invitations to objectors to give evidence—much of that work has already been done by the clerks. If we agreed to option 1 and the assessor reported back to us, we could amend any proposals that they came back with. I prefer option 1, but would opt for the speediest method of dealing with the objectors' concerns because they want the process to have as much momentum as possible.

The Convener: The clerks have advised me that option 2 would be quicker.

Jeremy Purvis: I accept their view.

Alasdair Morgan: Option 1 would mean that we would have to meet once or twice to agree other matters.

The Convener: Members are content that the assessor should undertake the role that is set out in option 2.

Do members agree to the provisional groupings and suggested lead objectors that are set out in annex A to the paper?

Members *indicated agreement*.

The Convener: I turn to the timescale for consideration stage. Do members agree to the provisional timetable that is set out in annex B to the paper?

Members *indicated agreement*.

Item in Private

The Convener: Do members agree agenda item 5?

Members *indicated agreement*.

15:35

Meeting continued in private until 15:46.

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