



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE

Wednesday 12 March 2014

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CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE
3rd Meeting 2014, Session 4

CONVENER

*Siobhan McMahon (Central Scotland) (Lab)

DEPUTY CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

COMMITTEE MEMBERS

*Alison McInnes (North East Scotland) (LD)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ian Alexander (JM Architects)

Oula Jones (Portobello Ladies Golf Club)

Charles Livingstone (Brodies LLP)

Iain Strachan (City of Edinburgh Council)

Maureen Wood (Portobello Ladies Golf Club)

CLERK TO THE COMMITTEE

Mary Dinsdale

LOCATION

Committee Room 3

Scottish Parliament
City of Edinburgh Council
(Portobello Park) Bill Committee

Wednesday 12 March 2014

[The Convener *opened the meeting at 10:01*]

**Decision on Taking Business in
Private**

The Convener (Siobhan McMahon): Good morning and welcome to the third meeting of the City of Edinburgh Council (Portobello Park) Bill Committee in 2014. I am the convener of the committee. I welcome everyone in the gallery.

The meeting is likely to be shorter than originally scheduled as a result of our accommodating requests from some objector groups to change the date of their evidence session. Our updated timetable is available on our web page. We do not foresee any further changes to that timetable.

The first item on the agenda is to consider whether to take in private item 3, under which we will review the evidence that we will hear in this meeting, and whether to review in private evidence that we will hear in future meetings at the end of them. Do members agree to that approach?

Members *indicated agreement.*

City of Edinburgh Council
(Portobello Park) Bill:
Consideration Stage

10:02

The Convener: Agenda item 2 is oral evidence on the City of Edinburgh Council (Portobello Park) Bill. I welcome the witnesses who are representing the objectors for group 5, which consists solely of objection 17, on behalf of golfers who use Portobello golf course: Oula Jones is the lead objector for group 5 and a past captain and current committee member of Portobello Ladies Golf Club, and Maureen Wood is a past captain and current treasurer of the club.

I also welcome the witnesses who are representing the bill's promoter, which is the City of Edinburgh Council. Iain Strachan is principal solicitor, legal, risk and compliance, at the council; Charles Livingstone is an associate of Brodies LLP; and Ian Alexander is design director at JM Architects.

The committee appreciates that the situation will be unfamiliar to some, so it might be helpful if I set out how the session will be run.

The lead objector and the promoter's lead spokesperson will be responsible for co-ordinating the evidence from the respective parties. I will first invite the objectors' lead representative to make a brief opening statement to set out the points that the group intends to explore in detail during its evidence. A maximum of 10 minutes will be allowed. We encourage all speakers to be as concise as possible. I will ask the promoter whether it has any initial questions or comments. The objectors will have the opportunity to explore their concerns in detail. I will indicate when we think that we have received enough evidence on each topic.

The promoter will have an opportunity to cross-examine the objector witnesses, after which the roles will be reversed. The promoter will have an opportunity to make a brief opening statement and the objectors will be asked whether they have any initial questions. The promoter will explore its evidence in detail and the objectors will have an opportunity to cross-examine.

The committee will primarily listen to the evidence, but members may ask questions for clarification at any point in the proceedings. Once we reach the end of the session, there will be an opportunity for each party to make a brief closing statement.

The committee is grateful to both parties for providing written submissions for the evidence session.

We will now move to the formal evidence session. The group 5 objections relate to pupil safety; potential disruption to games of golf by pupils; drainage problems and flooding; parking; and loss of common good protection for the course.

I invite Oula Jones, as the lead objector for group 5, to give an opening statement. You have a maximum time of 10 minutes.

Oula Jones (Portobello Ladies Golf Club): Good morning, convener. We will not need 10 minutes for our opening statement, as we want to go over our evidence in depth later. Maureen Wood and I are both on the committee of Portobello Ladies Golf Club. Maureen will cover objections 1, 2 and 4, and I will cover objections 3 and 5.

I say—with due respect to the gentlemen at the other end of the table—that I am disappointed that neither Billy MacIntyre nor anyone else from the children and families department is here to answer our questions. I have made a personal sacrifice to come here today, as I had already booked to travel to the funeral of a good friend down south. I cancelled my arrangements because I felt that it was more important to argue our case before the committee. However, we might as well have submitted written objections and saved ourselves the stress of appearing here today. I am surprised that the children and families department could not find anyone to replace Mr MacIntyre. That only adds to our feeling that the council treats objectors with disdain.

The Convener: That is a matter for the council to decide. There were circumstances outwith Mr MacIntyre's control, and the committee agreed to his not being here. Does the promoter wish to respond on that point?

Iain Strachan (City of Edinburgh Council): I was going to cover it in my opening statement. Billy MacIntyre was due to have attended the meeting but, unfortunately, because of a family bereavement, he is unable to be here although he would have dearly wished to be. He has asked that I pass on to the objectors and the committee his sincere apologies for not being able to attend.

Oula Jones: I am surprised that the department could not find anybody else to cover for his absence.

Iain Strachan: Unfortunately, by the time that it came around, we had already intimated to the Parliament who was going to attend today. We felt that, in the circumstances, it would be suitable for the three of us to represent the council today.

The Convener: I hope that the points that are raised can be answered. If not, we will take written

submissions from you on the points that cannot be answered.

We will move straight to the five objections. The first is on pupil safety.

Maureen Wood (Portobello Ladies Golf Club): Further to our objections 1 and 2 regarding the likelihood of our injuring pupils and pupils interrupting play, we wish to stress to the committee that the process of building the school and the presence of the school so close to the course will greatly affect our amenity. We foresee pupils being injured by stray balls, our play being interrupted and increased vandalism on the course. As you may know, Duddingston Golf Club suffered for a number of years from the same interruptions and vandalism as a result of pupils from Holyrood high school using the course as a short cut.

With a school of 1,400 pupils adjacent to the course, there will be a high risk of pupils roaming on to it, especially at dinner time and at the end of the day. The school will want pupils to stay in at dinner time, but it will have no control over them once they have left the premises. New travel patterns will be established if the school moves to the park, and pupils who cross the Hope Lane railway bridge will make a straight line across the course to the south-west corner entrance to the school. The council's failure to recognise even the possibility of that happening is symptomatic of its wilful ignoring of anything that does not fit in with its plan. Too often during the past eight years, it has buried its collective head in the bunker.

Oula Jones: That covers objections 1 and 2 together.

The Convener: Does the promoter wish to respond to that?

Iain Strachan: I have nothing to say at this point. I propose to deal with those points later.

The Convener: You have nothing to say in response to the points that have just been made. I explained the format of the meeting at the start: objections will be raised and the promoter will be invited to respond to certain things.

Iain Strachan: I am happy to do that. We note that the objectors foresee pupils being injured by stray balls and their play being interrupted by pupils crossing the course. Safety issues might arise if pupils were to habitually cross or walk on the course. We believe that the objection is, therefore, closely linked to the objection about possible disruptions to games. The council is greatly concerned to avoid any safety issues, and we have confidence in the proposed risk mitigation measures.

We have produced a couple of plans that we think will be helpful, of which you have been given

copies. The first plan shows the area that will be covered by the bill, which is the area outlined in red to the south of the golf course. The second plan is an Edinburgh Leisure poster showing the course layout. The poster was produced for the consultation exercise that Edinburgh Leisure carried out in July 2011, in which we understand the golf club was consulted. It shows the minor changes proposed for the course as a result of the proposals for the new school.

It can be seen from the bill plan that there will be no entrance or exit for the school grounds on the north side of the school site. Further, as we can see, the north side of the golf course is bounded by Stanley Street and the railway line. There will therefore be no part of the school site from which cutting across the golf course would be a short cut compared with exiting the school site on to whichever of Park Avenue, Hope Lane and Milton Road best fits the pupil's direction of travel and then using streets or paths that bound the course, if necessary. An entrance was originally proposed for the north side of the school grounds, but it was removed as a result of a concern that was raised during the original planning consultation process in 2011.

The school will be a good neighbour to the golf course and others in the area and will take that responsibility very seriously. The school is proud of the responsible behaviour and good citizenship shown by its pupils and it will deal swiftly and firmly with any issues that arise regarding the golf course.

On the points that have been raised about Duddingston golf course and Holyrood high school, we understand from speaking with the school's headteacher that there have been only isolated incidents over the years and that, in fact, the school is a good neighbour to the golf course, as is illustrated by it doing a litter pick on the course. That is all that I wish to say.

Maureen Wood: I would like to respond to your suggestion that the vandalism and trespassing on Duddingston golf course is a minor issue. I worked in the office at Duddingston Golf Club for 27 years and I can assure you that it was not a minor issue. For example, pupils frequently removed flagpoles from the holes and inserted them into the greens anywhere they liked, as well as scuffing up the bunkers. They were also in danger of being hit. Duddingston golf course is much longer than Portobello golf course and, I may say, it has much better players, who hit the ball harder. The pupils almost dared you to hit your ball.

Mr Strachan said that the only exit from the new school's grounds will be on the south side. That is fine, but pupils will have to find their way down to Portobello, and they will cross the course to get to Hope Lane bridge. I have seen it being done and I

know that it will happen. It is not just a case of "It may not happen"; it probably will.

Oula Jones: Further to the point about the fence protecting passers-by from danger, I am quite a good golfer, though I say it myself—these days, my home club is St Andrews rather than Portobello. Well, I play on Portobello as well. I have frequently hit the trees to the left of the second tee and I can see myself hitting balls over the fence, because I hit a high ball and it is a short hole. I can foresee danger arising there.

Iain Strachan: The point about safety is, of course, very important and one that we need to cover. We can see from the plan of the golf course that the only hole from where a stray ball might be likely to reach the school site would be the third hole, which goes approximately along the boundary of the school grounds. We can see from the bill plan that the playground and school will be some distance away, so any stray ball would be extremely unlikely to reach there. In any event, the playground and school will be protected by planting along the boundary, which will be reinforced, and there will be a 2.4m high fence to the north. The new 3G pitches will have 3m high ball-stop fencing, with 5m high fencing at the goal ends.

The council is confident that those measures are appropriate and sufficient to manage the concerns that have been raised. We would be very happy to engage with any concerned parties who believe otherwise. However, we do not believe that the objectors have produced any proposals or suggestions for other mitigation measures that they believe would be more appropriate.

I reiterate that if there were concerns about the children's behaviour—which we do not believe that there will be—the school would deal firmly with that behaviour, because it would not be appropriate, it would not be permitted and the council would not wish to be associated with it.

10:15

Charles Livingstone (Brodies LLP): I would like to add one more point on the issue of travel from the school. You can see on the plan the bridge from Hope Lane that has been referred to. Although it does not appear on the plan, Stanley Street continues to the north-west. One can then turn on to Southfield Place, and there is a tunnel underneath the railway and Sir Harry Lauder Road. That route continues to a crossroads at Portobello High Street.

Therefore, the railway bridge is not the only means of access to the town centre. If anything, the route that goes through the tunnel from Southfield Place to Brighton Place and on to the high street is possibly a more likely avenue for

pupils who want to go to the shops at lunch time, or whatever the concern is. If a pupil wants to travel to the eastern part of the town, the logical exit would be out of the east side of the site, up Hope Lane and over the bridge; and if they want to travel to the western part of the town, the logical exit would be out of the south or the west side and then through the tunnel.

Oula Jones: If the promoter thinks that the children will just process neatly down that route and not find the golf course a lure as they go home in the evening, full of beans after school, they are living in cloud-cuckoo-land. The school will have little control over the pupils once they have left the premises.

Iain Strachan: On safety concerns, currently, the area is openly accessible to the public, as a park. We are not aware of any risk to park users, so why should there be a risk in relation to the school? We should also remember that the golf course has been there for a considerable period of time.

Members of the public already use the perimeter paths down the side of the course. They currently have no protective separation from the course. In fact, our proposals would make it safer, as there will be new fencing down the east path, which will offer better protection for the members of the public and the pupils who use the path next to the course. I thought that that was worth highlighting.

The Convener: I ask the people in the public gallery to refrain from commenting, because it is quite off-putting.

Charles Livingstone: On the point about pupils' direction of travel, the point that I was making about the two means of crossing the railway line is that crossing the golf course will not be a short cut for pupils. If they live to the north-east, the shortest route will be out of the east side of the site and over the railway bridge; and if they live to the north-west, the shortest route will be out of the west or the south side of the site and then up the road to the tunnel under the railway.

Ian Alexander (JM Architects): One of the plans before us shows clearly the four exits from the school.

Oula Jones: I would just like to say that, at the moment, few people use the path that we are talking about. If the school is built, at least 1,400 people will be walking up and down those paths every day. That is a considerable difference with regard to incidents relating to safety.

Iain Strachan: The school's capacity is 1,400, but I do not think that it automatically follows that 1,400 people will be using that path. Further, the fences will be 3m high. There is no protection at

the moment. After the fences are erected, there will be protection.

The Convener: That concludes objections 1 and 2. We now move on to objection 3, which concerns drainage problems and flooding.

Oula Jones: In order to accommodate the school on the higher part of the park, there will be a great deal of excavation work to sink the school into the ground and reduce the overall visual impact. That will inevitably affect the natural underground watercourses that have become established. The park is higher than the golf course, and groundwater naturally flows from the park to the course.

After any disturbance from an excavation, it takes many years for natural watercourses to re-establish themselves. If the build is carried out, there is a substantial risk that the golf course will suffer flooding over the two-year construction phase and over the following five years, which is how long it will probably take for the natural drainage to stabilise. There is also a risk that, during the stabilisation process, the natural discharge of surface and groundwater will result in ponding and waterlogging on the fairways and, more seriously, on the greens.

There is ample evidence of the golf course's susceptibility to changes in groundwater flows and drainage from when the retention tanks were sunk into the course on the northern boundary approximately 10 years ago. A large pond already forms—we sent the committee a photograph—on the short par-three ninth hole, and there are very soggy conditions on other holes. The effect of worse drainage was evident from the reduction in the number of golfers using the course immediately after the tanks were constructed.

The more extensive disruption that will result from the proposed building on the park is likely to have a greater effect than the less-disruptive retention tanks. Although we accept that the council intends to provide a sustainable urban drainage system along with the proposed building, there is no certainty that the golf course will not be permanently affected. If excessive water flows from the development, it is unlikely that that will be easily proven to be the fault of construction, and the council is unlikely to carry out remedial work.

The council states in its comments to the committee that the contractor will be responsible for any sustainable drainage system. That seems strange, as it is not a design-and-build contract but one in which the council has carried out all the design work. The council should be asked to clarify which party is responsible for design and management in relation to surface water and groundwater.

The probable increase in flooding will diminish enjoyment of play to the extent that golfers will choose other courses. Coupled with the problem that we have already identified of disrupted play due to pupils using the course as a shortcut or recreation area, loss of income due to a reduction in play will lend weight to any argument to close the course.

In addition to the threat posed by development, the golf course was under threat of closure from 2006 due to a cut in council funding to Edinburgh Leisure, which is the arm's-length body that manages sports facilities for the council. Closure would lead to a serious reduction in amenity to local residents and reduce access to a local sports facility.

We believe that part of the reason why profits have reduced is that Edinburgh Leisure has moved the starter to a position where he cannot identify golfers who have not paid for their tee times. Falling income will increase the course's vulnerability. In addition, our club has suffered a decline in applications, which we ascribe to the eight-year planning blight since the council first made its plans public.

Although golf club membership has reduced everywhere following the recession, Portobello is the cheapest course around and is used by a wide range of social class groupings.

The Convener: Mr Strachan, would you like to respond?

Iain Strachan: There are two elements: drainage, on which I will comment before handing over to my colleague Ian Alexander, and the closure and viability of the course, which we will come back to after discussing drainage, if that is okay.

With regard to drainage concerns, our written submission contained links to information that was submitted as part of the planning process. We stress that the issue was fully considered in the planning process, and—as has been said—that a surface water management plan will be put in place as a condition of the process.

I will hand over to Mr Alexander, who can give a bit more information about that.

Ian Alexander: Yes, indeed. During the statutory planning process, three things have to be presented and ratified. One is a flood risk assessment, the second is a drainage impact assessment and the third is a sustainable urban drainage system design and a drainage plan. Furthermore, during the operations on site, the contractors have to submit a management strategy for the site and a water management plan to prevent water risk to any adjacent properties

from all sources, including a 100 to 200-year run-off.

That process is standard throughout Scotland. The whole principle is to do with attenuation on site—in other words, retaining water on site and controlling water egress into surrounding drainage patterns such as ditches, burns, underground surface water drainage and so on.

We believe that, through the strategy process and with the design team understanding the council's requirements for the site, we have designed something that will perform.

Oula Jones: You talk about surface water all the time. I am not an expert on drainage and had to take advice on the objection, but it seems to me that natural underground watercourses are different from surface water, and I can see that they will become a problem when the school is sunk down into the ground.

Ian Alexander: Without going into too much technical detail, all I can say is that the structural and ground engineers for the site have looked at the groundwater conditions on the site and the conditions that will be imposed by the new building, and they have created a design that will respond to those circumstances.

Oula Jones: It may take some time for the situation to settle itself, and in the meantime we will have to live with a problem that you have caused.

Ian Alexander: I do not think that the designer would want to create a risk for the community or for other sites. We believe that we have a system that will perform on the site and satisfy the requirements of the situation.

Iain Strachan: The Scottish Environment Protection Agency was, as is usual, consulted during the planning consultation, and I do not believe that it had any concerns about risks to adjacent properties such as the golf course.

I know that the objectors included a photo of a flooded area—I will just find it now. The area referred to in the objector's written submission is, approximately, in the north-west location to which I am pointing on the poster, and the school is to the south of that. I reiterate that we are confident that any flooding or drainage issues that the course might otherwise experience will be appropriately mitigated, and no detail has been produced on why it is believed that that would not be the case.

Oula Jones: We will just have to hope that your confidence is justified.

The Convener: We move to objection 4, which is—

Iain Strachan: Sorry, convener—Mrs Jones also covered course closure.

The Convener: Okay—do you want to address that?

Iain Strachan: Yes—we can do that now. The suggested potential closure and viability of the golf course was a new issue that was not covered in the original objection. The course is—as has been said—managed by Edinburgh Leisure on behalf of the council, and it is unrelated to the bill or the project to build a new school. However, it has been suggested that the golf club has suffered a decline in applications, which has been ascribed to the council's proposals and a planning blight that objectors say has resulted since the proposals were first publicised.

The council would not wish to speculate on why there has been a decline in applications, but we note that the objectors have produced no evidence to support their claim. However, we highlight that the golf course is public rather than private. People can use the course by paying per round or by buying season tickets and, unlike on most private courses, club membership is neither a prerequisite to play the course nor a method of reducing the fee that is paid. It is difficult to understand how the proposals for the park could be linked directly to a decline in member numbers.

On usage, having the high school next door might well contribute to an increase in the usage of the course. The objectors, in their written submission, describe the course as being

“easily accessible, cheap to play on”

and

“a wonderful course for children and adults to learn on”.

We believe that the high school's new location will make the course more visible, and there is likely to be much greater interest in using it. The school is also very keen to develop a positive and mutually beneficial relationship with the golf course.

The Convener: Have you any comments, Ms Jones?

Oula Jones: I will come to that point later in another objection, if that is all right.

The Convener: That is fine. We will move to objection 4, which is on parking.

Maureen Wood: Further to our objection 4 on car parking and increased traffic flows, we are concerned that increased car use in the vicinity as a result of locating a school of 1,400 pupils and staff on the park will lead to golfers being unable to park near the clubhouse.

Those travelling to the school from the north are likely to park in Stanley Street rather than face the traffic queues that will inevitably occur on the restricted access roads such as Park Avenue and Hope Lane.

10:30

Access to the school site from the west will be problematic, as traffic will have to queue to enter the site across eastbound traffic. That will result in more cars being parked round the golf course by motorists wishing to save time. Should the roads adjacent to the park be full, there is nowhere else nearby for golfers to park, so we may find ourselves unable to make times for games, and some of us may have to carry clubs a great distance.

As Mr Strachan said, Portobello golf course is “easily accessible, cheap to play on”

and

“a wonderful course for children and adults to learn on”.

Older, less-able adults enjoy its flat, short fairways, too.

I waited a long time to become a member at Portobello golf course, partly because I was still working. When I joined, which was slap bang as I retired, I heard that we might lose our course. That is why I am fighting very hard to keep it. I am one of the less-able adults who like to play on it. That is my objection.

Iain Strachan: To pick up on that point from Maureen Wood, there are no plans to close the course.

The parking issues were covered in our written submission. As the Edinburgh Leisure poster shows, the first and last holes are beside Stanley Street, as are the clubhouse and the starter's office, so golf course users are likely to park there. That is on the other side of the golf course from the school side, so parking there would be inconvenient for school users. We highlight that the school has provision for 117 on-site, dedicated parking spaces for staff and visitors. We therefore believe that the school is extremely unlikely to create any competition for parking spaces on Stanley Street, which we understand to be unrestricted and generally ample in any event.

I ask Mr Alexander to say something about the suggested traffic impact.

Ian Alexander: A traffic impact assessment has been carried out for the site, although that is slightly tangential to the main question that we are discussing. A survey of how people arrive at the current school found that most people walk or take public transport, and that there is actually little drop-off around the school. That survey, which was carried out by the council, fed into our processes for designing the new school. That is why we have a number of entrances to the site for pedestrians.

There will be 117 car park spaces on the site for staff and visitors, with disabled parking. We

believe that that will be absolutely ample for the purposes of the school. If people park on Stanley Street, it will be quite a walk from there to the school, and as there is a more convenient location for them to park on site, we hope that they will choose that.

Maureen Wood: How many staff are there at the school who might have cars? A total of 117 spaces is not a great deal for a school of 1,400 pupils. Pupils bring cars, too.

I have experience of what happens at present. My granddaughter is at the high school, so I have seen people picking up and dropping off pupils, and it is absolute chaos. Duddingston Park leading up to the lights and Milton Road are exceedingly busy roads. Especially first thing in the morning when pupils are going to school at half past 8, that road is diabolical. No matter what the council says, there will be people dropping off and they will park in those streets.

Iain Strachan: I reiterate that the issue was fully assessed through the planning process and that mitigations that are considered appropriate by the transport authority will be put in place. We consider that the on-site parking for the school is appropriate in the circumstances.

The Convener: If the school is built, do you intend to regularly review the parking arrangements for the area?

Iain Strachan: In terms of the school itself, yes. If concerns arose, naturally, the school would keep that under review.

The Convener: The school would, but I am asking you, as the promoter of the bill, whether you would do that.

Iain Strachan: If the committee wished us to do it, that is something that we would do.

Oula Jones: How would you intend to make more parking available? There is very little parking in that area. There are two narrow streets down the sides and Stanley Street round the bottom. Presumably, you have no more room for parking on the school site. Are you going to take more land from the golf course for that?

Iain Strachan: No. Again, there is no intention to do anything with the golf course or expand the school on to the golf course. I come back to the point that transport and parking have been assessed and the measures are felt to be appropriate in the circumstances. We hear and understand your concerns, but we believe that the measures that we are putting in place will deal with everything.

Charles Livingstone: It is worth reiterating that, as we show on the plan, the bill does not extend to the golf course or authorise any changes being

made to the golf course. It does not give the council power to do anything with the golf course that it cannot do at the moment.

Oula Jones: The boundary of the planning application runs round the entire site. That does not make us feel very confident that the council does not have plans to take a little bit more land, if it needs to, during the process of planning and building the school.

Iain Strachan: As I believe we covered in our written submission, the planning application boundary only includes the golf course because the perimeter footpath improvement works that we have talked about are included in the application. There is no other reason. The planning permission does not permit any development on the course and, as my colleague Mr Livingstone just said, the bill does not affect the golf course.

The Convener: If there are no further comments on that, we will move to part 5 of the objection, on loss of common good protection for the course.

Oula Jones: I have just made the point about the planning application boundary. I made a point originally that I see is not correct. We understood that a goods entrance for the school was going to be constructed over the eighth tee but I can see from the plans that the promoter has given us today that that is not so. I hope that the promoter will confirm that later.

If it was decided during the course of construction that the school building needed to be larger or perhaps that there needed to be more parking areas, the pitches could be constructed on part of the golf course, that being consistent with its Fields in Trust status but in effect destroying the course itself. Although the course currently has Fields in Trust status, as Roy Martin QC said in his evidence to the committee on 9 October, Fields in Trust protection is merely

“a private agreement between two parties”

and does

“not exist within any formal legal context”.

He went on to say that Fields in Trust protection is not

“the equivalent of inalienable common good status”.— [Official Report, City of Edinburgh Council (Portobello Park) Bill Committee, 9 October 2013; c 86.]

Moreover, information on the Fields in Trust website makes it clear that that organisation would not oppose councils’ plans to develop designated Fields in Trust sites if they can make a case for it. As the council’s plans were to use the whole park to build two schools and housing, we have no confidence that it may not revert to that scheme in future.

In 2006, the council planned to move the golf course and build two schools on the site and fill it up with housing. We were told that a site for a new golf course had been purchased by the council, but that subsequently turned out not to be the case. Although the housing element appears to have been dropped for now, the council has never said unequivocally that it will not be revived at some future date. We believe that the development of the school on the adjacent park makes that more likely.

Iain Strachan: As we said a few moments ago, the response to the claim that enacting the bill may somehow lead to development of the golf course is simple. The bill does not apply to the golf course, and its legal status, including any common good protection, cannot be affected by this purpose. The golf course, as has been mentioned, is further protected by the Fields in Trust status that was conferred on it in 2012.

The council considers Fields in Trust status to be an important safeguard, and it might help if I make a few further comments in connection with that. We provided further clarification of Fields in Trust status in our letter to the committee of 20 November 2013. We also referred to it in our letter of 31 January this year. The intention of Fields in Trust status is to ensure continued recreational use and enjoyment of land as park or open space in perpetuity. The dedication comprises a legally binding contract—it is subject to the law of contract—between the council and the National Playing Fields Association, which now operates as Fields in Trust. The status leaves oversight with an established, independent third party that is committed to securing and improving community open space.

The National Playing Fields Association is incorporated by royal charter. It is a charitable institution that was founded in 1925 by King George V to ensure that people

“have access to free, local outdoor space for sport, play and recreation”.

Fields in Trust status sits apart from and on top of the planning system and other statutory protections and would subsist even if there was a change in the law, for example in respect of common good land. In essence, the land affected cannot be used other than as a park, playing field or open space and cannot be sold, leased or otherwise developed without the consent of the NPFA.

We included in our 20 November 2013 letter a copy of the agreement that relates to the golf course and other land. The council nominated more sites than any other United Kingdom landowner when further sites were sought by the NPFA for Fields in Trust status to mark the

Queen's jubilee celebrations. In addition, that legal agreement cannot be varied or discharged without the NPFA's consent. The agreement specifically acknowledges that the course is to be used primarily as a golf course.

As regards some of the other points that have been raised, we have touched on the boundary of the planning permission. There are no plans to develop the golf course for any purpose or to expand the school on to it. The leaflet that has been exhibited by the objectors is from March 2006. It shows just one possibility—the only one that might have included the course—and it was never a plan. The leaflet predates the council's decision in December 2006 to build the school on Portobello park and not to develop the golf course—a point that was also covered in our written submission for today's meeting.

The alteration to the second hole, which is shown on the Edinburgh Leisure Portobello golf course poster, is not to accommodate the school building but rather to accommodate the pedestrian and cycle path, which will benefit the entire community. The relocation of the green from its existing location, as shown on the poster, will be planned and implemented by Edinburgh Leisure, as previously consulted on. The new green will be in place in advance of the path works being undertaken in order to minimise disruption to the course.

I am happy to confirm that the eighth tee, in the south-west corner, will not be the subject of any works in connection with the bill. You will see on the other plan that the boundary is indented there so as to avoid that tee area.

To give some further assurances, when the council first approved the park as the site of the new school in December 2006, that was subject to assurances that no housing would be built on the remaining green space at the golf course or the park. Subsequent reports to the council in December 2008 and March 2010 reaffirmed that the funding strategy for the new school did not rely on any housing being developed on the golf course.

I will add what we have said previously—there is great potential for the playing numbers to increase at the course. It is a public course so it is in all our interests that it is viable and successful, and there is great potential for future members of the club to come from the school.

Although the council has never sought to formally verify it, it is also likely that the course itself is inalienable common good land and, as such, could not be sold off without the consent of the courts.

We understand that any previous proposals to close the course related to the low number of

people using it. Those proposals were put to Edinburgh Leisure's board by officers at Edinburgh Leisure and not the council. It is notable that the board did not support them.

The Convener: Do you want to come back on those points, Ms Jones?

10:45

Oula Jones: Yes. First, why does the school not use the golf course? It plays a golf competition every year but, rather than play at Portobello, it goes all the way to Craigentenny. Our clubhouse is nearer to the existing school than it would be to the new school. It seems strange that the pupils do not use the course. It is such a good facility and it is so near to the existing school.

Secondly, why has the council persevered for eight years so far in the strategy when, in that time, it could have put a full cohort of pupils through a school on another site? It must have plans for the remaining land.

According to the "Protecting Recreational Land" leaflet from the Fields in Trust website, Fields in Trust status will

"Allow for recreational purposes and include as appropriate other community uses, such as education, culture and heritage."

Therefore, under that status, another school could in fact be put in the park and extra land taken for the school playing fields if the council needed to enlarge the school area in later years. That does not make us feel very confident that it does not have plans.

I have so much paper in front of me that I cannot find the specific bit, but somewhere in all that paper the council says that it has no plans "at this stage" for housing or anything else on the golf course. We know that the council is looking for sites for another school, so we are very suspicious about whether it might want to take another private bill to get rid of the inalienable common good on the golf course and use the Fields in Trust information to put a school on the golf course.

Iain Strachan: This process is about a private bill in connection with Portobello park. That is all that the bill is concerned with. Were it to become law, any powers that the bill makes available would be only in connection with using the site of the park for educational purposes.

I will respond to the points in order. I am not aware of the school's golf competition at Craigentenny. It may be that it feels that a nine-hole golf course is not suitable for its purposes.

As I have said, the school's location next to the course is an excellent opportunity to create special interest or a specialism in golf or something else to

do with golf in the school. The council's open space strategy identifies an increase in the number of children participating in golf, so surely the proposal has fantastic potential to introduce youngsters to the game.

I reiterate that there are no intentions to close the golf course. We would very much hope that the objectors and other interested parties take sufficient comfort from what we have said previously about that and what we have said today on the other protections. Furthermore, the bill does not cover the golf course.

The Convener: Do the objectors have any further comments?

Oula Jones: No.

The Convener: I ask the promoter whether he wishes to make any statement at this point. I will then give an opportunity to the objectors to question that.

Iain Strachan: First, please accept my apologies if I go over any points on which we have given evidence.

We believe that many of the issues raised by the Portobello golf course golfers are planning matters. Concerns about drainage, safety and traffic impact were raised by objectors in the planning process and considered by the council's development management sub-committee in approving both the original planning permission in February 2011 and the renewal of that permission in December 2013. We note from the preliminary stage report that the committee is conscious that its role is to scrutinise and to come to a view on a bill that has been referred to it, and not to take over the council's role as a local planning authority.

I turn to the key reasons why we believe that the objectors' concerns are unfounded. With regard to the suggestion that pupils will be injured by stray balls and that play will be interrupted, we have confidence in the proposed risk mitigation measures that we have put forward, as we believe the plans we discussed earlier today demonstrate. The school will be a good neighbour to the golf course and to others and will take its responsibilities seriously. It is proud of the responsible behaviour and good citizenship of its pupils and it would deal swiftly and firmly with any issues that arose regarding the golf course.

The council is confident that the measures are appropriate and sufficient to manage the concerns raised about disruption to play, damage to the course and the safety of pupils and passers-by, but we would be happy to engage with any concerned parties who believe otherwise. The objectors have produced no proposals or

suggestions for other mitigation measures that they believe would be more appropriate.

On the claim that enacting the bill may somehow lead to development of the course, I repeat what I said earlier: the bill does not apply to the golf course, whose legal status cannot be affected by this process. We have already touched on the Fields in Trust status that we have given it. We believe that that is an important step that will provide great additional protection for those who are concerned. I reiterate that there are no plans to develop the golf course for any purpose or to expand the school on to it.

We believe that, with the on-site provision of 117 spaces, it is unlikely that the school would create any competition for parking spaces on Stanley Street, where we believe that it is much more likely that golf course users would park, as we have demonstrated on the plans.

Drainage was fully considered in the planning process. A surface water management plan will be put in place as a condition of that process, and we are confident that any flooding or drainage issues that the course might otherwise experience as a result of the school project will be appropriately mitigated. Again, the objectors have produced no detail on why they believe otherwise.

We find it difficult to understand how the proposals for the park can be directly linked to a decline in member numbers. In fact, we believe that there is a great opportunity to create real interest and to increase playing numbers on the course by the siting of a large school next to the course. The school is keen to develop a positive and mutually beneficial relationship with the course.

We hope that our evidence today will provide objectors and members with the necessary reassurances. We note that they have given up their personal time to come here and we are grateful for the opportunity to address and deal with any concerns that the objectors might raise, because we want their support for the proposal. We would be happy to answer any further questions.

The Convener: Do you have any questions on that statement?

Oula Jones: No, but I would like to say that all our objections could be met happily if the council withdrew its plan to develop the school right on our borders.

Actually, I have one question. Does the council have any plans to compensate the common good fund for taking this land?

Iain Strachan: I have a couple of points to make. The park will still remain part of the common good. The common good fund would not

have been denied anything or had the park taken away from it if the bill were to become law. I do not believe that that is in the scope of the bill.

Oula Jones: I am sorry, but I understood that the bill was taking away the inalienable common good status.

Iain Strachan: I shall hand over to Mr Livingstone to answer on the technicalities.

Charles Livingstone: The council's view is that the inalienable common good status is not being taken away. The committee has seen the opinion of Gerry Moynihan QC, which confirms that. There is a difference of opinion between Mr Moynihan and Roy Martin QC on that issue but, in the council's view, the bill does not remove the inalienable common good status of the land. It simply creates an exception to the restrictions that that status would otherwise create.

As far as the council is concerned, notwithstanding the fact that an amendment has been proposed to address any concerns about that question, the status of the land has not been changed in essence. The bill is simply creating a power for the council to do something that it would not otherwise be able to do.

Oula Jones: Perhaps I should point out that Roy Martin won the last argument that the council's legal team had over the common good status of the land.

The Convener: We are aware of the history of the bill and why it is in front of the committee.

As there are no further comments from objectors, I open the debate to members to ask questions.

I see that no members have questions, so I invite the proposer and objectors to make closing statements.

Iain Strachan: I would like to say a couple of words, if I may. We hope that we have been able to satisfy objectors and the committee that the concerns raised by the group 5 objectors are unfounded. I would like to bring the discussion back to the fact that the council firmly believes that there is an urgent need to replace the school, which is the largest in Edinburgh. We have spent more than £2 million since 2009 on essential repairs to keep it open.

The council firmly believes that the park is by far the best location for the new school. That is not a decision that was taken lightly. There has been extensive assessment of other potential sites. We have inevitably, and rightly, covered in detail the concerns about the impact on the golf course, but I must also say that this is the only site that meets all the requirements for a new school and allows us to provide all curricular physical education

requirements on site and at the same time create fantastic outdoor sports facilities that will be freely accessible to the local area.

I know that today's meeting is not about the consultation, but there were just under 10,000 what we would call valid responses to the consultation, and approximately two thirds, or 76 per cent, were supportive responses from the local community, so we believe that there is strong local support for the proposals.

The Convener: Would you like to make a brief closing statement, Ms Jones?

Oula Jones: No. I would just like to point out that, although the council has great confidence in all its plans at the moment, it remains to be seen whether that confidence is justified.

The Convener: Thank you for your attendance this morning.

10:57

Meeting continued in private until 11:07.

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