



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE

Wednesday 23 April 2014

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CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE
5th 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)

Diana Cairns (Portobello Park Action Group)

Alison Connelly (Portobello Park Action Group)

Jean Douglas

Bill Flockhart

Stephen Hawkins (Portobello Park Action Group)

David Kilkerr

Beverley Klein

Charles Livingstone (Brodies LLP)

Billy MacIntyre (City of Edinburgh Council)

Roy Martin QC

Iain Strachan (City of Edinburgh Council)

CLERK TO THE COMMITTEE

Mary Dinsdale

LOCATION

Committee Room 6

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

Wednesday 23 April 2014

[The Convener *opened the meeting at 09:03*]

**Decision on Taking Business in
Private**

The Convener (Siobhan McMahon): Good morning. I welcome everyone to the committee's fifth meeting at the consideration stage, and remind everyone to switch off all mobile phones.

Item 1 on the agenda is to decide whether to take in private at future meetings consideration of decisions on objections, the key issues for our draft consideration stage report and the draft report itself. Are members agreed?

Members *indicated agreement.*

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

09:04

The Convener: Under item 2, we will hear oral evidence. As I said at the previous meeting, I remind all witnesses that we already have the content of all objections and the supplementary written evidence, and we have considered a substantial amount of evidence on a number of issues that have been raised in objections and covered in oral evidence at the preliminary stage.

I ask witnesses to focus on the main issues that they wish to raise and to avoid unnecessary repetition of information that the committee already has, which will be taken into account along with the oral evidence sessions from 12 March and 26 March and the sessions that took place at the preliminary stage.

The lead objectors from groups 1, 3 and 6 have been sent copies of the *Official Report* of the meetings of 12 and 26 March, and they may wish to refer to the relevant information where appropriate if they are content that an issue under consideration has already been covered adequately.

I remind everyone of the importance of the cross-examination part of proceedings, and I reiterate that the committee's role is not to carry out a planning inquiry.

The committee appreciates that the process may be daunting for some witnesses. As I have done in previous sessions, I will briefly set out the overall format. Groups 3 and 6 will be familiar with the procedure, but I will put it on the record for group 1 and for those who are following the proceedings.

The lead objectors and the promoter's lead spokesperson will be responsible for co-ordinating the evidence from the respective parties. I will first invite the lead objectors to make brief introductory remarks; the promoter will then have the same opportunity. We will then move to each of the categories, and a spokesperson from each group on each issue in the category will be invited to outline briefly concerns on a specific issue.

Therefore, in category 1, a spokesperson from group 1 should speak on each issue in turn—first, on all issue 1 matters on loss of amenity and use of the park, including associated health and mental wellbeing. The spokesperson will then be invited to speak on issue 2 matters on replacement open space. We will expect only one person to speak on the matters covered by each issue.

Once all the issues in a category have been addressed, the promoter will be invited to state their position on each of the key issues in the category. Both parties will then have the opportunity to cross-examine each other on all the issues in the category. Objectors will have an opportunity to make any final comments on that category. Consideration will then move on to the next category of objections and the same format will be followed.

Following the conclusion of proceedings on all categories, members will be invited to question witnesses from both parties, although members may raise a question of clarification at any point in the proceedings.

To conclude, I point out that the lead objector and the promoter will each have the opportunity to make brief closing remarks. Where a group does not wish to address a specific topic in a category, they should indicate that intention at the start of consideration of the relevant category. The promoter should also indicate whether they wish to address any issues that an objector considers do not require to be raised at this session.

We now move to the formal evidence, and I welcome back the witnesses from groups 3 and 6 who did not conclude their evidence on 26 March. We will recommence proceedings where we left off at that meeting. For the objectors, I welcome from group 3 David Kilkerr, who is the lead objector, Jean Douglas and Bill Flockhart. I thank you very much for attending again. From group 6, I welcome Beverley Klein; again, I thank you for coming back.

I also welcome those representing the promoter: Billy MacIntyre, head of resources, children and families, City of Edinburgh Council; Iain Strachan, principal solicitor, legal, risk and compliance, City of Edinburgh Council; Charles Livingstone, associate, Brodies LLP; and Ian Alexander, design director, JM Architects.

Where it is appropriate, witnesses may wish to refer to evidence that was provided at the meeting on 26 March if an issue has already been covered and the specific concern addressed, as that will avoid unnecessary repetition. At the previous session, we reached questioning by the objectors on the issues covered by category 1, which are loss of amenity and use of the park, including associated health and mental wellbeing, and replacement open space. I invite objectors to conclude questions to the promoter on issues in that category.

Who would like to go first?

Bill Flockhart: At the previous meeting I did not say anything at all, for the simple reason that there were time constraints and the committee was running against the clock. I am concerned about

the loss of amenity. I have lived for 31 years in Bailie Terrace, which runs parallel to Milton Road. I am a Portobello person: I was brought up in Portobello and lived on the high street. I went to Portobello school, and my kids did too.

The golfie, as I refer to it, has played a big part in my life. When I was young and keen on sport, it was the place where I used to perfect my golf skills, which led me on to play in national championships once I got into a proper golf club.

Nearer in time, it is no coincidence that Gordon Ross, who is the Scotland stand-off, lived on Park Avenue in recent times. Down the road is another chap, called Laurie Costello, who played basketball for Scotland, and round the corner were my two sons, who also played sport. They all honed their sporting skills on that piece of land.

I saw what happened at the meeting last month—people were talking about the things that cannot be done on the land, but a lot of things can be done. The problem in this country at present is that we are having to fight obesity and all those sorts of things, and here we are taking away a piece of land.

I know that it has been indicated that people can go to Magdalene glen. I will tell you now that under no circumstances would my wife and I have allowed our children to go to Magdalene glen—no chance at all. When the children disappear into the housing estates, you do not know where they are. The great thing about the golf course is that you walk along and look down, and you can see where your kids are and who they are playing with. That is very important.

I am appalled by what City of Edinburgh Council has done to that piece of land. It has vandalised the land, and I make no apology for using that terminology. The council did an archaeological dig and left the land so it was fit only for mountain biking. It was a terrible thing that the council did. It stopped cutting the grass, and turned people away from the area.

It is all very good for the television cameras to come along and for people to look at the park and say, "Oh, it's just a piece of waste land," but it is not a piece of waste land—it is a vital piece of sporting ground, and we do not have enough of those in Edinburgh. For it to go is most worrying.

Those are my thoughts on the loss of amenity; it would be sad if it happened. That is all that I would like to say on that part.

The Convener: I appreciate that contribution, Mr Flockhart—it is perfectly acceptable given the time constraints. Do you have a question for the promoter on those issues, given that we are trying to get back to where we were at the previous meeting?

Bill Flockhart: I just wonder why the park was not restored to its former glory. Portobello park, as it was, is the equivalent of what I consider the Meadows to be: somewhere where people could do impromptu sport. People probably do not realise that Portobello rugby club has its origins there; that is where the club started, as there used to be a rugby pitch there.

People used to go out there and have an impromptu game. They could play touch rugby, rounders and cricket—in fact, I have even seen Americans turn up and play baseball. That is what we need: impromptu sport.

There is an idea that we would have a bit at the end of the golf course with synthetic pitches and all the rest of it, but that would not breed the same sort of camaraderie. Someone is going to have to open those facilities, and my thoughts are that it will not happen. Anything that involves labour and cost to the council in opening and shutting a facility will not happen.

Because of the size of the park, different groups could play different games. I also remember Portobello gala day taking place on that piece of land.

The council has run the land down. As someone said at the previous meeting, there is only one seat in the whole place.

The Convener: Okay—we will put that as a question, then.

Bill Flockhart: It needs to be sorted out.

The Convener: Does the promoter have anything to say?

Billy MacIntyre (City of Edinburgh Council): I will respond to the suggestion that the park has been run down. There was a period between August 2011 and early 2013 when, as a result of the archaeological works that were done as a consequence of the planning consent that was granted back in 2011, which required us to do those works in advance of going ahead with the school, part of the park—by no means all of it—was disturbed.

That was fully remediated in early 2013. I have confirmed with my colleagues in the parks department since then that the maintenance regime in Portobello park is exactly the same as it was before, and exactly the same as the regime that applies to any other park in the city. I do not accept the suggestion that the park has continued to be run down.

Mr Flockhart referred to restoring the park to its “former glory.” I am not sure what he means by that, but it has been restored to the position that it was in when we undertook the usage audit in 2009—that was done in early 2013.

Beyond that, I refer to the information that I shared with the committee at the previous meeting on the significant number of accessible open spaces in the area. There is not just Magdalene glen, but Joppa, Jewel, Figgate and Bingham parks and the new area of open space that would be created on the combined existing school site should the project go ahead—

Bill Flockhart: Which is totally unnecessary. There is one of the largest parks in Edinburgh—Figgate park—about 150 yards away. I am sorry—

The Convener: I will come back to you, Mr Flockhart, but we will let the promoter finish.

Billy MacIntyre: As I was saying, those areas will be accessible and the provision of the new area of open space will improve the accessibility of open space to those in the local area. The current Portobello park is not classified as an accessible area of open space, and nor is the golf course because it is not openly accessible to all residents in the area.

The Convener: Thank you.

Bill Flockhart: The bit that the promoter has thrown in latterly about providing green space on the current site is totally unnecessary, as 150 yards down the road there is the Figgate park, which is one of the biggest parks in Edinburgh, stretching from Baileyfield Road at one end almost to Duddingston crossroads at the other. I am sorry, but to throw that in is just another red herring—which we will come on to later, as other red herrings have been thrown in. That is one of them, as there is no need for a green space there.

Billy MacIntyre: The very positive response from the community to provision of that space speaks for itself. It is by no means a red herring; that space will be delivered.

09:15

Bill Flockhart: But it is not necessary.

The Convener: Do any other objectors have questions for the promoter on category 1?

Beverley Klein: Yes. If the bill proceeds and is approved and the school is built on the park, would you agree that, whereas currently spontaneous play can occur, involving children having a game of football or cricket, for instance, that will be a non-option for children in the neighbouring area, many of whom—as I said in my contribution at the previous meeting—are socially deprived? There is an area there with a lot of council housing. There are many buy-to-let properties at Magdalene and in the Christians, where children are in very low-income households and where there may not be a car to take the children further afield or, indeed, the ability to pay

to use sporting facilities. My question is: would the spontaneous play by children that can currently take place be curtailed if the school is built on the park?

Billy MacIntyre: There is a question about whether a level of spontaneous play happens just now. Personally, I have not seen any evidence of that on many occasions when I have visited the park. However, within the area that would be developed, areas would be available for spontaneous play, as you describe. The area on the boundary of Hope Lane and Milton Road is about the size of a football pitch, which is more than large enough for areas of spontaneous play, and it would be flat. The current park is not flat, which militates against using it for football to any sensible degree—and cricket, I would suggest.

Two 3G pitches would be provided. They will be freely accessible to people in the local area when they are not being used by the school, and they will be able to be booked. The means for casual access when they are not otherwise being used will be there.

There are many other areas of open space in the adjacent area that could be used just now and in the future for spontaneous play. I do not see that there will be an issue there.

Beverley Klein: I would beg to differ. I am interested in your comment that the area would be flat, whereas it is not at the moment because there is a slight slope, which curtails the prospect of football. Am I not right in saying that there used to be football pitches there, even though the area was not completely flat?

Billy MacIntyre: That is correct.

Beverley Klein: That suggests that your assertion of the current limitations on playing football there is not a valid argument.

Billy MacIntyre: It is a valid argument. The area is on a slope, and it is not entirely suitable for football. The new 3G pitches will be flat and will be far more suitable for football than the existing surface. In addition to being flat, they will be accessible for longer hours and they will not be subject to the vagaries of the Scottish weather, which the grass is now.

Beverley Klein: I see. Given the suitability of the park for football now and previously, would it be fair comment to say that the council did not discharge its function properly, as it did not ensure that the area was flat, yet it had football pitches there, and a number of games took place there every weekend during the season?

Billy MacIntyre: No, I would not agree with that. I am slightly confused. You and many other people have suggested how well the park was and is

being used. I am not sure how such a criticism could be levelled at the council.

Beverley Klein: I am not saying that the park is not well used—it is absolutely the contrary. You are saying that the condition of the park, with the slope, means that football is not really the most suitable option, yet the council was responsible for putting up goalposts and for ensuring that the pavilion was erected—I recall it being erected during my childhood—so that football matches could take place there. It is just a little bit convenient for your argument to be developing in the way that it seems to be this morning. That would be my contention.

Billy MacIntyre: That is your opinion.

Beverley Klein: It is, absolutely.

Billy MacIntyre: Noted.

Beverley Klein: The last time I tried to explore the usage survey with you, we were cut short because of time restrictions. Would you say that you have any concerns about the usage survey?

Billy MacIntyre: No.

Beverley Klein: You would not say that the condition of the park following the archaeological dig and the failure to restore it, as Bill Flockhart would say, to its former glory had any bearing on—

Billy MacIntyre: The usage survey was done in 2009, which predates the archaeological works by some two years.

Beverley Klein: I beg your pardon.

I have seen recently that there has been a significant removal of mature trees in the park. Is that as a precursor to the building works that you anticipate being able to proceed with?

Billy MacIntyre: No, the removal of those trees in the park is a result of Dutch elm disease. The parks department, as part of its regular maintenance regime across parks in the city, removed those trees that it considered it was necessary to remove.

Beverley Klein: On the issue of making the park accessible, I am sure that you will be aware that, along with a large number of socially excluded, poor children, there is a high number of elderly people who live in the surrounding area who, in my youth, would have sat in the park. There were benches in the park. Bill Flockhart has said that there is now only one bench in the park. I would qualify that slightly by saying that there is only one usable bench. There are four benches, but three of them are unusable. One of them has no wooden struts across it to facilitate seating. Would you say that that could have an impact on the park's amenity for people?

Billy MacIntyre: I could not comment on that because I do not know the individuals to whom you are referring. Have the individuals who believe that their amenity has been constrained in that way raised the matter with the parks department to seek improvements?

Beverley Klein: I believe that the parks department, and you, have been notified of that difficulty. The fact that there is no suitable seating in the park is something that I have heard being raised with you personally on a number of occasions.

Billy MacIntyre: It is not my responsibility to provide seating in the park. If any individuals in the local area have concerns, I suggest that they contact the parks department directly.

Beverley Klein: That runs counter to your argument that the maintenance regime in the park is as it always was. I fully appreciate that it may not be your department that is responsible for benches. Equally, it is not your department that is responsible for cutting down trees, but you are fully aware of the Dutch elm disease issue, so maybe you are being a little selective about the issues on which you are choosing to answer today. I find that that runs contrary to your previous assertions, prior to our group taking our place, when you said on a number of occasions that you had endeavoured to engage with objectors.

A lot of people have tried to engage, and it seems that what we are getting is a selective response. You answer questions about trees because you can give a reasonable explanation as to why that is the case, but you will not answer questions about a level playing field, about why goalposts have not gone back up, or about benches being surplus to requirement because they are unusable.

Billy MacIntyre: Ms Klein, I am answering questions, as I always do, to the best of my knowledge and ability. We were informed by the committee clerks on 3 April that you had advised them that you had some questions for the promoter that you would furnish in advance of this meeting. Had you done so before last Thursday, when you eventually chose to send them through—and they were not in any way sufficiently specific to allow us to respond—I might have been better prepared to answer your specific questions this morning about areas that are not within my responsibility.

I repeat that I am answering the questions that you are addressing to me to the best of my knowledge and ability. If you wished to address more detailed questions to me about areas that are outwith my responsibility, you had the

opportunity to do that in advance of the meeting but you chose not to do so.

Beverley Klein: No, Mr MacIntyre, I did not choose not to do that. I did not indicate that I would be advising you of questions in advance. I indicated that I would be advising you of areas of discussion on which I wished to question you. There is quite a significant difference, and your assertion is a misrepresentation.

Further, I did indicate to you that some of the areas—such as the amenity of the park and the condition of the park—were areas that I was going to be questioning you on. Indeed, at the last committee meeting, I made it clear that I would be pursuing that line of questioning.

You are here on behalf of the promoter. It is not my fault that you are not in a position to be able to answer questions. You are here as the voice of the council and I am asking questions that you are not able to answer. I fully appreciate that. It is most unfortunate. It does not suggest that we have a highly engaged council. However, I can certainly move on.

The Convener: Ms Klein, do you have any more questions on this area?

Beverley Klein: I am just looking through my list of questions to check what point I reached last time. No, that is all that I have on amenity, convener, thank you.

The Convener: Thank you. Does anyone else have a comment?

Bill Flockhart: I have one quick point. I have played on the pitches at Portobello and I have never heard anybody complaining about the slope. It is just not an issue when people are playing football at Portobello, so Mr MacIntyre's point about the slope is not correct. If you think that that is a slope, God help you if you are a Hibs supporter: if you lay down at one end of the pitch, you would not see the goal at the other end. That point about the slope does not wash—I am sorry.

The Convener: God help you if you are a Hibs supporter for many reasons. [*Laughter.*]

Bill Flockhart: I am not, so I am okay.

The Convener: Do you have any other comments on these issues, Mr MacIntyre?

Billy MacIntyre: No.

The Convener: Mr Kilkerr and Ms Douglas, do you have anything to say on these issues?

David Kilkerr: Not on these issues, no.

Jean Douglas: No.

The Convener: Does the promoter have any questions for the objectors at this stage?

Charles Livingstone (Brodies LLP): Just one—what proposals do the objectors have that might mitigate their concerns? I know that there was some disquiet about that question being asked in the previous meeting, so I will refer the present witnesses and others in the room to paragraph 5.26 of the Parliament's guidance on private bills, which states:

"promoters and objectors are encouraged to enter into early dialogue to seek resolution of objections whenever and wherever possible."

In the council's 31 January letter to the convener, which was circulated to all the objectors, the council advised that we were open to discuss any proposals that objectors might have. We have heard nothing from any objector, so I ask the present objectors what proposals they have for what the council could put in place that would mitigate their concerns.

Beverley Klein: I would like you to build the school somewhere other than Portobello park. That would assuage all my concerns. Portobello park is not the only option. There is a degree of misinformation abroad, which is most unfortunate, that no other site is suitable. Boroughmuir is being rebuilt presently or imminently. James Gillespie's is currently being rebuilt with a decant. I am a parent of a child who will attend the high school, but there is a suggestion that, somehow or other, a decant is not a suitable option for our children. There is another option, Mr Livingstone, in that the council could make a bid for the compulsory purchase of the Baileyfield site.

Charles Livingstone: I am sorry—we are not in the category of alternative sites at the moment. That will all be explored.

Beverley Klein: But you are asking me what would assuage my concerns so I am saying that if the council—

Charles Livingstone: I am asking you for mitigation measures.

The Convener: Right. I understand that you wanted to make that point, Ms Klein, so that is why I let you make that point about the loss of park. You do not want the school at Portobello park and therefore you would have the park. You have addressed that point. Do you have anything specific on other options in this category, because I think the point has been made about the school and the options for decanting and so on? Are there other examples of options in this category?

Beverley Klein: I thought that I was specifically dealing with Mr Livingstone's point. You will appreciate that Mr Livingstone is here in a professional capacity. I am here as a citizen. If I have misunderstood your question, perhaps it could be clarified or perhaps my colleagues have more immediate points that they want to make.

09:30

David Kilkerr: I do not understand how there could be any mitigation at all. As Beverley Klein has said, the only real solution, as far as we are concerned, is that you do not build the school on the park. We are not going to suggest that we have half a school on the park or anything like that. That kind of question is irrelevant.

Charles Livingstone: One example of things that the council might do concerns what could be done with the replacement open space and what functions it should be dedicated to. There is a consultation on that matter. That is a mitigation measure. I am asking about mitigation. The question is what mitigation measures the objectors might want to propose if the bill goes ahead and the school is constructed in the park. If they have nothing to propose, I think that we have our answer on that.

Bill Flockhart: The point is that you are proposing to move people over to Magdalene glen, which is entirely unsuitable. If you are talking about learning new skills, there are skills that I have managed to keep my kids away from all their life. There are social skills that happen there that I would not want them to get involved in. I do not see that particular site attracting people at all.

You are closing down an area that, as I said earlier, should be developed. I have just returned from America, where the obesity—the size of the people—is frightening. As Winston Churchill said, America sneezes and we catch a cold, so it is coming to a cinema near us. We should be trying to stop that by putting in physical advisers to help the local community and to develop the park to ensure that young people in particular—I am talking about five-year-olds and people who are taking up sport for the first time—are encouraged to be active.

This is the second piece of land in the area that has been stolen in my lifetime. I did not go to the existing school; I went to the school that existed prior to that. The site that was taken for the current school used to be our recreational ground. That is another piece of green space that has been taken away. We have to get people—particularly children—out of their houses so that they can do more exercise. People do not do enough exercise. If they do not do more, we will have a serious problem, which will have an impact on the national health service. We must look well ahead. The loss of this piece of land—

The Convener: Okay, I genuinely think that that point has been made—

Bill Flockhart: I am sorry.

The Convener: No, it was fine to make the point, but I think that it has been made.

We are not going to get another suggestion, other than not to build the school, so we can move on.

Beverley Klein: Following Mr Livingstone's clarification, I have something to say. If the school is built in the park, it would help to mitigate some of my concerns if the school's capacity was not 1,400. At present, I understand that 340 out-of-catchment children attend the high school. On a bare assessment of the arithmetic, in order to accommodate the needs of the catchment, the school does not need to have a capacity of 1,400.

There has been lots of discussion about the benefits of smaller schools. If the school's capacity were smaller, the school's footprint—were it required to be built on the park—would be significantly smaller. That would mitigate some of the concerns. We would not need to lose so much of the park if the school had a smaller footprint.

Billy MacIntyre: There are a number of out-of-catchment pupils at the high school—I will not make the mistake that I made previously of quoting a number. That is because there is capacity for those pupils just now. It will not have that luxury in future. Birth rates in Edinburgh peaked five years ago, and you might be aware of the rising school rolls that many of our primary schools are experiencing just now. The impact of that peak will continue into secondary schools towards the end of the decade.

In a report to the education, children and families committee in March 2009, we considered whether to build the school with a capacity of either 1,200 or 1,400. Based on the projections at that point—we used the General Register Office for Scotland's projections to inform the decisions, and the figures have been borne out—the catchment requirement for a school in the Portobello area will be 1,400.

The Convener: Thank you. Fiona McLeod has a question.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I want to take us away from catchment areas and go back to the loss of amenity and mitigation. Mr Flockhart, you said that the current school was built on a greenfield site on which you used to play.

Bill Flockhart: Yes.

Fiona McLeod: I have a question for the promoter. My understanding is that if the new school is built, you propose that part of the mitigation will be that the site of the current school will become a new park. Is that correct? The site would therefore revert to what was there in Mr Flockhart's young days.

Billy MacIntyre: I am not entirely sure what area was open space or green space before the

old school was built there. Our proposal is that, within the combined existing site for Portobello high school and St John's RC primary school, which extends to 3.46 hectares, 1.3 hectares will be assigned for a new St John's RC primary school and the remaining 2.16 hectares will be converted into a new area of open space.

Fiona McLeod: Can I just check on the map that I have got the right place? [*Interruption.*] Is the area that I am pointing to the one to which you are referring?

Billy MacIntyre: The first area that I point to shows the park; the second shows where the current school is.

Fiona McLeod: And that area will become a new park.

Billy MacIntyre: Correct.

Fiona McLeod: You are consulting the public on what they want that area used for.

Billy MacIntyre: As part of the consultation exercise on the bill, we invited comments from respondents about what use they would like to see made of the new open space. When the council approved the progression of the private bill, it delegated the matter of the use to which the new space would be put to the local neighbourhood partnership, which will consult the local community on what the best use of the space would be.

A sum of £1 million has been assigned from the project budget for building a new Portobello high school to convert the existing space to a new space for whatever purpose is intended. The £1 million does not include the cost of demolishing the existing high school buildings; that sum is purely for creating whatever is deemed by the local community most appropriate for going into the new area of open space.

Fiona McLeod: Thank you.

The Convener: Are there any final comments on category 1 from the objectors?

Beverley Klein: I would like to respond to the question of the catchment area for the school, to which Mr McIntyre just referred.

The Convener: You will have to do so very briefly because we have to move on.

Beverley Klein: Mr MacIntyre, I understand that there are five cluster schools for Portobello high school. Is that correct?

Billy MacIntyre: Yes.

Beverley Klein: I am certainly aware that one of those schools has a falling roll. Do all the other schools have increasing rolls?

Billy MacIntyre: I do not have that information to hand.

The Convener: Is that information available?

Billy MacIntyre: We undertake roll projections on an annual basis. That information could be provided to the committee, if that would be helpful.

The Convener: Thank you. That would address Ms Klein's questions.

We move now to category 2, which covers loss of view, traffic and road safety issues, and environmental impact. Bill Flockhart was previously identified as speaking for group 3 on category 2. Mr Flockhart, do you have any comments on the first issue, which is loss of views?

Bill Flockhart: Sorry? On what?

The Convener: Do you have comments on loss of views or, indeed, all aspects of category 2?

Bill Flockhart: I will just cover the whole lot.

The Convener: That is fine.

Bill Flockhart: I will be referring to the council's design and access statement. When the project for the new school started, I did not take a lot of interest in it. That was primarily because my children had left the school, but it was also because I did not think that anybody would be daft enough to build a school on such a dangerous site.

I am giving my comments on the basis of being a local resident who has lived in the area for 30 years. I am also a commuter, because I go for a swim on four mornings a week about 7.30 in the morning and I come back up the road usually between 8.15 and 8.30, so I am in the traffic mix and see exactly what is happening with that.

On page 7 of the design and access statement, the A1 is marked as a red-line road, which means that it is a minor road. It worries me that people such as you or your colleagues, who might not be familiar with the area, will think that it is a minor road. The A1 is not a minor road. The A1 is the tributary for traffic coming in and out of the city from the south and east. I am not an expert on the numbers, but you heard Ian Ross say at the previous meeting that 18,000 vehicles a day go along there. It is by no means a minor road.

The artist's impression of the site looks like an *Evening News* spot the ball contest—or spot the car, rather, as there are hardly any cars on the road. That just does not happen—there are cars there all the time.

Let us consider the present site versus the proposed site. On the present site, there are only two bus services, one east to west and one north

to south. There is traffic calming outside the school, and there is a very limited amount of car and commercial vehicle traffic going up and down. The move involves going to a site with 10 bus services going east to west along Milton Road and two services going north to south—plus the commercial vehicles and a tremendous amount of cars. It is a different animal altogether that we are dealing with. The possibility of accidents is a lot higher. I will come on to the accident rate later.

At the junction of Duddingston Park and Milton Road, east-to-west traffic runs very well. There is a filter, and there is not really a problem there. However, traffic going north to south down Duddingston Park does not have that facility, so the traffic backs up. Even walking down there this morning, I saw that all the cars were in the bus lane, because the drivers are terrified that they are not going to get through the lights otherwise. They are all breaking the law, but they are prepared to do that to get through the lights.

Anyone thinking of carrying out a project of this nature must look 10, 20 or 30 years ahead. What will happen in Edinburgh over that period? Thousands of houses will be built on the south-east wedge. They have already been started: up the Wisp, houses are already getting built. The traffic going north to south will increase over the next period, which, I think, will necessitate filters for the north-south route. All of that will delay traffic.

The whole document—the design and access statement—is really all about traffic flow stagnation. I will come on to the stagnation of traffic in a bit more detail later, but that leads to further frustration, which leads to irrational behaviour. It is irrational behaviour that worries me, as that is what makes accidents likely. We should really consider that very closely.

The most dangerous thing is possibly on the north side of the road. The pavement between Duddingston Park and Park Avenue is 75 yards long and very narrow. It is about 1.4m wide. You are going to ask thousands of kids to walk along there every day. They have got to go in there in the morning, and they have got to come back out in the afternoon.

At the meetings that I have attended, nobody has got into heated discussion about lunch time. The number of children having school meals is comparatively low. I know that some children bring packed lunches, but when the bell goes, hundreds of them will vacate the building and move towards where they will get food. The main places where they will get food are on Milton Road. There is a post office, the Milton Fry and another shop further along. If they do not go there, they will have to go to the other side of the road and go into Magdalene, either to the chip shop at the end of

Magdalene Drive or further down Magdalene Drive to the bakery. Either way, thousands of children will be walking along that space.

We are not in the world of Miss Jean Brodie here. The children are not walking along in twos. Every day, there are bound to be people on the roads—they will get knocked off the pavements. It is not possible to walk in any more than twos. There are cars going back and forward along there. It is highly dangerous. It is not possible to build fences along there, as there are two driveways going into people's houses. It is an uneven pavement.

I am not just concerned about the schoolchildren; I am also concerned about the fact that members of the public might have to walk on the road. Nowadays, children walk along texting and listening to music at the same time. That all adds to what is happening.

09:45

If the school goes ahead, kids will be herded in there. They will have been told by their leaders that the area is safe; nobody has told them that there have been 13 accidents on Milton Road and that no road safety audit has been carried out. The kids are not like a herd in an African film; they are not all in the same place—the herd moves. Going around the area all the time are what could be called predators—buses, cars and commercial vehicles.

If the school goes ahead, commuters will be irritated. There will be 200 more vehicles in the area, and the school will have 117 car parking spaces. The vehicles will go in from Milton Road, which will stop traffic. Another issue will be all the people doing drop-offs.

In the mornings, I come through the lights at Milton Link. On a good day, the traffic on Milton Road usually stops past Hope Lane—it is as far as 600 or 700 yards back. On a bad day, the traffic will just get over Milton Link and will be another 200 yards further back. The commuter has a choice at that point, as there are two exits to the left—Magdalene Drive and Bailie Place—if they want to take a rat run. On the other side of the road are Hope Lane and Park Avenue.

If commuters suddenly have 200 more vehicles to contend with, plus 1,400 pedestrians to swerve past, that will make them tetchy and will mean that they look for rat runs far more. The first rat run is Magdalene Drive, where Brunstane primary school is located 150 yards up the road. An increase in rat running there could affect younger kids who are going to school. The Magdalene area was not built for cars—it was built in the 1960s, when people were not supposed to own cars. When

people drive in that area, they swerve round parked cars. The area is not suitable.

Bailie Place is an innocuous little road, but it is not easy to get into and out of, because a bus lane must be negotiated when turning left. A driver must hope that nobody is coming out of Bailie Place because, if somebody is coming out, they will not get in, as residents' cars are also parked on the road. That is not suitable.

On the other side of Milton Road is Hope Lane, where the pavements are only 1m wide. The statement says that walkways will be put into the woods. I will not comment on the golf side, which is not worth consideration.

Children will come over a bridge from Portobello. At the bottom of Hope Lane is a sharp left-hand bend. I walk up there once a week, when I do not take my car to Portobello baths. Pedestrians must really look round the corner of that bend, because the cars that come along Stanley Street are travelling. The statement says that the speed limit on Milton Road and Hope Lane will be dropped to 20mph, but there is nothing about Stanley Street, so traffic will still come flying along there. There is no pedestrian crossing at the bend. The same applies at the diagonally opposite location; there is no pedestrian crossing on Park Avenue.

Park Avenue is another rat run that people use. I presume that some sort of lollipop system will be used; I would hate to think that the main stream would just come across the road. If cars cannot travel down Park Avenue, they will use the other three exits, which will bring problems for the whole community. The whole thing is fraught with problems.

We are told that the school will have 140 cycle spaces, which is good—cycling is exercise. However, one of the cycle paths is an on-road route on Park Avenue. If cyclists go down Park Avenue, where are they expected to go next? Cyclists will probably head home into the Northfield and Mountcastle areas, which are to the west. To get there, they will have to cross Duddingston Park. Two little lanes off Park Avenue—Park Lane and Durham Park Lane—are untreated roads that are unsuitable for cycling.

If cyclists cannot go on the roads, they will go on the pavements, which would be a hazard to residents. Duddingston Park is a fast road, so a toucan crossing or something will have to be put in there, which, again, will stop the traffic flow back and forth. I am sorry to say that I think that the whole thing is a farce. I am surprised that it has got to this stage.

Further down the A1, between Berwick and Newcastle, there is a terrible road accident record. The signs say that 142 people were killed there in

the past so-many years. It is a national disgrace. I do not want any tombstones on the Milton Road. Should it happen, though, I know where we will be pointing the finger, because we are telling the people who want to put the school there what the dangers are and there is a good chance that if anything does happen, the people who are affected—it could be pupils or residents—would like to sue for negligence. You have been warned about what will happen. If you are going to build the school, you will have to acknowledge that if any fatalities occur, which they may well do, the dangers that we face on the Milton Road were brought to your attention.

The Convener: Mr Kilkerr, do you have anything to add on this category that has not already been covered?

David Kilkerr: No.

Beverley Klein: I have two questions that have arisen from Mr Flockhart's contribution.

The Convener: We will get to questions in a minute. I will first allow the promoter to respond to the comments.

Billy MacIntyre: The issue of views has not been mentioned, but it was raised in evidence. I explained at the previous meeting that the new school has been designed to fit sympathetically with its surroundings and—in case it comes up in questions—that the protected views across the park to Arthur's Seat will remain unobstructed. I do not propose to repeat the detail of the council's position on that.

I come to the issue of traffic and road safety, and the scaremongering that the committee has just heard. I emphasise once more that ensuring the safety of pupils and the wider local community is and always has been of paramount importance to everyone involved in this project. Transport and road safety issues were explored in great detail with groups 2 and 4 at previous oral evidence sessions. To be honest, given what we have heard from the objectors this morning, this sounds like a planning hearing and, unfortunately, it has included significant repetition of the issues that were covered previously.

I am not sure whether Mr Flockhart has read the transport impact assessment, which is the primary document to do with transport and road safety.

Bill Flockhart: I am here purely as somebody who—

The Convener: Mr Flockhart, we will allow you to respond later.

Billy MacIntyre: This is part of my introductory statement. I encourage Mr Flockhart to look at the TIA, because it goes into a lot more detail about

transport and road safety issues than the document to which he has referred.

I do not propose to repeat the detail of my previous evidence. The present proposals have been considered by a range of people who have expertise in traffic and transport matters, including AECOM, which is the professional traffic consultant appointed by the project, and the council's transportation department and development management sub-committee. Those bodies have considered the project twice through the planning processes that the proposals have gone through and none of them has identified significant risks in relation to the traffic or road safety implications of the new school. Appropriate mitigation measures have been proposed and will be put in place for those risks that do exist.

I will cover the issue of road safety at lunch time, because it came up at the previous meeting, and Mr Flockhart has raised it this morning. We said that we would check the detailed position, which we did, and we covered that in our letter to the convener of 14 April. As that letter explained, the transport assessment included, in a list of measures that may be appropriate for the site, the provision of high-quality services within the school to actively encourage pupils and staff to stay on site at lunch time. As I explained in the previous evidence session, the proposed new high school has been designed specifically to do just that—to retain as many pupils as possible within the curtilage of the school and the wider site at lunch time.

In our letter of 14 April, we identified the latest school meals uptake statistics, which showed an average uptake for the 2012-13 school year of 15.8 per cent, with the figure for Portobello being rather low at 9.2 per cent. It might be worth providing further clarification on those figures, as they represent an average uptake across the week and actually understate the levels on a normal day. The fact that City of Edinburgh Council schools have a half day on a Friday tends to draw down the average, compared with the normal uptake on a Monday to Thursday.

Based on the 2013 school meals census, which is undertaken by all schools in Scotland on one day every year—it covers a normal weekday, not a Friday—the average uptake across all the council secondary schools was 21.9 per cent. The uptake at Portobello that day was 14.9 per cent. The uptake in the council's newest secondary schools—the ones that were built as part of the public-private partnership 2 schools programme—ranged between 24.6 per cent and 40 per cent. We would certainly expect a similar, if not better, position to arise in Portobello, were the new school to be built on the park.

The transport assessment did not otherwise take account of pupil movements outside the school grounds at lunchtime. The assessment was focused on peak travel periods at the beginning and end of the school day. That is standard practice for transport assessments and it complies with all relevant statutory and planning requirements in that regard.

It might be worth noting that, other than the need for a private bill, there is nothing out of the ordinary about this project. Many schools in the Edinburgh area, including the current Portobello high school and other schools that have been built more recently, are on or near busy roads. Although risks can of course arise as a result of that, appropriate measures are put in place as a matter of course to mitigate such risks. In a city such as Edinburgh, it is inevitable that schools will be built in such places. Such measures were proposed as part of the transport assessment to cover peak-period travel. Some of them will also be relevant to lunch-time travel, such as the provision of a toucan crossing on Milton Road.

The council's transportation department twice considered the proposals to construct the school on the park as part of the planning process and did not identify any significant risks that would justify not proceeding with the project or which the proposed mitigation measures would not deal with. The review would have been cognisant of all potential issues in the vicinity of the project and would not only have focused on peak-period travel. The department has specialist expertise and knowledge on these matters and has an understanding of potential issues in the wider transport network in Edinburgh, for which it is responsible.

Any further necessary mitigating measures relating to lunch-time travel will naturally be identified in the road safety audit, which we have already said will be instructed after the main contractor has been appointed. That will take account of anticipated travel patterns of pupils at lunch time. The road safety audit process will project the movement of pupils throughout the course of the day and will ensure that any appropriate additional measures over and above those already proposed are put in place to mitigate any safety risks that may be anticipated as a result of lunch-time travel.

The council's proposals are fully compliant with all relevant legislation and are in keeping with standard practice. They have been through a planning process twice and have been accepted. They will ensure that all necessary steps are taken to identify and appropriately mitigate potential risks in relation to traffic and road safety issues.

I will stop there, convener.

The Convener: I will go to Mr Flockhart first, because he was mentioned.

Bill Flockhart: When I was at the committee previously, it was plain that you had not carried out a road safety audit. You did not know about the figures that showed that there have been 13 accidents and there is two and a half times more chance of having an accident. Will you be issuing a statement to the parents and the media apologising for not carrying out a road safety audit?

Billy MacIntyre: No, we will not. We never said that we would undertake a road safety audit.

Bill Flockhart: But you should.

Billy MacIntyre: No, that is not necessary at this stage of the project, for the reasons that we explained at the previous meeting.

Bill Flockhart: But surely that is misleading. The parents think that they are going to send their kids to school on a site that is very safe, when in actual fact there is 2.3 times more chance of being in an accident. Should they not be party to that information?

Billy MacIntyre: To what information?

Bill Flockhart: To the information that there have been 13 road accidents on the Milton Road.

Billy MacIntyre: I am not following the question. I do not understand the relevance of the question. The traffic and road safety issues that are associated with the proposals were fully considered as part of the planning process twice.

Bill Flockhart: Yes, but you have not done a road safety audit.

Billy MacIntyre: No, and we never said that we had.

Bill Flockhart: That is exactly what I am saying, Mr MacIntyre. You have not done it.

Billy MacIntyre: No, we have not done it because it is not required and it is not normal practice to do a road safety audit at this stage of development in the project, as I said at the last meeting.

10:00

Bill Flockhart: So, when something goes wrong, it will be a question of saying, "Oh dear, we should have done that."

Billy MacIntyre: No.

Bill Flockhart: You are very good at platitudes and pushing things over. This is another example. You should be up front with the parents and inform them through the media about what you are

actually doing and about the dangers that lie in the site, but you have not done that.

Billy MacIntyre: Mr Flockhart, you have suggested that it was necessary for me to inform the parents that we had not undertaken a road safety audit. I do not believe that that was necessary. We have twice followed all the necessary processes that are set down for us to comply with in going through the planning process to ensure that any road safety and transport issues that may arise as a result of our proposals are appropriately mitigated. That is what we have done, and the granting of planning consent—twice—is evidence of that.

Bill Flockhart: Yes, but you have done that according to your objectives. I am saying that something has arisen that you did not know about and it is only right that you should have informed the parents.

Billy MacIntyre: No. We have done it not to our objectives but in full compliance with the requirements that are set out for us in seeking planning consent.

Bill Flockhart: You are hitting the nail on the head when you say, “in seeking planning consent.” Surely you have a duty to inform parents. If I sent my children to a school that I thought was on a nice safe site and found out retrospectively that there were problems on that site and something happened, would you say, “Oh dear, we knew about that but we did not bother to tell you”?

Billy MacIntyre: As I said at the previous meeting, we will do a combined stage 1 and 2 road safety audit when the contractor is appointed, and any additional road safety mitigation measures that are necessary will be implemented.

Bill Flockhart: Well, I am sorry, but time will tell, as they say, Mr MacIntyre.

Billy MacIntyre: Time will indeed tell, Mr Flockhart.

Beverley Klein: On that issue, I can fully appreciate that, if I have understood you correctly, Mr MacIntyre, there is no legal obligation to carry out a road safety audit at the present stage. Is that correct?

Billy MacIntyre: That is correct.

Beverley Klein: Would you say that building the new Portobello high school so that it borders the A1 would place it in a relatively unusual, if not unique, road safety category?

Billy MacIntyre: No.

Beverley Klein: Do you not agree with that?

Billy MacIntyre: No.

Beverley Klein: What happens if the road safety audit reports that there are too many difficulties and no suitable mitigation measures?

Billy MacIntyre: The transportation department did not require a road safety audit, because it does not anticipate any circumstances of that nature arising.

Beverley Klein: But what if they do arise? That was my question.

Billy MacIntyre: That is not expected or anticipated.

Beverley Klein: You did not anticipate the private bill taking this long to proceed through the Parliament either, Mr MacIntyre. I am asking you about the possibility.

Billy MacIntyre: Ms Klein, your comparator is irrelevant. I remind you that we have followed all of the necessary processes to demonstrate that our proposals for a new school at Portobello park are safe.

Beverley Klein: Who will carry out the road safety audit?

Billy MacIntyre: The road safety audit will be undertaken by a suitably qualified and professional road safety auditor that will be appointed by the contractor, if we get to the point of appointing a contractor. It will be for the contractor to determine, but the auditor will be appropriately qualified.

Beverley Klein: Okay. I want to clarify that you are not prepared to answer my question about what would happen in the event of the worst-case scenario about road safety.

Billy MacIntyre: I do not know that you asked a question of that nature, Ms Klein.

Beverley Klein: I asked you what would happen if the road safety audit said that there were so many issues with the site without suitable prospect of mitigation that the auditor did not consider it to be safe.

Billy MacIntyre: It will not. The transportation department has already assessed whether there are any significant risks or issues.

Beverley Klein: That is a very reassuring guarantee from you, Mr MacIntyre.

Billy MacIntyre: It is not a guarantee from me; it is a guarantee from the council’s transportation department, whose role is to overview such projects.

Beverley Klein: I really do not mean to be flippant, but it is infallible, is it?

Billy MacIntyre: I am not going to be drawn—

The Convener: I do not think that that question is necessary. Please carry on with your other questions.

Beverly Klein: On the issue of children leaving the school curtilage—as Mr MacIntyre calls it—at lunch time, why would you expect a better uptake of school dinners at Portobello high school than at the PPP2 schools?

Billy MacIntyre: The approach that we are taking to school meals and the provision of dining facilities in Portobello is different from our approach to the PPP2 schools. Dining is more dispersed and has been designed in consultation with pupils to ensure that we respond to what pupils are telling us. It will be different.

Beverly Klein: So there was no consultation with pupils in the PPP2 schools.

Billy MacIntyre: That is not what I said. I said that we are designing the school catering facilities to respond to what children want now. Pupils' eating habits and the way that they eat at lunch time are quite different now from how they were 10 years ago.

Bill Flockhart: Mr Alexander, am I correct in saying that you are the contractor?

Ian Alexander (JM Architects): I am the architect.

Bill Flockhart: I am sorry. In that case, I will refer my questions to Mr MacIntyre.

Is it normal for the contractor to carry out the road safety audit?

Billy MacIntyre: Yes, it is.

Bill Flockhart: That is interesting, because I mentioned it to two of my friends, who are professionals in the construction trade, and they burst out laughing. They said, "What the hell's it got to do with the contractor?"

Billy MacIntyre: Are they here this morning, so that we can cross-examine them?

Bill Flockhart: No, they are not here, but they found it amusing that the contractor should be the person doing the road safety audit.

Billy MacIntyre: The contractor will appoint the road safety auditor. That is entirely normal practice.

Bill Flockhart: So the contractor appoints the auditor. That is fair enough. I got the impression that it was the contractor that would be doing the road safety audit.

Billy MacIntyre: I have never said that.

Fiona McLeod: I seek clarification from Mr MacIntyre. Our papers say that, in August 2013, AECOM did a long and detailed transport

assessment. How does that feed into a road safety audit?

Billy MacIntyre: I will pass that over to my colleague.

Ian Alexander: The transport assessment has to be produced as part of the planning process to support the planning application. What happens then is that the scope, nature and context of the site are analysed. Junctions, access and parking provision on site are looked at and suggestions are made through that process. For instance, we have proposed a toucan crossing across Milton Road—that came out of that process.

The road safety audit, which will be carried out by a professional company during the contractor's appointment, gets into more detail and will be reported back at that stage. As Billy MacIntyre said, any mitigation would be endorsed into the scheme at that stage.

Alison McInnes (North East Scotland) (LD): Is it appropriate to ask for clarification about whether there are any conditions attached to the planning permission in relation to road safety issues?

Billy MacIntyre: There are such conditions.

Alison McInnes: Which means that there is an obligation to carry things out.

Billy MacIntyre: Yes. Informative 2 says:

"Prior to the occupation of the school, the applicant is to arrange for the design, construction, works and necessary traffic orders"

in respect of a variety of things.

Alison McInnes: I will follow that up. Thank you.

James Dornan (Glasgow Cathcart) (SNP): I want to touch briefly on what Fiona McLeod said. Mr MacIntyre, you talked about the road safety audit and said that you are confident that there would be no need for any major works or whatever. Is that based on the transport assessment?

Billy MacIntyre: That is based on the transport impact assessment that has been done but also on the transportation department's assessment of the proposals. If the transportation department felt that there were any significant risks or issues that needed to be further considered, those would have been identified and consideration of them would have been necessary prior to granting planning consent.

The Convener: Do you have questions for the objectors, Mr MacIntyre?

Billy MacIntyre: No.

The Convener: Are there any final comments from the objectors on category 2?

Bill Flockhart: I would like to ask whether the council is in any way concerned that, if the bill goes through, it will haemorrhage all the traffic coming in from the east and south—that is what will happen. It will haemorrhage the whole system, so it will be a sad day.

Another thing is that the bus lanes' operating times will be extended to start from 3 o'clock. I understand why the council wants to do that, but to say that there will be less traffic is not true. There will not be less traffic. When traffic is travelling from west to east at the Milton crossroads, the cars are in two lanes and they can go only about 25 or 30 yards before they suddenly see a sign saying that one of those lanes is a bus lane. If that happens at 3 o'clock, more people will be swerving across the road to get into the right lane and there will be far more traffic in the outside lanes.

My main concern is that traffic could be brought to a standstill in the mornings. There are also to be drop-off points on Park Avenue. They will be on the left side of the road, so I presume that the council wants vehicles to come up the way but, if they do that, how will they get out? They will certainly not get out by turning right, so they will have to go left into the bus lane heading east but, for most of them, the only way back to where they came from will be to go down Hope Lane, so further traffic will go down it, which will further emphasise the rat run there. The whole thing will be very interesting, but you will not have to deal with the repercussions because, by then, you will have moved on to something else, so it will not matter.

The Convener: I do not think that those are fair comments. I asked for final comments, so—

Bill Flockhart: As I have said, the project will haemorrhage the whole of the traffic into Edinburgh in the mornings. That is what will happen.

Billy MacIntyre: Can I respond to that point?

The Convener: Very briefly. We are supposed to be hearing final comments, but I understand that there are issues.

Billy MacIntyre: On the suggestion that there will be haemorrhaging in the transport system, I point out that one of the responsibilities of the council's transport department is to assess not just the safety of any given proposal but its impact on the wider transport infrastructure for which the council is responsible. In granting planning consent for the proposals twice, the council has fully taken into consideration any impact.

I point out to Mr Flockhart that there are no designated drop-off points. The council does not have a drop-off policy and it actively encourages parents not to drop off their children by car at school.

Bill Flockhart: I am—

The Convener: Mr Flockhart, I asked for final comments, but if you want to respond briefly—

Bill Flockhart: I will leave it, but I just want to say that that bit is in yellow in the design and access statement. Never mind—carry on.

The Convener: If you want to respond, you may do so.

Bill Flockhart: No—I am finished. All that I will say is that the council should look at the document that it has issued, which has areas in yellow at the top of Park Avenue. The document says that the yellow areas are drop-off points.

The Convener: We move on to category 3, which covers issues that were considered at the preliminary stage. Again, I ask witnesses to raise only issues that were not addressed at that stage, issues on which there is new evidence or issues that were not covered in earlier oral sessions.

Group 3 previously indicated that it would address issues in categories 1 and 2 only, but I understand that group 3 witnesses now wish to raise a matter that relates to the first issue in category 3. I invite group 3 to speak on issue 1, which is the Parliament's role in legislating subsequent to a Court of Session decision.

David Kilkerr: Jean Douglas would like to ask the committee a question about the Parliament's role under the private bill process.

The Convener: Jean Douglas can ask the question but, at this stage, it will not be for the committee. That is set out in our first report. At this stage, questions are to the promoter. It is not for the committee to answer questions that we have already addressed.

Jean Douglas: It is not a question; it is just a statement.

The Convener: I am perfectly happy for you to make a statement. That is no problem at all.

10:15

Jean Douglas: Thank you—I will be brief. We are concerned that not all MSPs are fully engaged in the detail of the bill and that MSPs are simply following the party line in supporting it. We would like to understand the relationship between the council and MSPs and the impact of that relationship on the private bill's progress.

I refer to the *Official Report* of the meeting on 26 March 2014, when one of the witnesses indicated that an MSP had been whipped to vote in a particular way. Mr Dornan was very clear that he did not believe that that had happened.

I have a letter written to me by an MSP who lives outwith Edinburgh and the Lothian region, whom I contacted to ask how he was voting. I will read an extract from that letter, which states:

“Dear Mrs Douglas,

Thank you for your e-mail of 22nd August regarding Portobello High School.

In response to the points you raise: No, it is not a free vote. We will be voting in accordance with the MSP who has most interest in this bill or whose policy brief it falls into. I will therefore be guided by my Conservative colleagues in the Lothians.”

In a telephone conversation that I had, I was told that all four main parties supported the bill and that, regrettably, I would be disappointed in the outcome.

I contacted all MSPs and, although not all replied, many who did gave the same message. I will quote briefly from three of those replies. One response states:

“Acknowledged with thanks. I will seek the advice of colleagues who are better acquainted with this issue before I vote”.

Another advises:

“Thanks for your e-mail. As I am not a local MSP on this issue I will be guided by colleagues as to how to vote. Thanks for being in touch”.

The last one states:

“I, alongside my Scottish Labour colleagues, strongly support the general principles of the bill. I believe the children of Portobello deserve a new school”.

It looks as if the Conservative and Labour parties voted along party lines. Our local Scottish National Party MSP, Kenny MacAskill—a senior MSP who has considerable influence and is very pro building on the park—also told us that he had contacted his party colleagues to ensure that they were aware of his interest.

From the information that I have just given, we believe that strong pressure from local politicians is influencing the votes of MSPs. We believe that, given Edinburgh councillors’ support for the proposal, they may be positioned to influence the views and therefore the voting of MSPs. That is to an extent borne out by the low level of engagement of MSPs in the detail of the bill.

In the preliminary stage debate, remarkably few MSPs were in the chamber, although more entered in time for the vote. They cannot have heard the arguments, so I presume that they came

to their position on how to vote by some alternative means. That is all that I want to say.

The Convener: I am perfectly happy that you put that on record. I cannot speak on behalf of every party, and committee members are not here representing parties, but the point that we tried to make is that we are not whipped in committee—absolutely not.

As for members not being in the chamber, I point out that we can listen to chamber debates when we are not in the chamber. Not a lot of people know that we have the opportunity to do that, but I put that point on record.

If you do not mind, I will ask the clerks to give you the contact details of every party’s business manager, because the business managers set out how their parties would vote on the day in question. Some parties were whipped, but others were not. I do not often speak up for Mr Dornan and his party, but I believe that the SNP group was not whipped on that day—that is what he was referring to.

The issue is not for the committee to deal with, but we can give you the details for every business manager, so that you can approach them and they can answer the questions that you have raised. We will make them aware of the statement that you have made this morning, so I hope that you will get an answer from them on that point.

Jean Douglas: Thank you.

The Convener: Do the other group 3 witnesses wish to say anything about the other issues in category 3?

David Kilkerr: No, but I believe that group 6 has something to say.

The Convener: I will ask Ms Klein to respond; I was just asking whether group 3 had anything else to say.

I ask Ms Klein to take in turn each issue that she wishes to address. It is entirely up to you whether you deal with every issue or just parts of each issue.

Beverley Klein: I want to address the consultation process.

The Convener: I am more than happy for you to do that.

Beverley Klein: As I did previously, I will ask questions to which I expect responses. My first question, which is a scene setter, is probably best directed to Mr Strachan. Is it fair to say that I and other Edinburgh residents own Portobello park?

Iain Strachan (City of Edinburgh Council): Well—

The Convener: Just a minute, Mr Strachan. Ms Klein, if you are not making a statement, I will give the promoter a chance to make a statement on the issues. If you have a statement, I suggest that you make it. I will give you time to ask questions.

Beverley Klein: My statement is brief. I apologise—nerves get the better of you when you are in an alien environment.

The Convener: There is no need to apologise.

Beverley Klein: My principal concerns about the consultation process will be outlined in the questions that I put to the promoter. A number of those concerns relate to misinformation in the public domain and pressure being brought to bear on people who have not been provided with full information.

The council's conduct has been below par, as I hope to show. That is my way of phrasing neutrally how I really feel about the process. Its conduct has angered me greatly as a citizen and as someone who believes that we should be able to engage with our local and national democratic organisations in a way that satisfies us that we have had an opportunity to get the truth. The conduct of the consultation process and the behaviour of some of the council's officials before, during and after it were not what we should expect as citizens. My questions will put flesh on the bones of that statement.

The Convener: Thank you. Does Mr MacIntyre have a statement?

Billy MacIntyre: I have a brief statement. I have little to add to what has been said on the issues at the preliminary stage and in previous written and oral evidence that has been provided to the committee during the consideration stage. However, I will address the specific points that the witnesses have raised in written evidence and in previous introductory statements.

On the precedent point, Mr Kilkerr asserted in an introductory statement at a previous meeting that the bill would result in the laws of Scotland being changed. I stress that the bill would not result in a change to the general laws. The committee will be well aware that the general law prevents local authorities from appropriating any inalienable common good land from one statutory function to another. The bill would not address that wider legal issue; it would simply give the council a very narrowly defined power that is not available to it under the general law. That is the essence of a private bill. If the bill sought to change the laws of Scotland more generally, it would not be competent as a private bill. I have nothing further to add on the precedent issue; it has been fully considered, including by the committee at paragraphs 66 to 69 of its preliminary stage report.

Mr Kilkerr suggested in his introductory statement that street surveys that were carried out during the consultation process asked residents whether they were for or against the new school. The council did not ask that question as part of the consultation. The committee has seen the leaflet that was circulated to inform the community of why the private bill was being pursued, which provided information on the alternative sites for the new school if the bill was not progressed.

Ms Klein asserted that it was inappropriate for the council to have allowed children to participate in the consultation process. It was neither an election nor a referendum vote, so no age restrictions were applied in determining who could participate. That approach is common practice in most consultations that the council undertakes, including formal processes such as planning applications and statutory education consultations. In respect of the latter, children have a statutory right to be consulted.

The council's proposals for a private bill to allow the new Portobello high school to be sited in Portobello park are directly relevant to children and young people in the council area—particularly those who live in the local area and are in that education system and/or have an interest in leisure activity. The council believes that every child has the right to contribute to decisions that affect them and that an age restriction might have excluded the valid views of a section of the community who would be directly affected by the proposals. Parents were free to decide whether to allow their children to exercise their right to respond to the consultation.

In any event, there is no merit in the suggestion that children's participation skewed the consultation results in favour of the bill. As was noted in our submission in respect of groups 3 and 6, analysis of the consultation results against the electoral register suggests that the percentages supporting and opposing the proposals would have been broadly similar if the results had been limited to those on the register, which would have excluded children, among others.

The Convener: Ms Klein, do you have your questions?

Beverley Klein: Yes—thank you.

Do you recall my question as previously stated, Mr Strachan, or should I repeat it?

Iain Strachan: You asked whether the park is owned by the people of Edinburgh. The answer is no. Common good land is owned outright by the local authority, although the manner in which it is held and administered is subject to certain legal qualifications under statute and the common law. Of particular relevance is the obligation under section 15(4) of the Local Government etc

(Scotland) Act 1994 that, in the administration of its common good land, Edinburgh must

“have regard to the interests of all the inhabitants”

of the unitary authority’s area. I would be happy to go into further detail on aspects of common good law if the committee would find that helpful.

Beverley Klein: Thank you—that is clear.

Will someone clarify for me whether the school’s present site, on Duddingston Road, was once the council’s number 1 option for the new high school?

Billy MacIntyre: Number 1?

Beverley Klein: The number 1 option.

Billy MacIntyre: I cannot answer that definitively, but that has certainly not been the case since the consultation that was undertaken in 2006.

Beverley Klein: Can Mr Strachan answer the question?

Iain Strachan: I am afraid not.

Beverley Klein: You do not know whether the current site was once the top location for the new build for the new school. You do not know the answer to the question.

Iain Strachan: I am afraid that I do not.

Beverley Klein: Both Mr Strachan and Mr MacIntyre are the intended recipients of my next question. Do you recall attending a community council meeting in December 2012 at Northfield Willowbrae community centre?

Billy MacIntyre: I do.

Iain Strachan: Yes.

Beverley Klein: Am I right in saying that that was at the start of the consultation process?

Billy MacIntyre: Yes—it was.

Beverley Klein: Did you attend many meetings during the consultation process?

Billy MacIntyre: I attended three community council meetings, I think, and two public meetings.

Iain Strachan: I attended two public meetings and two community council meetings.

Beverley Klein: Does either of you have any idea how many people in total attended those meetings?

Billy MacIntyre: The community council meetings were not particularly well attended. In my experience, the maximum number of people who attended a community council meeting was perhaps 30. The public meetings were very well attended. From memory, I think that the attendance at the one at Meadowbank was 300,

and there were 350 at the other one. I believe that an estimate of the number was included in the précis to the minutes of the meeting.

Beverley Klein: One of the documents that I have lodged is an email exchange between you and me, Mr MacIntyre. I refer you to the final page of that email, which is signed by you. Just above that, it says:

“I trust that this is helpful.”

Do you have that document before you?

Billy MacIntyre: Yes, I do.

Beverley Klein: I will refer to the paragraph just preceding that. You will no doubt be aware that it relates to your introduction to the local Northfield Willowbrae community council—my local community council. Incidentally, that meeting was attended by an unheard of number of local residents. I am a regular attender at meetings, and it was the best-attended meeting that I have ever been to.

In your opening submission, you stated to the gathered participants that it had never been the council’s intention to build on the park and the golf course. Do you recall saying that at that meeting?

10:30

Billy MacIntyre: Ms Klein, I cannot recollect exactly what I said at a meeting that took place more than a year and a half ago. Forgive me, but I am surprised that you expect me to recollect exactly what I said at a meeting that long ago. What is your question?

Beverley Klein: My question is this: I remember being quite surprised when you made that opening statement, because the proposal had initially been to build social housing, a new St John’s primary and Portobello high school on the entire site of the park and the golf course. I questioned you about that. Do you recall saying to me, “I did not work for the council at that time, so I do not know that to be true”?

Billy MacIntyre: I provided clarification in the email that I sent to you on the evening of that meeting, which you seemed to accept. I do not think that you came back and identified any issues with my response to you at the time. What is your question?

Beverley Klein: I just asked you my question. Do you recall my saying to you that that was the case and your answer being, “I don’t know that to be the case because I didn’t work for the council at that time”?

Billy MacIntyre: I cannot recollect a conversation—

The Convener: I am sorry, Mr MacIntyre. What is the purpose of the questioning, Ms Klein?

Beverley Klein: An official from the council came to a community council meeting that was well attended and advised the people there, who were possibly going to participate in the consultation process, that it had never been the view of the council that the whole site of Portobello park and Portobello golf course would be used. That was incorrect information that could have skewed the result of the vote, and Mr MacIntyre's response was, "I don't know that because I didn't work for the council at the time." There are other instances of misinformation being provided before, during and after the consultation period, which I fear have given people a wrong view of the whole issue, and that is of great concern to me.

The final paragraph of Mr MacIntyre's response to me says:

"the decision to approve the selection of Option C (Portobello Park) as the preferred location for a new Portobello High School was subject to assurances that no housing would be built on the remaining green space of Portobello Park/golf course. That was the context for my response to your question this evening as this position was, and has remained the case ... since ... 2006."

The information that was provided on that evening—in the opening statement—was incorrect. Mr Strachan, you were present at that meeting. Do you recall the sequence of events as they have been narrated?

Iain Strachan: To be honest, Ms Klein, I cannot, but I believe that Mr MacIntyre followed up the point afterwards. 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 in the park and golf course, as we highlighted in the first oral evidence session. 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. That is the project that we have been dealing with ever since that December 2006 decision of the council that no housing was to be proposed. There was no incorrect information.

Beverley Klein: My difficulty is that certain assurances have been provided over many years by the City of Edinburgh Council, which have been revised, amended or reversed. It is simply not good enough that people like me can go along to a public meeting and hear a council official say, "It has never been the council's position that the golf course would be built on" when that was wrong information. I appreciate that Mr MacIntyre may not have worked for the council when the proposal to build on the golf course was made, but I understand that Mr Strachan did. Mr Strachan was

present when Mr MacIntyre made his opening statement to my community council and he did not correct that information. The council's conduct in that respect is the subject of my concern, but I can move on.

The Convener: I totally understand the point that you are trying to make, but we are looking at the bill.

Beverley Klein: This bill is directly linked to the consultation document, madam convener, as I am sure the entire bill committee can appreciate.

The Convener: Absolutely. However, we cannot look at a statement that was made at a meeting. I understand the point that you make, but it would be good if we could go forward now.

Beverley Klein: Yes. Thank you.

I will comment on another public meeting that Billy MacIntyre attended and to which he alluded earlier: the meeting at Meadowbank. On that occasion I asked him what the out-of-catchment-area pupil numbers for Portobello high school were. He stated that there were about 160. When I questioned that figure with him by email, he responded by saying that the figure was 321—I know that I said 340 earlier—which is more than double the figure that he advised at that very well-attended public meeting during the consultation period.

When people look at a school that needs, in the council's view, to be adequate for 1,400 children, and hear that almost a quarter of the school is from out of catchment, can they really be satisfied that a school that size is necessary?

Billy MacIntyre: I suggest that that is utterly irrelevant to the purpose of the bill, which is to change the use of Portobello park in order for it to be the location for a new secondary school. I made—

Beverley Klein: I appreciate that that is your view, but I am a member of the public and it is not mine.

The Convener: Ms Klein.

Billy MacIntyre: If you can let me finish. I made an innocent mistake, which I hope you appreciate. You did previously in your email response to me, but you have chosen now to adopt a slightly more aggressive approach than you took before. I made an innocent mistake in quoting a figure. This is a very complex project that has been going on for a very long period. I quoted an incorrect figure that evening, which was corrected subsequently in an email to you, and it was corrected in the minute of the public meeting that was reported to the council.

However, I see no relevance in the figure that I quoted—which was not "misinformation", but a

genuine mistake on my part, as I have admitted—to a person's decision about whether to support the building of a new school on Portobello park. Your question relates to the size of the school, which, as I said in evidence earlier, was decided by the education, children and families committee back in March 2009.

Beverley Klein: I am sure that you understand that the very foundation of democracy is that you can have a view, which you have expressed, and I can have an entirely different view. Many members of the public do not turn up to public meetings as a matter of course—although it happens to be one of my hobbies—but at the end of the day people genuinely expect that figures that council officials provide will be correct.

Mr Strachan was present at the Meadowbank meeting. Were you aware that the figure Mr MacIntyre provided was incorrect?

Iain Strachan: No, I was not.

Beverley Klein: Okay. Was Portobello high school's headteacher present at that meeting?

Billy MacIntyre: I honestly cannot recollect that.

Beverley Klein: Do you recollect that, Mr Strachan? Might she have been able to interject and provide the correct figure?

Iain Strachan: I am afraid—

Billy MacIntyre: With all due respect, Ms Klein—

The Convener: Ms Klein, you have to help the committee. We do not understand why you are asking that question. Can you give me more information as to why that question is being asked? We are talking about the consultation process—I accept that—and we are looking at new evidence, not things that have been said before.

Beverley Klein: I am sorry if I am not making myself terribly clear. The point that I am trying to get across is that officials from the council, staff and teachers were present at the meeting—although I do not know what the headteacher looks like—and nobody saw fit to correct that figure, so that people could have adequate correct information upon which to base their decision in relation to the consultation process.

The Convener: You have made those points in emails that we have. Given that that is on the record, what is the purpose of your questioning this morning?

Beverley Klein: I apologise. Perhaps I do not fully appreciate how the committee system works.

Do you recall my raising, at a meeting of Northfield Willowbrae community council,

concerns about the wording of the consultation questions?

Billy MacIntyre: No. I honestly do not.

Beverley Klein: Do you recall that I said that we have had a big public debate about the Scottish independence referendum question and that a lot of media attention had been given to how the question was worded and to concerns about wording it in a way that would elicit a particular response?

Billy MacIntyre: As I said, I do not recollect that.

Beverley Klein: You do not recall that. I seem to have a good memory. Quite a lot of my questions were to be linked to those points, so I ask people to bear with me while I check them.

If the bill falls and the decision is that Portobello park should not be the site for the new school, where will the new school be built?

Billy MacIntyre: On the existing site—if we assume that the statutory consultation process that would be required for re-providing St John's RC primary school elsewhere would proceed.

Beverley Klein: Gillian Tee's letter of 25 October 2012, which I have lodged, says that Portobello park is the best site but, on page 1, the end of paragraph 2 says:

“however it is important that we have a back-up plan.”

Given that the fallback option is the existing site, what steps have been taken to put anything in train for a back-up plan?

Billy MacIntyre: Nothing has been done at this point, because to do something would be wasteful of public funds.

Beverley Klein: I see. Will you clarify whether there have been preliminary consultations of architects or associated professionals?

Billy MacIntyre: About what?

Beverley Klein: About the site of the present school.

Billy MacIntyre: We undertook preliminary consideration to inform the exercise that you referred to but, beyond that, no detailed consideration has taken place.

Beverley Klein: So there has been just preliminary consideration.

You will be aware that part of the focus of consultation responses was on the fact that Portobello park is supposed to be for leisure use in perpetuity. Does the city council get many bequests of land?

Billy MacIntyre: I have no idea.

Beverley Klein: Does Mr Strachan know about that?

Iain Strachan: No—I am not aware of any.

Beverley Klein: You are not aware of bequests of land.

I lodged a couple of items that were sent out in schoolbag drops. What I have called item 2 is from the Portobello for a new school group. Does everyone have it in front of them? The note came home in my daughter's schoolbag. Part of my reason for lodging it is to provide a bit of background information about how the debate, particularly during the consultation process, was handled. Information was provided to make people think that things were cut and dried.

On the note, the first bullet point under "So PLEASE" says:

"You don't have to say anything, but your presence will send a clear message that this school must go ahead."

What is the council policy on bag-drop items? Are there any checks on the suitability of items that are to go out in pupils' bags?

10:45

Billy MacIntyre: I cannot comment on that on a wider basis, but I can comment on the policy that was applied during the private bill consultation process, if that would be of assistance. Obviously, item 2 predated that process.

Beverley Klein: Yes, it predated it.

Billy MacIntyre: I assumed that it had. Although it is undated, it obviously predated the private bill consultation process.

Beverley Klein: The item asks people to come along on 26 April 2013, so it predates the consultation.

Billy MacIntyre: The document is undated, but it predated the private bill consultation process.

Beverley Klein: Yes, it did.

The Convener: I am sorry, but I seek clarification on that. I have item 2 in front of me, and I see that it was put out by another group, and not by the council.

Beverley Klein: The note was not from the council, but it went out via a bag drop from the council cluster schools.

The Convener: For clarification, Mr MacIntyre—was the note put out by the council?

Billy MacIntyre: No.

The Convener: Just so that we are clear, are you saying that the council had nothing to do with the item 2 that we are discussing?

Billy MacIntyre: Item 2 was not produced by the council.

The Convener: Yes, but did the council have anything to do with the bag drop?

Billy MacIntyre: I believe that schools facilitate the handing out of bits and pieces to children to take home in their schoolbags.

The Convener: Yes, but the schools were not instructed by the council to do that.

Billy MacIntyre: As regards this particular leaflet, I am not sure what would have happened at the time. However, if it would be of assistance, I can detail the protocols that were in place for schools regarding such documentation during the bill consultation process.

The Convener: That would be helpful. I am sorry, Ms Klein.

Beverley Klein: I am coming to that. You have clarified that for me, Mr MacIntyre, but I will come to it.

The leaflet was an invitation to attend a Portobello community council meeting, although I am not in the catchment area for that community council. As I said, it states:

"You don't have to say anything, but your"

mere

"presence will send a message."

However, my presence would not have sent the message that PFANS wanted to convey. The whole debate has been prefaced by the message that everybody is on one side other than

"a small but very determined group of people who call themselves ... PPAG".

The note highlights the phrase

"to stop the new school being built".

Then, out of highlight, it continues:

"on Portobello Park."

The Convener: I am sorry, Ms Klein, but I have to suspend the meeting for five minutes, because a member desperately has to leave.

10:47

Meeting suspended.

10:53

On resuming—

The Convener: We will recommence. I apologise for stopping you as you were speaking, Ms Klein. We will go back to your comments.

Beverley Klein: It is clear that the point that I was trying to make is not being conveyed suitably, so I am happy to move on to another item.

Mr MacIntyre helpfully provided me with information that, during the consultation period, assistance was provided with bag-drop material that went out from the cluster schools. I will refer to my items 7(a) and 7(b). I understand that the wording of item 7(a) caused some difficulty at my daughter's parent council.

Could someone from the council confirm that item 7(a) would have been approved because it referred to the consultation or because it referred to an issue that was under consultation? I understand that the council's officer David Wright was the person who was responsible for checking the content of those documents during the consultation period.

Billy MacIntyre: That is not the case, and that is not what my email says. The committee has a copy of it and I furnished Ms Klein with a copy of it in advance of the meeting. The email was sent on 4 December 2012. I felt that it was important that the headteachers of all the schools in the primary and high school cluster were made aware of the rules of engagement in relation to consideration or otherwise of matters relating to the consultation during the consultation period. I will quote from my email. In summary:

"Whilst there is logic in schools having an active engagement with children on these questions ... it has been determined that this would not be appropriate in the circumstances. ...

For this reason, any such discussion and/or debate is considered to be best left to the parents of the children who attend your schools and you should not seek to engage in any direct discussion and/or debate on this matter with children during their time at school. However, the Council does want to have as many responses to the consultation process as possible therefore this is something which you should proactively encourage at any available opportunity for both children and their parents but this should be done in a way which does not suggest, or imply, any response being favoured i.e. it should be entirely neutral. The same principle should apply to any requests from Parent Councils or other groups regarding the use of pupil post; school text and/or email facilities or putting up posters in the schools—where this simply draws attention to the consultation process that is acceptable however any such communication should be entirely neutral and not suggest or imply any particular response. ...

I hope this is helpful however should you wish any clarification on this matter please contact David Wright, Senior Education Manager (Schools)."

David Wright has subsequently left the authority. Local headteachers were not asked to run everything past David Wright. They were given a clear understanding of the protocols and it was for them to follow those protocols unless there were any areas in which they felt that they needed

guidance. It is in the latter circumstance that they would have referred matters to Mr Wright.

Beverley Klein: I see. I understand that item 7(a) was run past Mr Wright but on behalf of Parsons Green primary school parent council. I have a concern regarding that document, which went out to the parents of about 600 or 700 children across the two schools. Paragraph 2 urged people to come along to the meeting. It said:

"It is your best chance to hear from the Council and those that support and oppose the school."

I am a regular attender at my daughter's parent council. That leaflet was approved in the playground, not at a meeting. In my view, I am in a minority on the parent council and, on that basis, I was not asked to contribute to the leaflet. I would have instantly said, "Nobody opposes the school," which was why item 7(b) went out later that week. However, my clear understanding was that Mr Wright, on behalf of the council, approved the wording of the document. At the height of the consultation period a view was provided, which appears to be an official view, that people opposed the school. I take strong exception to anyone thinking that I oppose the school; I oppose Portobello park being the site of the school.

The whole debate has been conducted in that manner, and my concern is that the public authority of the City of Edinburgh Council has not conducted itself with integrity in the matter. That has created an atmosphere whereby a consultation process and, in effect, a vote by any other name were undertaken under very questionable circumstances.

I also refer to item 5, which is a double-sided document, although I freely concede that the document went out to schools prior to the consultation period. In particular, the small section at the bottom under the left-hand column says:

"This leaflet is distributed on behalf of Portobello High School Parent Council and authorised by your own School Council."

That was not the case: my daughter's parent council did not authorise that document.

A whole dishonest debate has been played out. People came up to me and said that they had already voted at Morrisons that morning because the person said, "You need a new school. Do you want to vote for a new school?" That is the level of debate that we have had.

11:00

The Convener: Those points should be put on the record, but I do not believe that they are questions for the council.

Beverley Klein: The one question in there relates to the approval of a bag drop during the consultation period. I understand from Mr Wright that the council approved the wording of a document that said that people should come along to Meadowbank to find out who opposes the school. That has caused heightened anxiety in the community, and there has been a lot of unpleasantness. If the council cannot be relied on to correct such misconceptions, I am afraid that we have reached a very low point.

The Convener: Does the promoter have any comments to make?

Billy MacIntyre: I will respond briefly. First, the document was issued on behalf of the Royal High primary school parent council, so it was in no way affiliated with City of Edinburgh Council at all. I note that the final page of Beverly Klein's evidence is a correction notice that relates to the previous document. Am I right in my understanding?

Beverley Klein: Yes, there is a correction notice.

Billy MacIntyre: A correction notice was issued.

Beverley Klein: Yes, at my instigation, but—

Billy MacIntyre: A correction notice was issued to those who would have received the original document.

Beverley Klein: The same initial document was sent out to the parents at Parsons Green primary school but no correction was issued. My understanding—it is only an understanding, but I am as certain as I can be—is that the wording of the document that went out prior to our school document at Parsons Green primary school was approved by Mr Wright.

Billy MacIntyre: All the literature that City of Edinburgh Council issued made clear the bill's purpose and what we were seeking views from the community on.

The Convener: Are there any further questions on those categories, either from Ms Klein or from the rest of the witnesses?

Beverley Klein: I have just one final question. Can anyone from the council confirm whether City of Edinburgh Council has funded or provided any administrative support of any kind to PFANS?

Billy MacIntyre: No.

Beverley Klein: Thank you.

The Convener: Does anyone else have any further questions?

Bill Flockhart: I mentioned drop-offs earlier, but I got my terminology wrong. Page 22 of the design and access statement refers to "restricted parking timings".

Billy MacIntyre: That is to prevent drop-offs.

Bill Flockhart: Yes, but it does not say that it is to prevent drop-offs—it just says "restricted parking".

Billy MacIntyre: That is the purpose of restricted parking—it is to prevent drop-offs.

Bill Flockhart: One question has always baffled me in the whole exercise. When Holy Rood high school was left empty for months, why did the council not at that point consider building the new school on the existing site and decanting the new school on the existing site and decanting the pupils? Holy Rood high school lay empty for months and you could have decanted Portobello pupils up there quite easily. If there had been an overflow, you could have used Castlebrae high school, which is also quite empty. It has always baffled me that that did not happen.

Billy MacIntyre: At the risk of going into issues that we covered earlier, I point out that that predates my joining the authority in the middle of 2008. However, I would have thought that it would have been down to an absence of funding. Six secondary schools were placed under the PPP2 programme. The three secondary schools that found their way into what is called the wave 3 programme were the new Portobello high school, Boroughmuir high school and James Gillespie's high school, and funding was not identified for the new Portobello high school until early 2009. I therefore surmise that it was an issue of funding.

Bill Flockhart: I find it quite sad—that is probably the best word—that no common sense is being used in local government. We are spending money on all sorts of issues. Frankly, the commonsense approach was to do as I suggested. I play golf at Duddingston, so I have passed the empty school for months. It would have been simple to do that, but we are now in this mess because that was not done. It is very sad that the council did not act sensibly.

The Convener: Those comments are on the record, but I do not think that we need anybody to respond to them. Do you have any questions for the objectors on the issue, Mr MacIntyre?

Billy MacIntyre: No.

The Convener: Okay. We move to closing remarks from the objectors. I invite Mr Kilkerr to make brief comments for group 3.

David Kilkerr: Thank you, convener. I will keep my comments brief, given that there is a lot to get through this morning.

It seems to me that many of the arguments that are being put forward by the promoter are disingenuous and complacent at times. For example, the promoter says that the net loss of parkland will be 0.48 hectares, but to arrive at that

figure it has designated the all-weather pitches as no loss of open space and it counts paths, cycle paths and woodland as parkland. In fact, 5.4 hectares of the existing parkland will disappear and will be supposedly compensated for by 2.16 hectares on the current Portobello/St John's site. Another example is that the promoter says that the all-weather pitches will be available seven days a week without having decided what security and staffing would be required to allow such use. No other school in Edinburgh operates such a system at the moment.

We discussed traffic earlier. The promoter seems to think that that is not a real issue and that it has planning permission, that everything has been looked at and that such problems as may arise will be dealt with subsequent to the start of building the school. That defies common sense. The council agrees that a road safety audit needs to be undertaken, but the timing seems to be completely wrong. It seems to me that it would have to carry out a safety audit before it decided whether this was a proper, fit and safe place to build a school.

The council has tried to mollify opposition that is based on the existing legal judgment by stating that the Court of Session did not decide on the merits of the council's proposal for Portobello park. That may be so, but the Court of Session did decide that there was no compelling reason to change the law that prevents the council from building on the park. If the private bill succeeds, it will change the law and, in my opinion, similarly compelling reasons need to be given for doing that.

Convener, you said earlier that the committee is not concerned with planning matters—you have said that on a number of occasions—and that your main concern is the private bill. Should the committee endorse the bill, it will, in effect, give permission to build a school on the park. That is why, in coming to its conclusions, the committee needs to consider such matters as road safety and the welfare of the students who may attend such a school.

The promoter maintains that its planning permission implies that there are no major traffic concerns and that those that are recognised will be dealt with by the contractors subsequent to the building of the school going ahead. However, should the committee see the question of traffic congestion and road safety as an intractable problem, it should recommend the rejection of the bill.

The Convener: Thank you, Mr Kilkerr. I call Ms Klein.

Beverley Klein: The objectors in group 6 want children—now and in the future—to have what the

rest of us have all been lucky enough to have experienced: open, free access to Portobello park.

We feel that we have demonstrated that there were some significant flaws in the consultation process. The wording was designed to get a positive response. Indeed, as is made clear in item 4 of the items that I lodged with the committee, which is a kind of straw poll that was undertaken by the local newspaper, 100 per cent of people said no to the question whether development should be allowed on green-belt land. There are differences between green-belt land and common ground, but most people do not understand the legal niceties of the distinction—they just understand that a piece of land is a park or a green space, and when they are asked whether a park should be built on they mostly say no. Had the question that was devised by the council been fairer and had the consultation been conducted in a fairer way, we would have got a different result. My experience of the only two public events that I attended during the consultation period was that the promoter of the bill provided incorrect information that I believe could have influenced the result of the consultation.

As I have said—I say this as an adult who acts as a safeguarder in the children's hearings system and who meets a lot of very disadvantaged children—the park is right on the doorstep of children whose parents might have mental health issues and cannot take them to parks or might not have the financial wherewithal to take them to places to which I am lucky enough to be able to take my daughter. I ask the committee to consider that.

As I said at the previous meeting, when I was a wee girl I stayed in a tenement. I used to visit my granny a lot, and I did not have to book a playing field to be able to go out into a safe place. If I wanted to go out and play or enjoy myself outdoors, I went to Portobello park. Please let today's children and our future children have that opportunity.

The Convener: Thank you. Does the promoter have any final comments on this group?

Billy MacIntyre: Yes, convener.

Thank you again for the opportunity to address the issues and concerns that have been raised by the objectors in groups 3 and 6 and to set out the council's views to the committee this morning. I hope that the committee has found the session helpful in understanding the council's position on these issues.

I am conscious that I am slightly repeating a point that I have previously made, but I believe that it is vital to emphasise that the council's firm view is that Portobello park remains by far the best location in which we can deliver the new

Portobello high school, and the one where we can deliver it most quickly and cost effectively. That view reflects careful consideration and assessment of the various options on several occasions.

We also believe that it is by far the best of the available options not just for the pupils, parents and staff of Portobello high school, but for the local community and the city as a whole. The results of the pre-introduction consultation on the bill showed significant public support for the proposal both across the city and in the local area. Although we appreciate that the objectors feel strongly about the prospective loss of part of Portobello park, we simply do not accept the validity of the objectors' claims about the negative consequences that they believe will result from the passing of the bill and the project more generally, particularly in the light of the mitigation measures that we will put in place to address many of the issues that have been raised.

We are not suggesting that our proposals are a perfect solution. There is no perfect solution to meeting the urgent need for a new Portobello high school. The alternative solution of a phased on-site rebuild would come with significantly greater drawbacks. None of the issues that have been raised today and at the previous meeting would justify our changing our view that any potential downsides of building the new school on Portobello park would be significantly outweighed by the benefits of doing so, which include the improvements to the remaining open space on the site, the creation of new open space in the area and the other mitigation and compensatory plans that would accompany the project.

Many of the issues of detail that have been highlighted by the present objectors today and at the previous meeting were comprehensively dealt with during the planning process by the council's development management sub-committee on two occasions. As the committee itself has recognised, this is not a planning appeal process, and the committee is not sitting as a planning inquiry. However, the objectors in groups 3 and 6 seem not to have taken note of the committee's earlier observations and, instead, have continued to raise matters that have already been comprehensively dealt with during the planning process.

We would have welcomed the opportunity to engage with any proposals that the objectors might have had for mitigating or alleviating their concerns about the project. Indeed, that would be the usual practice during the consideration stage of the private bill process. However, it is clear from this morning's meeting that they have no suggestions to make other than that the project should not proceed and that the school should be built elsewhere. I therefore confirm once again that

none of the issues that the objectors have raised would justify the council's withdrawing its proposals.

Although we are in the hands of the committee and the Parliament with regard to the bill, the alternative to the option that the bill would enable would be the more time-consuming, more expensive and far more disruptive option of a phased rebuild on the existing school site, including the necessary relocation of St John's RC primary school, which would also entail significantly compromising the facilities that would be available at the school compared with what would be available if we sited the school on Portobello park.

I hope that the committee agrees that the issues of detail that have been discussed today do not constitute reasons for recommending that the bill should not proceed. I particularly hope that members are content that our compensatory and mitigation plans will be sufficient to address any issues that would or might arise as a result of our proposals. However, if there are any steps that the committee wishes to recommend that we take to alleviate members' concerns, we will be happy to consider them. Similarly, we will be happy to provide any further information that might assist the committee in considering the issues that have been discussed this morning.

The Convener: Thank you. That concludes the oral evidence session for groups 3 and 6. I thank everyone for their attendance and I suspend the meeting for a few moments to allow our next witnesses to be seated.

11:16

Meeting suspended.

11:23

On resuming—

The Convener: We move on to the oral evidence session for group 1. I welcome Stephen Hawkins, who is the lead objector, Diana Cairns, Alison Connelly and Roy Martin QC.

Group 1 has requested that the order of consideration of categories be revised to allow category 5 to be taken first, after introductory remarks have been made by both parties. The other categories will then be considered in sequential order.

I invite Stephen Hawkins, as the lead objector for group 1, to make some brief introductory remarks.

Stephen Hawkins (Portobello Park Action Group): During this session, we will try to offer questions rather than statements, and we will look

for facts rather than conjecture. In highlighting the promoter's responsibilities within the framework of the private bill and keeping to the confines of the categories set out for this evidence session, the topics of significant interest to us are the council's compliance with its open space strategy; the council's compliance with best practice for road safety; the council's compliance with planning authority guidelines and conditions; the council's compliance with "Secured by Design" policies; the council's compliance with the European procurement guidelines; the council's corporate risk management approach; the council's approach to the management of legal matters; and the quality of information provided by officials to the public and to elected members.

The committee may agree that the council has fallen short of some of the standards that are expected or in some elements of its responsibilities for the private bill. The committee's quasi-judicial role at this detailed consideration stage means that it is important that clear answers are provided to the significant questions that arise. We are before a committee of the Scottish Parliament that will decide whether to support a local authority building on a piece of land of which it is a custodian for all when it is illegal to do so.

The provision of schools is routine business for local authorities, and there is nothing exceptional about Portobello high school and its need compared with the needs that exist in many other communities throughout Scotland. What is truly exceptional is the extreme approach that the City of Edinburgh Council has taken, over many years, of proposing to build on a common good public park.

I have been a resident of Portobello for more than 25 years. I have with me Alison Connelly and Diana Cairns. We are spokespeople for the large number of objectors—there are thousands of them—to the private bill. In addition, we have asked Roy Martin QC to be in attendance, as matters may arise that require his expert opinion.

The Convener: I invite the promoter to make any remarks that it wishes to make.

Billy MacIntyre: I am conscious that there is a significant degree of overlap between the issues raised by group 1 and those covered in earlier written or oral evidence, including that given in the first session this morning. For the promoter's part, we will try to avoid any unnecessary duplication of evidence that the committee has already heard.

In common with the issues raised by other groups, many of the issues raised by the group 1 objectors were considered in great detail as part of the planning process; indeed, they were covered twice during that process. Planning issues are not directly relevant to consideration of the bill, which

does not authorise the construction of the school. As the convener reiterated at the start of the meeting, the committee is not carrying out a planning inquiry. Despite that, we note that the group 1 objectors continue to raise matters that were dealt with during the planning process. Having made that observation, we will, of course, be happy to address those matters if it would assist members in making a decision on issues that relate to the bill.

I expect that the committee will now be very familiar with the fact that the current Portobello high school is in urgent need of replacement and with the fact that the council is firmly of the view that Portobello park offers by far the best and most cost-effective location for developing the new school, and the one where that could be done most quickly.

In the objectors' written submission, they have suggested that the main difference that building the new school in Portobello park would make would be the provision of one additional sports pitch. That is a much more important consideration than the objectors suggest, in that the provision of that additional pitch will enable us to deliver all curricular physical education requirements on site, thereby saving valuable teaching time that would otherwise be wasted busing pupils to off-site facilities.

However, as I have made clear, that is far from the only consideration. I am conscious of the need to avoid unnecessary repetition, but I believe that it is vital that the group 1 objectors are left in no doubt about the disadvantages of a phased rebuild on the existing site. I reiterate that that option would require the relocation of St John's primary school; that it is estimated that it would cost £13.4 million more than the cost of completing the new school in Portobello park and would take four years longer to deliver; that it would impose constraints on site layout and design; and that it would entail a lengthy period of potentially significant disruption to the education of the school's pupils as a result of having a construction site directly adjacent to the school. We do not believe that it is possible to justify incurring those disadvantages to avoid a net loss of open space in the local area that is equivalent to less than the size of a football pitch.

The decision to build the new school in Portobello park has been arrived at following thorough consideration and extensive and repeated consultation with the local community. I believe that the strong community support for the proposals reflects the range of benefits that will flow to the community as a result of the new school and the compensatory and mitigation measures that we have proposed as part of the overall project. As I have said previously, the

council is confident that the proposed compensation and mitigation measures will be appropriate and sufficient to address objectors' reasonable concerns, but I am more than happy to engage with objectors who believe otherwise to discuss any ways in which they think that the council's plans could be improved.

I note that despite our invitations to the objectors to raise potential improvements or mitigation measures with the council, as would be usual at this stage of the process, the objectors have declined to do so. I will be glad to hear any suggestions that the group 1 objectors have about measures that might alleviate their concerns.

11:30

The Convener: We move to category 5, which covers issues that were considered at preliminary stage. I invite a spokesperson for group 1 to speak on the first issue: the role of the Parliament legislating subsequent to a Court of Session decision.

Alison Connelly (Portobello Park Action Group): Thank you, convener. I will make a brief opening statement for category 5 because, as we said, we want to focus on questions.

We are aware that the issues have already been considered during the preliminary stage proceedings. We now want to reflect on the quasi-judicial role of the committee in the context of the consideration stage and establish why the City of Edinburgh Council is in this position, as the promoter of such a controversial private bill.

There were key legal turning points as plans were developed for Portobello high, particularly in 2008, which give us an insight into the council's attitudes and methods and can help us to form a view on whether the information that is now being offered is reliable and trustworthy. If that is in doubt, it would be very dangerous to allow the bill to progress further—dangerous not just for Portobello but, in a broader sense, for Edinburgh and beyond.

We have a number of questions for the City of Edinburgh Council. We want to establish how it identifies, acknowledges and mitigates risk, and how transparent and accurate it is in its communications and the information that it provides to the tax-paying public and elected members. We have questions on each of the four sub-categories in category 5.

The Convener: Thank you. Are you spokesperson on the second, third and fourth issues, or was that—

Alison Connelly: That is our opening statement. We want to go to questions.

The Convener: Okay. I will invite the promoter to make an opening statement and then come back to questions, if that is okay.

Alison Connelly: Thank you.

Billy MacIntyre: Convener, my statement is a little longer, so I apologise in advance, but there is much that we need to say, particularly in relation to events of yesterday afternoon. I will cover all five categories, if I may.

As noted by the committee, these issues were all considered at preliminary stage and the council has repeatedly addressed them in previous written submissions and at earlier oral evidence sessions. It is somewhat disappointing that the group 1 objectors continue to open up these issues, relying on the same arguments as have been covered before. However, the council witnesses will, of course, be willing to address any pertinent questions that the objectors want to ask.

Beyond saying that, I wish to address just a few key points. The relevance of the Court of Session decision and the role of the Parliament relative to that has been fully covered in previous sessions, and in particular in the committee's preliminary stage report, so I do not propose to say more on that.

The objectors suggest that the pursuit of the private bill has caused delay in the process of providing a new high school for Portobello, but that is incorrect. Had we not proceeded with the private bill route, following the Court of Session's ruling in September 2012, two fallback options would have been available: a phased build on the existing combined site and Baileyfield, which was not in our ownership.

The final decision would have been subject to a statutory consultation process, which could not have commenced until we had learned the outcome of our bid for the Baileyfield site, which, as the committee is aware, was confirmed only recently. In addition, a parallel statutory consultation process would have been required in respect of the potential relocation of St John's primary school, as that would of course be a precondition of pursuing the option, for the high school, of a phased rebuild across the combined sites of both schools.

If the council had been successful in acquiring the Baileyfield site, that would have been one of the options for the relocated primary school. Clarity on the Baileyfield bid was therefore also essential to commencing the statutory consultation in respect of the primary school. We would therefore only just now be in a position to initiate either statutory consultation.

As we said in our written submission for today, we have begun the process of planning the

consultation for the new primary school and we intend to include the possibility of an off-site rebuild, in the event that the bill is not enacted and the high school therefore requires a phased rebuild on the existing combined schools site. If that becomes necessary, following completion of the consultation on the location for a replacement St John's later this year, it will take an estimated 28 months to design the new primary school, secure planning consent for it and procure a contractor to construct the new school.

The new school would have to be built elsewhere before the phased rebuild of Portobello high school could commence on the current site, albeit that the design, development, planning and contractor-procurement processes for the high school rebuild could be progressed in parallel with the construction of the new primary school, which would mitigate some of the delay. The timescale for delivering the new high school via a phased on-site rebuild would therefore have been much the same if the bill had not been introduced as it will be if the bill is not enacted, which is to say that the new high school would in either case likely not be ready for occupation until the second half of 2020.

I have little to add to our previous comments on precedent, as I believe that the issue has been considered in detail a number of times, including today and by the committee in its preliminary stage report.

On the suggestion that the council could use the park land as it wanted in future, I first put on the record a strong objection that we and, I understand, the committee received Mr Martin's relatively complex legal opinion on the issue only at about 3 pm yesterday. That is completely contrary to all requirements for fair notice, particularly as I see that the opinion is dated 10 April, so the objectors could easily have lodged it by 15 April in accordance with the committee's timetable. I am sure that no responsibility attaches to Mr Martin in respect of that, as it would have been for his clients to decide whether and when to lodge his opinion. I find it extremely dissatisfactory that the objectors have chosen to take such an unconstructive approach to the proceedings.

The committee will be familiar with the council's view that the bill provides only a specific and limited authority to use the park for educational purposes while leaving the land's status otherwise unchanged. Mr Livingstone explained the council's view on the status of the land post appropriation at the oral evidence-taking session on 12 March, and the council believes that no further alienation would be authorised by the bill. We previously provided to the committee the opinion of Gerry Moynihan QC, who supported the council's view on that point. Mr Martin disagreed with Mr

Moynihan's opinion in his evidence at the preliminary stage. Indeed, I note that paragraphs 8 to 16 of his most recent opinion essentially restate the analysis and conclusions that he provided in his original opinion, and that the rest of his analysis is based on the same premise.

The council has nevertheless been mindful of the committee's recommendation at the preliminary stage that the bill should be amended at the consideration stage to safeguard the future use of the park. The council therefore drafted an amendment that is intended to put the issue beyond doubt. The amendment was provided to the committee and circulated to all objectors via our letter to you, convener, of 31 January 2014. It is intended to provide expressly that neither the bill nor an appropriation of the park in line with the bill's provisions after its enactment would allow the council to deal with the park in any way that would not otherwise have been permitted.

That means that, if the land was no longer required for use as a school, the only other permitted use would be recreational. The council is satisfied that the terms of the amendment are sufficient to achieve that outcome, and we heard nothing from the group 1 objectors before yesterday afternoon to suggest that they were not content with it. I see that Mr Martin disagrees with the council position on the amendment, but I can confirm for the avoidance of doubt that the council remains firmly of the view that the amendment would be effective.

If the committee wishes to have the detail of the legal issues explored today, I will leave it to Mr Strachan and Mr Livingstone to do that in response to any questions that Mr Martin may have, but I note for the record that the council does not accept the underlying premise of Mr Martin's opinion—namely, that it is not possible for land to have common good status and be used for educational purposes. We do not believe that that is the case under the common law, and in any event the question of what status and, most important, what protection the land has following an appropriation under this piece of legislation can be entirely resolved by including suitable language in the bill.

The council believes that the proposed amendment would achieve that desired outcome but, if the objectors feel differently, we have always been open to discussing possible changes to the proposed amendment in order to resolve any remaining concerns. Indeed, our letter of 31 January invited objectors to contact us directly if they wished to raise any concerns, and in particular expressly advised that the council would be happy to consider any proposals for revising the amendment so as to better achieve the intended outcome and address objectors'

concerns. Such discussions between promoter and objector would be entirely consistent with both the purpose and practice of the consideration stage of the private bill process.

I note that Ms Connelly advised in her supplementary written evidence of 6 February that she intended to seek legal advice in relation to the proposed amendment. It is therefore extremely regrettable that the objectors, first, do not appear to have sought Mr Martin's views until 8 April, secondly did not provide his opinion to us or the committee until 3 pm yesterday, and thirdly did not accept our invitation to contact us directly to raise those concerns and discuss what alternative amendments might be made to the bill to satisfy them.

Indeed, I note that the objectors still do not offer any suggestions on how the bill might be amended so as to address their concern. I would have thought that they would have been keen to do that, given that they claim to be interested in ensuring that the park cannot be further appropriated for any other purpose following an appropriation for education purposes. However, I am afraid that the situation is indicative of the approach that these objectors have taken throughout the process. It is clear that they are not interested in engaging with the council to ensure that it addresses their concerns where possible.

The council nevertheless remains open to discussing how the bill might be amended to address the concerns that the objectors claim to have in relation to the issue. I am therefore conscious that it might not be an appropriate use of the committee's time to hear further argument on the legal issues today, given that the more productive approach would perhaps be for the objectors to produce an alternative amendment to the bill for discussion with the promoter. If no agreement could be reached, it would of course be open to the objectors to submit their amendment directly to the committee for the amendment phase of the process, which would allow members to have the benefit of your legal advisers' views on how best to address the recommendation that you set out in your preliminary stage report.

I could make other comments, convener, but in the interests of time, I will stop there.

The Convener: Thank you. I invite questions from objectors. We are now into cross-examination on all the issues in the category.

Alison Connelly: Given the importance of the status of the land, we would like to ask Mr Martin to ask some questions on our behalf. Just before I ask him to do that, I want to reply briefly to the comments that Mr MacIntyre made about the timing of the most recent legal opinion being

provided, in order to give a bit of information about the background.

We as a group are not legally qualified. We are a community group that is made up of individual residents. We do not have access to a 9-to-5 legal department where we can go to clarify matters of a legal nature. In interpreting and understanding opinions that are provided to us, we need time to read them, consider the content and to meet and discuss them. Very often, we need subsequent information to enable our legal understanding. So, it is actually difficult for us to turn an opinion around quickly by receiving it and posting it straight out. The technical nature of legal opinions means that we need to be able to consider the content carefully and understand it before we decide how to act subsequently.

That explains why the legal opinion that Mr Martin provided to us took a little while to get to the council. Over the Easter break, people were on holiday and it was difficult for us to come together as a group. We also had to go back to Mr Martin for subsequent conversation and clarification. That is just to give you some context and to answer the concerns that the council seems to have that we were perhaps in some way deliberately delaying submission of the opinion, which was not the case.

The Convener: Thank you very much. I call Mr Martin.

Roy Martin QC: Thank you, convener. As you appreciate, I am instructed to give legal advice and to represent these objectors, as I have done for some time. I therefore come not as an objector but simply in the hope that I can assist the committee in legal matters. I am happy to answer any questions on those myself.

I appreciate that you have permitted me to ask questions. I do so, contrary to what Mr MacIntyre said, because of the amendment proposed in the letter of 31 January, which of course came after the initial consideration of the bill. There seemed to be an implication that all the legal matters should have been resolved then but, if I may say so, that letter proposed the amendment that is the subject of my consideration.

I assume that I will be addressing my questions to Mr Livingstone and Mr Strachan and I do so accordingly. First, may I ask one or other of those witnesses on behalf of the council to confirm that the act of appropriation of land that is held by a local authority for the purpose of one of its functions results in the land vested in the local authority being held for another function of the local authority?

Iain Strachan: In practical terms, yes, I would agree with that. The situation that we have before us, if the bill was to be enacted and appropriation

was to take effect, is that while parks and green space is currently in essence responsible for the administration of the park, the responsibility for that would shift to children and families. The council's opinion is that that is not inconsistent with the land and the park remaining part of the city's common good.

11:45

Roy Martin: We will come to that. The question that I asked was based on a paraphrasing of section 73(1) of the Local Government (Scotland) Act 1973. Do you accept that it is not a practical change but a legal change that takes place when land is appropriated from one function to another of a local authority?

Iain Strachan: Yes.

Roy Martin: Do you accept that, if the bill is enacted, it will allow the council to rely on section 73(1) of the 1973 act to appropriate the park for the purposes of its functions as an education authority?

Iain Strachan: Yes. That is the purpose of the drafting, as has been explained in previous opinions and in the explanatory notes that accompany the bill.

Roy Martin: That is in the last sentence of paragraph 11 of the explanatory notes. Let us suppose that the bill is enacted and that the council appropriates the land to its education function. The school is built, all the facilities are built and the school is operated by the council as the education authority. What will be the status of the land in that period?

Iain Strachan: Once the school is being operated—

Roy Martin: After the land has been appropriated.

Iain Strachan: After the land has been appropriated and the school has been built, the facility will operate as a school and the children and families department will be responsible for it in the usual way.

Roy Martin: I am asking not who will operate the school but what the land's status will be.

Iain Strachan: I am not quite clear what you are getting at. What do you mean by the status?

Roy Martin: The land is vested in the local authority—

Iain Strachan: And it still is.

Roy Martin: Is the answer to my question yes?

Iain Strachan: Will you clarify your question?

Roy Martin: The land is vested in the local authority at the moment.

Iain Strachan: That is correct.

Roy Martin: After appropriation, the land will remain vested in the local authority.

Iain Strachan: That is correct.

Roy Martin: However, it will be vested in the authority for the purpose of its education function.

Iain Strachan: The vesting will still be with the local authority, because the title will not change. The site will still be council land that is owned outright by the council.

Roy Martin: However, the land will be used for the purposes of the council's education function. We have agreed that section 73(1) of the 1973 act provides that the land is vested in the council for its education function.

Iain Strachan: I do not recall whether the bill talks about vesting. The vesting is the title, which will still be with the local authority. However, the land would be appropriated for use by the local authority for its education function.

Roy Martin: The land would therefore no longer be vested for any other function.

Iain Strachan: The land would still be vested in the local authority, but you are correct to say that it would not be a park.

Roy Martin: That was not my question, Mr Strachan—so I am not correct. I asked whether the land would no longer be vested for any function other than the education function. Is that correct?

Iain Strachan: The site would be used as a school—that is correct. The land would be appropriated for educational purposes, but it would still be vested in the local authority.

Roy Martin: The land will be vested for the purposes of the education function and not for the purposes of any other function. Is that right?

Iain Strachan: I come back to the point that the title is vested with the local authority and that the land would be used for a school.

Roy Martin: We are talking not about title but about the function for which the land is vested.

Iain Strachan: The function would be to provide a school.

Roy Martin: The land would not be vested for any other function.

Iain Strachan: I am sorry, but I think that we are perhaps going round in circles.

Roy Martin: I say with respect that I would like an answer to the question, which is straightforward.

Iain Strachan: I have given my answer.

Roy Martin: All right—I have no doubt that the committee will receive submissions on the issue.

Will the land on which the school is built still be part of the common good, notwithstanding the fact that the land will be vested in the council for its education functions?

Iain Strachan: Yes—we believe that it will be. It is an interesting point. The common good encompasses heaps of things. Moveable items can be part of the common good; indeed, buildings in the city—the city chambers, James Craig house, the city observatory, Lady Stair's close, the Ross bandstand, the Scott monument and so on—are clearly part of the inalienable common good. The fact that they are also used for sporting, cultural and other purposes is not inconsistent with their being part of the common good. A number of closes, paths and streets of the old town are part of the city's inalienable common good, but they are maintained by the council in its capacity as the roads authority. The council does not believe that the two are inconsistent, which I think is the point that Mr Martin is seeking to make.

Roy Martin: I am not seeking to make any point, Mr Strachan—I am asking a question. No one is suggesting that buildings cannot be part of the common good. Indeed, municipal buildings such as the city chambers are historic examples of buildings that are held for the common good. However, if this particular land remains part of the common good, it will have a building on it that will be a school.

Iain Strachan: That is correct. The committee might not wish to come back to this issue but, in relation to common good and the nature of common good assets, I pointed out to the previous group our obligation to administer the city's common good with due regard to all the city's inhabitants. Surely common good is not frozen in time, and it is for the local authority to consider how it best manages those assets. The inherent quality of common good property is its underlying use for the benefit of the city's inhabitants. The specific use of an asset might change over time and there might be different benefits from day to day—it might be a park, a school or whatever—but that is not inconsistent with its underlying common good status, which is held by the city subject to the statutory restrictions under common law. The inhabitants of the city benefit from that.

Roy Martin: I suspect that we are not going to get anywhere with this, Mr Strachan, but let me ask you this question. The common good is not just some ethereal concept; it is an entitlement on

the part of members of the community to require the authority to dedicate land for the community's use.

Iain Strachan: Okay.

Roy Martin: That can apply to buildings such as the city chambers, but in this case it applies to Portobello park, which is dedicated to recreation and the other purposes specified in the disposition of 1898.

Iain Strachan: I just want to make a point about that. The terms of the disposition are one matter but, from my—and the council's—perspective, we need to consider the wholesale reform of land law that happened with the Abolition of Feudal Tenure etc (Scotland) Act 2000, the Title Conditions etc (Scotland) Act 2003 and so on. As you will be aware, the title conditions in the original 1898 conveyance are of no relevance. The question is whether the specifics in that deed are enforceable title conditions; they are not, and the council's position is that, although we do not deny that the terms of the original grant are pertinent to the assets underlying common good status, we feel it important that we do not get overly hung up on the terms of the original grant.

Roy Martin: Are you a legally qualified person, Mr Strachan?

Iain Strachan: Well, I hope that you know that I am.

Roy Martin: I am asking you to confirm whether you are, because I have never met you before.

Iain Strachan: I qualified some time ago.

Roy Martin: So you will realise that there are significant legal issues to address. We are not getting hung up on anything. Certain legal issues arise because land has common good status; indeed, the Court of Session has dealt with that.

Iain Strachan: I am aware of that, but I want to clarify for the committee's benefit that, given where we are in the process, I think that it would be wrong to overstate some of the terms of the original dedication in the grant.

Roy Martin: But you will agree that the bill provides that the council may exercise whatever powers are provided, notwithstanding the terms of the 1898 disposition. In other words, the bill makes it lawful for the council to act contrary to the 1898 disposition.

Iain Strachan: I disagree, and the explanatory notes make it clear that that provision purely gives clarity on that point.

The Convener: I am sorry to interrupt, Mr Martin, but under which of the four issues in front of us does this questioning fall?

Roy Martin: It falls under this category because of the proposed amendment.

The Convener: But which of the four issues in this category does your line of questioning fall under?

Roy Martin: Forgive me, but I have put the relevant paper to one side.

Category 5 covers the role of the Parliament legislating subsequent to a Court of Session decision; the precedent argument and the possible use of the private bill process by other councils; the pre-introduction consultation process; and alternative sites. I accept that the lawfulness of what the council proposes is not specifically identified in those headings, but there is reference in what the group has said to the legal opinions that have been instructed from me. As I say, this issue has arisen and I understood that the purpose of my presence today was to deal with the proposed amendment, because the committee had decided at the preliminary stage that there was an issue.

The Convener: The answer to that is no. We are here to allow questions to be asked on the categories, and there are many categories. We have spent 13 minutes speaking about common good land, which was dealt with at the preliminary stage. We are not discussing the amendment, because at this stage we are discussing not whether the bill will go forward but the questions that objectors had for the promoter. If we can curtail the questions—I am happy for them to continue, but they should be on the issues that are in front of us—that would be helpful, because I am not sure where the issue that you raise fits in at this stage of proceedings.

Roy Martin: Thank you for that. The issue arises directly from the amendment on which my advice was sought.

The Convener: Yes, but we are not discussing the amendment at this point.

Roy Martin: I am much obliged. If it is the position that the committee will not report on the amendment but will, for example, reserve for consideration by the Parliament matters arising from it, I apologise if I have taken up the time of the committee unnecessarily. I rather thought that, given the council had proposed the amendment, the committee wanted to hear something on it and, indeed, on the effect of the bill generally.

The Convener: That would happen at phase 2 of this stage, but we are not there yet. We are still on the categories.

Roy Martin: I am sorry if I have contributed to that misunderstanding.

The Convener: No, it is okay. We have to get to the amendment at one stage—if, indeed, the bill proceeds—but we will certainly not get to it at this stage.

Roy Martin: Forgive me. I apologise if I have contributed to the confusion.

The Convener: No, it is okay. I just wanted to link the discussion back to where we are.

Roy Martin: Does that mean that consideration of the effect of the amendment will take place at a later stage? I think that my clients would be reassured by that.

The Convener: Yes, it certainly will. That will be looked at if we get to that stage. We are currently discussing all the groups of objections that have been made, so that you can quiz the promoter on what has come before us to allow the committee to make a decision. At phase 2, we will look at any amendments on which the promoter or, indeed, by any objector, seeks the committee's approval.

Stephen Hawkins: Excuse me, convener. Obviously, we have never been involved in anything like this before, so we are not sure exactly what the process is. We thought that this was the point at which evidence was given, that what had been put forward before would be questioned and that the committee would consider that. How do we become involved in the second stage of consideration?

The Convener: That matter is not for the current discussion, but I will give you the information on that.

I am concerned that time is very much against us. When objections were made, we clubbed them together into groups. The reason why you are in front of us today is to ask questions on those matters. I am very concerned that those questions will not get asked and that you will therefore feel that the process has not taken place and that the committee has not listened to your objections.

All the information will be provided about how you can get involved in phase 2, if we get to that stage. At the minute, we are not discussing any of that. The committee has to go through each objection to see whether it can be upheld. That is the next process. This morning's evidence session—just like the previous two evidence sessions on 12 March and 26 March—is about putting questions to the promoter on objections that have already been submitted to the committee at the preliminary stage.

Alison Connelly: Just briefly, I would like to apologise to the committee and to Mr Martin if we are here under false pretences, if you like. However, in his opening comments Mr MacIntyre referred to the timing of the provision of the legal opinion, which clearly was specifically related to

the amendment. If it had been drawn to our attention even at that point that we were not here today to discuss the amendment, we might have been able to address that. I apologise for the confusion.

12:00

The Convener: No apologies are necessary. What I am trying to get at is that the amendment might come up when you are discussing certain things, such as the precedent argument. I am trying to relate it back to the categories, so you are perfectly entitled to bring it up, as has been discussed. However, how does it relate to the categories? That is the question on which I seek clarification. That was why I allowed the promoter to talk about the legal evidence, which we got as well and which I have read, because that informs our opinion. That was why I allowed the promoter to talk about it, but I will not allow repetition of that. We really have to bring the discussion back to the categories that are before us. If the amendment links to those, then that is fine. However, if we are talking about common good, the purpose of it and various other things, that was dealt with at the preliminary stage. If that issue was linked to the precedent argument, for instance—I asked about that—I would have allowed discussion on it to continue. However, if we are not moving on with the categories, I am concerned about that.

Alison Connelly: It is just very difficult to discuss any of the evidence raised if there is a fundamental lack of consensus about the legal framework that all this is sitting on. The private bill is a legal framework, so we are here to focus on what is in the private bill, and the amendment is crucial to that.

The Convener: But we will look at that. I am not saying for one second that just because we are not discussing it now it will not be looked at. I am just trying to get us back to what we should be looking at.

Alison Connelly: Thank you.

Diana Cairns (Portobello Park Action Group): Will there be an opportunity to give evidence on the amendment at a later stage?

The Convener: No. The promoter is suggesting an amendment, but the committee has not taken a view on it at the minute, because we are not thinking about that at the present stage.

Diana Cairns: With all due respect, I thought that Mr Martin's questioning was to enable better understanding or clarity on the amendment.

The Convener: It may well be, but the point is the process that we are undertaking today. I have to follow the rules, which are not my rules: they are the rules for discussing a private bill. As I have

done in previous evidence sessions, I have talked about the groups and the categories that are to be discussed. That is why I asked what category questions about the amendment are under. You might think that the issue is relevant, but what category that we are discussing this morning does it come under? That is the process that we have to adhere to. We can continue to talk about the Parliament legislating subsequent to a Court of Session decision, the precedent argument, the consultation process and the alternative sites, because that is where we are at the minute and the cross-examining should be on those areas. Have you got questions on those, Ms Connelly?

Alison Connelly: Yes. Mr Martin will ask them.

Roy Martin: I appreciate what you have said, madam convener, and I certainly do not want to take up too much time, but I have two more questions that I would like to ask Mr Strachan. I would appreciate it if he would just answer the questions rather than try to explain other things. The questions are related to common good, but they may assist on matters of practicality subsequently. The first question for Mr Strachan, which can have a yes or no answer, is this: the school will be constructed on common good land, but will the school building be part of the common good?

Iain Strachan: I think that you are aware of this, and your legal opinion perhaps referred to it, Mr Martin. However, I would have thought that accretion would apply and the building would become part of the heritable property.

Roy Martin: So the answer is yes.

Iain Strachan: Yes.

Roy Martin: Thank you. My second question is my final one. We are of course talking about a hypothetical situation, but let us suppose that the decision is made subsequently to no longer use the structures on the site as a school. Has the council provided any information on its proposed arrangements for demolition and for restoration of the park to a recreational environment?

Iain Strachan: That is probably a question for Mr MacIntyre.

Billy MacIntyre: At this point, there is no suggestion or intention of using the site as anything other than the location for a new school.

Roy Martin: Madam convener, I did say that that was my final question, but I have another.

With respect, Mr MacIntyre, you are introducing the concept that the land would remain as common good land if the school ceased to be there. My question is related to the practical situation that would exist if you did decide that the school was no longer going to be there. Again,

with respect, I would like a simple yes or no answer to this question. Has any provision been made or has any explanation been given regarding the practical steps that would be taken to demolish the buildings and return the land to a recreational environment?

Billy MacIntyre: No.

Roy Martin: Thank you. Thank you very much, madam.

The Convener: Thank you. I just put on record that the legal advice that you have given will be looked at, and if we require clarification at that point we will get back to you—I am not dismissing it at all.

Roy Martin: That is kind of you, and I do appreciate that. I am perhaps labouring under a similar misunderstanding to that of my clients.

When you move to the more substantive objections, where legal matters are unlikely to arise, I will probably withdraw—I mean no disrespect to the committee in doing so. However, I will be happy to assist if you want to ask me anything while I am here.

The Convener: Thank you, Mr Martin.

Alison Connelly: Thank you, convener. We continue with questions on the role of the Parliament, if that is okay. We are going back to looking at the committee's quasi-judicial role, as we were advised to do, and the reasons why we are in the position that we are in with this private bill.

My first question is for the City of Edinburgh Council representatives. Why has the legal risk associated with the proposal to build on the park continually been played down or not mentioned at all?

Billy MacIntyre: To what legal risk are you referring?

Alison Connelly: The risk of a legal challenge to the proposals, based on the legal opinions that have been provided across the board.

Billy MacIntyre: I am not aware that any legal opinion has been provided that suggests that there would be a challenge to the private bill.

Alison Connelly: You will be aware of the legal opinion to you, which I presume the council commissioned, from Malcolm Thomson on 22 August 2008.

Billy MacIntyre: That was to do with the appropriation of the land under an entirely different mechanism. Your question was—

Alison Connelly: Well, I have copies—

Billy MacIntyre: Your question was about legal challenge to the outcome of the private bill process, was it not, or did I misunderstand you?

Alison Connelly: My question was about the council's approach to legal risk in general, in terms of the legal framework around the proposal to build on the park.

Iain Strachan: I wonder whether we are touching on issues that are not really of relevance today—of course, that is up to the convener and the committee. I will attempt to answer.

I think that the point that you are getting at is about where we ultimately got to with the court cases, but it is very important to bear in mind that, at the time, there was no judgment that had looked on something like this and the council's decision to proceed with Portobello park was on the back of a robust opinion from two QCs that we could do so. That was against the background of case law at the time; the Lanarkshire cases suggested that such an approach was indeed lawful, as did our review of the law.

Indeed, if you look at the expert evidence that was provided to the committee in connection with the issue, you will see that Professor Rennie said that he thought that the fact that a council could not appropriate was "bizarre" and Andrew Ferguson said that the law was "somewhat illogical". I think that you can see from that that the council was conservative in its approach at the time, in that we did not embark recklessly on something but rather considered, with all due process, whether we could do this. We got a very robust opinion that we could do it, and we reported that up to council.

Therefore, on your question about legal risk, I think that the answer is quite the opposite of what was suggested: we have taken a very robust approach to that. However, again, I wonder whether those issues are somewhat historical.

Alison Connelly: I think that we accept that the council provided a robust legal opinion from two QCs, dated November 2008, which was eventually released to us after an appeal to the Scottish Information Commissioner, because the council was not willing to share it with us at the time.

What we have subsequently received—in fact it was only earlier this month, and it is in the public domain, because it has been released under freedom of information rules, and you as representatives of the council will be aware of it—is a legal opinion, provided by Malcolm Thomson on 22 August 2008, which is clearly quite different. You will be aware of the opinion, because it is your property. I have copies and I am happy to read an extract from it.

Billy MacIntyre: Let me respond to that point, Ms Connelly. You are talking about the past. That opinion was provided in August 2008. The joint counsel opinion was sought and secured in advance of the December council meeting, when the then council solicitor reported to council that, in her opinion—an opinion that proved not to be correct—there was a cast-iron opinion that said that we did not require the court's permission to build the school on Portobello park.

There was a previous opinion to the contrary, but the joint counsel opinion that was reported to the council in December 2008 said unambiguously that there no impediment to the council going ahead and appropriating the land at the park. Indeed, several high schools have been built on common good land as a result of previous decisions taken by other authorities. Therefore, I am not clear why we are returning to the history of the matter.

Alison Connelly: These documents were produced as evidence to support the promoter's case for the need for a private bill by showing what has happened and why we are where we are. The promoter relied very heavily on the late November 2008 opinion to support its position and show that it had been told that it could do this. That opinion was based on quite a narrow question. The August opinion was broader; it was not blinkered in the same way. I am very happy to read out the section that I am interested in—

Billy MacIntyre: What—

The Convener: Mr MacIntyre.

Alison Connelly: I want to draw to the attention of the committee and other people who might be interested in the matter information that the council has had knowledge and ownership of that it has not shared with the people who are interested in the decisions that were taken about how to proceed with the building of a new Portobello high school.

As I have said, I am happy to read out the relevant section, which is fairly short; if you prefer, I have copies that I could distribute. The opinion basically says that relying on the South Lanarkshire Council case as the underpinning reason for proceeding without going to court to get permission to build on common good land is high risk.

Billy MacIntyre: That opinion was subsequently changed. I believe that Mr Thomson was one of the joint counsel—

The Convener: Mr MacIntyre, if you just—

Billy MacIntyre: I am sorry. My apologies, convener.

The Convener: No, that is okay. We are interested in the opinion, so I ask that Ms Connelly gives us the copies that she mentioned.

I remind witnesses that issue 1 in category 3 is the role of the Parliament legislating subsequent to the Court of Session judgment. I want to have the information to which Ms Connelly referred and I understand that that sets the context, but matters raised must be relevant to what we are considering. We are where we are.

Alison Connelly: The relevance is that it addresses the council's previous and on-going risk approach, particularly in view of the conflicting legal opinions that remain about where we are now. You heard from the debate between Mr Strachan and Mr Martin that there is no clarity about where we are legally. The council is trying to stick to a line; we do not agree with that line, so we are trying to prove where we are—

The Convener: I understand that. I am trying to explain that that issue does not fall under the category under discussion. Unfortunately, you are referring to historical arguments. As frustrating as this may be, it is not for the committee to look at those matters.

Diana Cairns: Why did the council decide not to go with the August 2008 opinion? The council had an opinion in 2008. What changed?

The Convener: That is of no relevance to this committee. I know that those are questions of interest to the objectors, but they are not relevant to the bill.

Stephen Hawkins: I suggest that an argument made by the council is that, because such a long period has passed during which it has failed to provide a new Portobello high school, a private bill is needed to sort out where we are. Part of our argument is that we are here because of the council's mismanagement. We are trying to make the point that the bill must be looked at in the context of the four-year delay from 2008 when the matter was not taken to court.

The Convener: I understand where you are coming from. However, as you know, the committee dealt with that matter in our preliminary stage report. Although it is very helpful for you to give us the information to which you are referring, the purpose of this session is not to talk about what happened in the past but to talk about what present concerns you have under category 3 that we can put to the promoter to clarify certain things for us that are relevant and which we have not already heard. We have heard lots about what has happened in the past and where we are with the precedent argument, which is covered in our report. We are asking for new evidence.

12:15

Stephen Hawkins: I am sorry, but I thought that we had considered the general principles and that today we are considering the detail of what has happened.

The Convener: That was covered in our report. We are trying to get to the role of the Parliament legislating subsequent to a Court of Session decision. I need to know what happened subsequent to the Court of Session decision, not before it.

Alison Connelly: We are trying to provide evidence to demonstrate that the information that the council is currently providing is not to be relied on. We have given evidence of how it has dealt with matters in the past to prove that that is the case. That is the point that we are trying to make.

The Convener: The point is not lost on me. We have certainly got that point.

Alison Connelly: We need to be able to lay that evidence in front of the committee, because if we cannot say, "Did you know there was a report in August 2008?" how will you know?

The Convener: That is new evidence, but I am suggesting that we move on and not labour the point, because the point has been made absolutely. I agree with you. You have given us new evidence. Thank you very much for that. If you can continue and not discuss anything previous to the Court of Session decision, that would be good.

Diana Cairns: Before we leave the issue, I want to make it quite clear that, in April 2008, the council made a public announcement that it was going to go to court to resolve the common good issue, and it subsequently changed its mind. That is what led to the delay in the delivery of the school.

The Convener: You have put that on the record. We will continue.

Alison Connelly: I wanted to ask a number of other questions about the history, what happened in 2008, and who said what. If you do not want me to ask them now, I can move on to the next issue.

The Convener: You can move on.

Alison Connelly: I will move on to the precedent issue.

In October 2012, the director of the children and families department wrote to the Cabinet Secretary for Finance, Employment and Sustainable Growth and explained that the situation is likely to be

"of interest to other local authorities".

Can one of the representatives from the children and families department confirm whether they still believe that to be true?

Billy MacIntyre: I am not aware of the document. Was it presented as evidence?

Alison Connelly: I think that it was.

Stephen Hawkins: It is your letter.

Billy MacIntyre: I do not have it to hand. If I could see it—

The Convener: The clerks are looking for it.

Charles Livingstone: I think that the letter may have been submitted, but we had no notice that it would be relevant to this meeting. It may have been submitted at the preliminary stage. I am not sure.

The Convener: It is still part of the evidence.

Charles Livingstone: It is part of the evidence, but it is not easy to bring to hand if we do not have the reference.

Alison Connelly: We have the same problem. There is so much evidence. I am sure that the committee has the same problem.

The Convener: Yes, we do.

Alison Connelly: It is hard to find our way through the evidence. The letter to which I referred is dated 9 October 2012 and says:

"As there are clearly a number of Ministerial interests involved in this particular matter we have taken the liberty of sending this letter to the Cabinet Secretary for Education and Lifelong Learning, the Cabinet Secretary for Justice and the Cabinet Secretary for Finance, Employment and Sustainable Growth."

It goes on to say:

"this matter will be of interest to other local authorities".

Billy MacIntyre: I believe that my colleague Mr Livingstone has suggested that that letter may have been about the general law.

Charles Livingstone: I understand that the discussions with the cabinet secretary were about the possibility of amending local government legislation to resolve the issue for all local authorities. Although I do not have the letter in front of me, I believe that it was not about the private bill.

Alison Connelly: The letter was very specifically about the new Portobello high school.

Charles Livingstone: I think that the letter raised with the cabinet secretary the possibility that the general law might be amended and said that, if that were to be the case, Portobello high school could proceed without the need for a private bill. As I said, I do not have the letter in front of me, but from my recollection, I do not

believe that it was about the private bill being of interest to other local authorities.

Alison Connelly: You may be correct, because a report from the children and families department to the council on 25 October 2012 says:

“Efforts to resolve the matter are therefore considered to be better directed towards addressing what has been identified as being a significant gap in the legislation.”

Do council representatives agree that that is another way of saying that the law is not working, that it is broken, and that it needs to be changed? I can read that out again.

Billy MacIntyre: We believe that there is a gap in the law, in that land can be disposed of but cannot be appropriated. We have made no secret of that.

Alison Connelly: If there is
“a gap in the law”,

does not the law need to be changed, and does not that mean that there should be a change to the general law rather than a private bill?

Billy MacIntyre: No. The whole purpose of the private bill is that it is geared specifically towards one particular piece of land and will confer specific and discrete powers on the local authority. That is why we followed the private bill route instead of pursuing a change to the general law.

Alison Connelly: That was done despite the fact that the private bill guidance explicitly states that a private bill is not appropriate when a change to the general law is required.

Iain Strachan: I think—

The Convener: I am sorry, but that has already been discussed and the committee has sought clarification from the Minister for Local Government and Planning. I wrote to him asking whether there are currently any plans to change the general law, and he wrote back to say that there are no such plans at this time. That is why the committee took the decision to proceed with a private bill. The matter was covered at that stage.

Alison Connelly: With due respect, I say that the minister perhaps said at that stage that he had no plans to change the law, but should not Parliament as a body have considered whether the law on this matter needs to be addressed?

The Convener: When I spoke in the debate, which I am sure you heard, I said that that is where we should get to. We have gone over the matter and it is in the committee’s report, so we will move on after I have made this point. If the Government had no plans to change the law at that stage, we could have been waiting for 10, 20 or 30 years for it to happen, but we had a bill in front of us. We had to make a decision, and that

was why the committee went for the private bill. That is not a question for the council or the promoter to answer; it is a question for the committee.

Alison Connelly: I am sorry. I think that we have misunderstood the guidance. It says that a private bill may not be appropriate, but we did not realise that there was a time aspect to that condition.

The Convener: I wrote to the minister, asking whether he was bringing forward legislation. If he had said yes at that point, it would have been correct for the committee to wait for the Government to legislate. However, the Government has no plans to legislate on the matter, which is why we are at the stage that we are at. As I have said, we will move on.

Alison Connelly: I am sorry. I will quickly go back to Mr Livingstone’s point that the letter was not about the private bill. Stephen Hawkins has just handed me a copy of the letter and it says that one of the options is

“A Private Act of the Scottish Parliament under the provisions of”—

blah-di-blah. That is just for clarification.

You may say that this question is not really for the promoter, but are you aware that, at present, at least one other local authority is considering its options in the light of the existing legislation? I am referring to East Renfrewshire Council. It has published a document—I do not have it in front of me—that talks about a private bill being an option if its court action is unsuccessful.

Billy MacIntyre: I am not aware of that, and I am not sure of its relevance.

The Convener: Other councils can bring forward—

Alison Connelly: We are raising the issue under the precedent angle.

The Convener: Absolutely, but the matter was covered in our report, which said that any council would be free to introduce a private bill.

Alison Connelly: The document is hard evidence that it will.

The Convener: It would depend on the merits of the case. It would be unique in the sense that we have to look at each individual case. I am aware of the situation in East Renfrewshire, although I do not know the ins and outs because my mind is focused on this bill. If East Renfrewshire Council took that decision, it would be for another committee to decide whether the matter should be pursued through a private bill. The matter was covered at stage 1.

Alison Connelly: You will be pleased to hear that I would like to go on to the next issue—

Diana Cairns: I am sorry—I would like to make a point. I remind the committee that Andrew Ferguson said that he was not surprised by the legal decision that did not allow the park to be built on. He also said that it was

“likely to be a relatively frequent issue in some parts of Scotland over the coming decades.”

In other words, if this private bill is passed, there is no doubt that the process will be used as a quick, easy and cheap route to enable councils to build on common good land.

The Convener: I do not think that the bill would set any precedent other than what has already been stated, but thank you for putting that on the record.

Diana Cairns: I beg to disagree.

Alison Connelly: I turn to the pre-introduction consultation process. At the earlier evidence session this morning, there was some discussion about the council influencing public opinion through connections with related parties. However, the council made it clear that there were no such connections and that it had played with a straight bat.

Not many of the connections have been made public, but we believe that there have been links, that there has been pressure and that the council and PFANS have worked hand in hand. To demonstrate that, I have an email. I will not read it out in its entirety and will not read the names in it. It is dated 2 February 2006 and was sent to me in my capacity—

Alison McInnes: Did you say 2006?

Alison Connelly: The email tells us about the relationship between PFANS and the council.

The Convener: In 2006?

Alison Connelly: Yes, but it is about PFANS.

Diana Cairns: In the council’s evidence, there was a statement saying that Ms Connelly had alleged that there was connivance between PFANS and the council. She has a right of reply on that and that is what she is trying to do.

The Convener: Ms Cairns, no one has said that she should not.

Diana Cairns: Well, the question—

The Convener: No, the question was—

Diana Cairns: —has been asked about the date.

The Convener: If you will allow me to finish, the question was whether she said 2006. That is not an unfair question to ask.

Diana Cairns: It was about the tone in which it was asked.

The Convener: We will go back to what you were saying, Ms Connelly.

Alison Connelly: Back to 2006. Thank you.

The email was sent to me in my capacity as a member of the parent council at my children’s primary school. It says: “Dear Alison”,

my colleague

“and I are on the case about Porty HS because of course our client ... is the prospective developer and we are very disappointed at the way the story was announced yesterday (it could have been a double page spread with pictures of the existing grotty school, artists impressions of a new one etc etc). Apparently it was done by Councillors”

A and B

“against the advise of the Council’s comms teams.”

My colleague’s

“view is that we need to pull together a meeting of what might be a campaign group, this weekend, perhaps Sat pm, to include the school board chairs of the two affected schools, and a few other keen and interested people.

He also thinks that we need to get at least six letters of support into the Evening News asap. I attach a draft letter I’ve done for”

X, who subsequently went on to be the first chair of PFANS.

“If you have the time and inclination, could you do one and pass this on to anyone else relevant to DO THEIR OWN VERSION OF and then email to the Evening News ... Will let you know about time and day for campaign meeting—are you interested?”

As I said, I was sent that in my capacity as a member of a primary school parent council. Initially, I had no view on it and went along to the first meeting. However, the group was created in conjunction with the council; any suggestion that it was otherwise is just not true. I understand that Mr MacIntyre was not at the council in 2006, but that is why the history is important.

The Convener: I will not pass that over because there is a difference between councillors and the council and the email mentioned councillors. Although you did not name them, you spoke about councillors being involved. That is different from the council and it is not fair for the promoter to answer questions about what certain councillors did and did not do, or what was proper or improper. We can all have opinions on that, but it would not be fair to go into that discussion.

Alison Connelly: Okay.

Diana Cairns: Mr MacIntyre said in his letter that both sides had been treated the same throughout the matter, so perhaps he could tell me how the consultation results were released to the chair of Portobello high school parent council the

night before they were made public. The chair approached the *Evening News* with a statement that was printed in the paper the next day. We have already submitted that to the committee.

Billy MacIntyre: I am not aware of that having happened and it is certainly not something that I did or authorised.

Diana Cairns: So, you cannot say how that information was released to him a day before it went public.

Billy MacIntyre: No, I cannot. I assume that you are correct in what you say.

Diana Cairns: I am.

Billy MacIntyre: I have no idea how that information got to that individual.

Alison Connelly: We have a couple of questions on consultation. The area in which the leaflets were to be distributed during the consultation period in December 2012 was the catchment of the school amended slightly to include additional areas from which the school currently accepts a significant number of out-of-catchment pupils. Will the council explain the thinking behind the selection of that as the consultation area?

12:30

Billy MacIntyre: That was explained in the council reports of November 2012 and March 2013, if my memory serves me right. The area was not the catchment area; the area has Portobello park as its geographical centre.

Stephen Hawkins: I do not understand what you mean by that. The distribution area is not a circle, is it? The boundary is more or less the same, apart from one or two differences. Do you have the comparative maps in front of you?

Billy MacIntyre: The comparative maps were included in the council report of November 2012, I believe. I am sorry—they were included in the report of March 2013. The area is more a rectangle than a circle. I will hold the map up.

Stephen Hawkins: I was questioning what you said about the geographical centre.

Billy MacIntyre: There is Portobello park—

Stephen Hawkins: What is the difference between the school catchment area and the area of the distribution—

James Dornan: Excuse me, Mr Hawkins. Can I hear Mr MacIntyre's response? You asked him about that piece of information and I would like to hear the relevance of it.

Stephen Hawkins: Yes.

Billy MacIntyre: I do not know whether you can see the map that I am holding. I am pointing at Portobello park. The red outline is the school catchment boundary. The black outline is the area that we designated as the local area, to which we distributed the leaflets. It is an area that has Portobello park at its centre. It is not the catchment area, because it was not about the school; it was about building the school on the park. The area chosen was the area that had the park as its geographical centre—not as a circle but as a rectangle. That was explained in the council report of November 2012 and there were no issues or concerns expressed.

Stephen Hawkins: Could you explain for the committee the major differences between the black line and the red line? Where do they differ?

Billy MacIntyre: You can see it—

Stephen Hawkins: You can see it from the plan. You can see that to the north-west there is a large spike that is different, which goes along an area of industrial buildings. I think there is one residence there—the dog and cat home. There is a difference between the red line and the black line to the north. I will wait until the committee members have the plan in front of them before I continue.

What I am getting at is that there is very little difference in practical terms between the two areas. There is a large spike to the north-west—you can see that. There is a difference between the red line and the black line to the north. I think that one of the lines encompasses the beach—and not many people live there. There is a difference to the south-west which, at the moment, covers two large fields at Brunstane. Again, not many people live there.

What I am saying is that, for all practical purposes, the distribution area for the leaflets was the same as the catchment area. The consultation was skewed towards the school community.

Billy MacIntyre: Can I respond to that, convener?

The Convener: Yes, absolutely.

Billy MacIntyre: The consultation was not “skewed towards the school community.”

On the one hand, you have on a number of occasions made the point that it should have been a more confined local area, but on the other you have also said that we should have issued leaflets to the whole of Edinburgh.

We identified that area in November 2012 and no issues were expressed about it at the time. We leafleted approximately 14,500 households in the area with the purpose of raising awareness of what we were doing. That was the area that we

considered to be most directly affected; in other words, it was the area in the proximity of the park.

We took a variety of measures to publicise our proposals beyond that. However, we leafleted that area twice because we felt that it was important that the local community—I remind you that that is the area that would be designated as having free use of the 3G pitches—was made explicitly aware of the proposals. That is perfectly fair and perfectly reasonable.

Stephen Hawkins: You may take that as being “perfectly fair and perfectly reasonable”.

You will also be aware that any concerns that were raised were ignored.

Billy MacIntyre: I am sorry, Mr Hawkins. I am not aware of what you are referring to.

Stephen Hawkins: You are not, but perhaps it relates to other members of your team. I am asking you to agree with us that, to all intents and purposes, the distribution area was more or less the school catchment area.

Billy MacIntyre: The distribution area was similar to the school catchment area, but was designated according to an entirely different purpose. The reason why the school catchment area was shown in that report was to illustrate that it was different.

Stephen Hawkins: By what percentage of the population was it different?

Billy MacIntyre: I do not have that information. You can see the differences.

Stephen Hawkins: I accept that there are very slight differences, but for all practical purposes the areas are the same.

Charles Livingstone: Mr Hawkins has a point behind the questions. We could maybe cut directly to that.

The Convener: We have moved off Mr Hawkins. We are going to Ms Cairns now.

Stephen Hawkins: I thought that I had made my point.

The Convener: Yes. It is fine. If I had thought that you were not making the point, I would have said so. That is my role, as convener.

Diana Cairns: Mr MacIntyre said that we thought that the council should have consulted “the whole of Edinburgh.” However, the information leaflet says:

“We are consulting with people in the local community and the rest of the city”.

Billy MacIntyre: I believe that at some point in the past you have suggested that we should have

issued leaflets to the whole of Edinburgh. Is that not correct?

Diana Cairns: No. I am saying that if you did not issue leaflets to the whole of Edinburgh, you were not consulting.

Billy MacIntyre: We were. The point that I was making—I am happy to be corrected if you did not say this—was that you felt that we should have issued leaflets to the whole of Edinburgh. That would not have been sensible or practical, and it certainly would not have been cost efficient. We chose to distribute leaflets to people in the local area, which we have just discussed. However, we identified a range of other means to highlight and draw awareness of our proposals to the rest of Edinburgh. We were successful in that, in the light of the significant number of responses that were received from outwith the local area.

Diana Cairns: I suggest, in that case, that what was on the front of the leaflet was a misrepresentation because you did not properly consult the rest of Edinburgh.

Billy MacIntyre: Well, we did.

Stephen Hawkins: In consulting the rest of Edinburgh, how did the rest of Edinburgh get the information?

Billy MacIntyre: The information was freely accessible on our website. Attention was drawn to that in a number of ways, including through social media. As you will be aware, the story was carried regularly in the Edinburgh and local press. As I have said, the responses from Edinburgh and from far beyond Edinburgh speak volumes about the extent to which there was awareness of the proposals outwith the local area.

Stephen Hawkins: I suggest that the level of response from outside the area was as a result of two opposing community groups within the area rather than the efforts of the council.

What has been in the local media—principally the *Edinburgh Evening News*—are articles about Portobello high school that are not necessarily promoting the consultation. The only other thing that you mentioned was social media, but you are aware that a large number of people do not use social media.

One of the ways that you promised to make information available to other people in Edinburgh was through the libraries. You did not mention the libraries because, quite often, it was very difficult to get information from the libraries. The people in our library in Portobello vaguely remembered receiving that consultation information, but they did not know where it was at the time. When I inquired at the central library, staff there had no idea what I was talking about. They thought that the material might be in the Edinburgh room, but

the Edinburgh room was closed. No one could find the information—and I specifically went in to ask for it, because I am awkward.

I suggest, therefore, that you did not distribute information throughout the rest of Edinburgh and you did not make the council's proposal clear to the people in the rest of Edinburgh—they did not really know about it—but you made it very clear within the area of the school and in the feeder catchment areas.

The Convener: I am trying to get some questions rather than statements of fact. What you were saying was relevant, which is why I did not stop you, but this is a cross-examination. We started this at 11.43; it is now 12.40 and we have not got through the first category.

Stephen Hawkins: I know—it was Mr Martin's fault.

The Convener: I am not apportioning any blame—I am just pointing out what the time is. We have not yet covered alternative sites. Do you wish to ask any questions on that issue?

Alison Connelly: I have a couple more points about the consultation and the information used in it. During the consultation process, the council omitted to advise the public that the contract might need to be retendered. Can you tell us whether that was a conscious decision? Everything in the consultation was geared towards giving the impression that the contract was ready to be awarded.

Billy MacIntyre: It does not need to be retendered. I am not sure how you have come to that conclusion.

Alison Connelly: I suppose that two subsequent points arise. In April 2012, the children and families department reported to the City of Edinburgh Council, recommending that the tender from Balfour Beatty be accepted and

“that a contract be entered into with them ... on ... condition that the existing appeal be first either successfully concluded in favour of the Council or withdrawn”.

Neither of those conditions has been met.

Billy MacIntyre: That has been superseded by the council's subsequent decisions to change the basis of the terms of the contract with Balfour Beatty, most recently on 6 February 2014.

Alison Connelly: Has the council been formally asked to approve the awarding of the contract to Balfour Beatty?

Billy MacIntyre: It did so in 2012, and it approved the amended terms of the contract on 6 February 2014.

Alison Connelly: So it has approved the awarding of the contract as well as the amended terms.

Billy MacIntyre: Yes.

Alison Connelly: I looked through the information and could not find that, but perhaps you can clarify exactly where I can find the awarding of the contract.

Billy MacIntyre: The council has approved Balfour Beatty on the revised contract terms. That was what it approved on 6 February this year.

Iain Strachan: The private bill process is not of direct relevance to the appointment of the contractor. The important point is that the park is by far the cheapest, the quickest and, most important, the best quality option for the new school.

Alison Connelly: But that is exactly the point that we are trying to make. That is all that the council could say throughout the consultation process, but it could not provide the detail behind that. That is exactly what we are complaining about. The council did not tell us that there might be a risk of the tender having to be rerun—

Billy MacIntyre: It was not.

Alison Connelly: I think that it is a risk—

Billy MacIntyre: No, it is not.

Alison Connelly: I quote the Scottish Government guidelines on procurement, which say:

“in open and restricted procedures”—

The Convener: I will have to stop you there. Procurement is not an issue for the committee.

Alison Connelly: It is very important in demonstrating the transparency that existed during the consultation period.

The Convener: I understand the points that you are trying to make, which is why I have allowed an hour for one category. You can put all those points on the record, but you will be taking time away from issues that the committee can look at. It is up to you. You can talk about procurement and take time away from issues such as loss of amenity and park, the traffic and so on that I and the committee can look at. I cannot look at procurement.

Stephen Hawkins: On the previous point, the council has forever said that this is the quickest way. For clarity, then, I wonder whether Mr MacIntyre will confirm that the council will not need to retender and that there is no risk of a legal challenge.

Charles Livingstone: I am sorry, but this issue was dealt with in the previous session, when the

council confirmed that it is aware of its obligation under procurement law and that it will comply with it, and the convener confirmed that it is a matter for the council and not one for the committee. I am therefore not sure of the relevance of the question.

12:45

Stephen Hawkins: I would like to have the council's position on the public record—

The Convener: It was put on the record in the previous session. It is in the *Official Report*.

Stephen Hawkins: So there is no chance of a legal challenge and you will not be retendering.

Charles Livingstone: Mr Hawkins, this was dealt with in a previous session.

The Convener: It is in the *Official Report*.

Stephen Hawkins: I will take instructions from you, convener.

The Convener: As I have said, the *Official Reports* of the previous evidence sessions, of which you were given copies prior to this meeting, show that those questions were asked and answers provided. The answer is still the same, and I would have picked it up if it had been different. The issue is a matter of record.

I want to make everyone aware of our time constraints and that we have to finish at 1 o'clock. Do you have any more questions about consultation or do you want to move to alternative sites?

Alison Connelly: I had some more questions about the consultation, but I will skip them just now because I do not think that there is much to be gained.

I have a couple of questions about alternative sites. The council has made the comment that the Atkins study is unachievable, and at the evidence session on 26 March said that it had been "discounted". However, none of the reasons that have been given for that is particularly convincing, given that all the circumstances that you mentioned exist to a greater extent at James Gillespie's high school, where an on-site rebuild is going ahead. Can you explain that conundrum?

Billy MacIntyre: It is not a conundrum, Ms Connelly. The council is well experienced in school design and what will and will not work. At the previous meeting, I gave the committee a clear explanation of why, as soon as I saw it, the Atkins survey was dismissed, and I do not want to waste any more time repeating that.

Alison Connelly: Did you dismiss the Atkins feasibility study?

Billy MacIntyre: The Atkins feasibility study was dismissed some time ago when I looked at the available options for building the school now. The answer to your question is yes, I dismissed it. I am the sponsor for this project. One of the main reasons for dismissing it was because it was predicated on a rebuild on the current site, which is just not possible. A rebuild on the site has been identified as a fallback option, but only if the site is extended to include the site that is currently occupied by St John's RC primary school. As I have said, I provided a full explanation of all the reasons at the previous meeting.

Alison Connelly: I was struggling to find anything in writing or in a report to the council that explained when and why the decision—

Billy MacIntyre: I think that you will find the reference to Atkins in the council report of November 2012—or perhaps it was October.

Alison Connelly: I do not think that it explains the point—

Billy MacIntyre: Ms Connelly—

Alison Connelly: You are not—

The Convener: Mr MacIntyre, please give Ms Connelly a chance to ask her question.

Alison Connelly: I am trying to ask when the decision was made that Portobello high school could be rebuilt only if St John's was relocated first. That was suddenly dropped in as an assumption, and there was nothing to demonstrate the point at which that decision was made.

Billy MacIntyre: I think that you will find that, in any event, the decision predated my joining the council, because the option in question was not one of those that were subject to statutory consultation back in 2006. I am not sure of the relevance of the question.

Alison Connelly: You are right about 2006, but in 2003 and 2004 it was available as an option. When we got to 2006 and the council had made it clear that it wanted to build on the park, the option had become that the school could be rebuilt on site only if the primary school was relocated. When was that decision made?

Billy MacIntyre: In advance of 2006? I do not know.

Alison Connelly: Perhaps someone else does. I have searched everywhere I can, and I cannot find the answer to that question. Perhaps Mr Strachan remembers.

Iain Strachan: No, I do not.

Alison Connelly: The point is important because, according to you, one of the biggest disadvantages of the existing site is that the

school cannot be rebuilt on it unless St John's moves. I do not know where you came to that conclusion, because there is nothing to evidence it.

The Convener: I do not know either, but again that is not for us to look at as part of the bill.

Alison Connelly: I was asking the question under the category of alternative sites.

The Convener: That is why I am allowing you to put your points on the record but, again, it is not an issue that I or the other committee members can look at as part of the bill.

Alison Connelly: In the information that has been provided, there is a lot of talk about the swimming pool being available for community access. Do you agree that, regardless of where it is built, the new school could have a swimming pool that could be available to the community, much like the one at the current high school?

Billy MacIntyre: Yes.

Alison Connelly: So it is irrelevant to the question of where to build the school.

Billy MacIntyre: The inclusion of a swimming pool in the design? Yes.

Alison Connelly: It is irrelevant to the decision about—

Billy MacIntyre: I have never suggested anything to the contrary.

Alison Connelly: Okay. It is just that it was given as one of the advantages of the new school during the consultation process.

Billy MacIntyre: Not by the council.

Stephen Hawkins: Saying "Not by the council" is a throwaway remark, but people in the community thought that they could turn up with a swimming towel rolled up. You are aware of that; I have spoken to you about it. It may not have been given out crystal clear by the council, but an impression was created by the council that allowed people to interpret it in that way.

Going back to the Atkins study, I note that you said at a previous meeting that a rebuild on site was discounted. To clarify, it was not discounted but there was just not enough money to take the project forward at that time. That is correct, is it not?

Billy MacIntyre: Sorry. When?

Stephen Hawkins: At a previous evidence session, you dismissed a rebuild on site because it was discounted. Those were your words.

Billy MacIntyre: Discounted when? Remind me, please, Mr Hawkins, about the time.

Stephen Hawkins: You were not specific about the time. You just said that it was discounted, but it was not. It would have gone ahead if there had been enough money in the PPP2 pool of money. In fact, it was held as a reserve. Just to clarify that point, it was not discounted, was it? It is just that there was not enough money.

Billy MacIntyre: I do not know. I cannot comment on that. It predates my involvement.

Stephen Hawkins: You did tell us that it was discounted, so you could comment on it at one point, but not now.

The Convener: Can you point to where that was said in the *Official Report*?

Diana Cairns: Yes, it was said on 26 March, in Mr MacIntyre's evidence.

Billy MacIntyre: Can you refer to the page?

Diana Cairns: No. I am sorry. I cannot, but you stated that when the council officers—

Alison Connelly: It is in column 206.

Diana Cairns: It says:

"When the council officers considered the proposal in detail at the time",

which was in 2003,

"it became clear that that would be unachievable, so it was never progressed further."

You also stated:

"An option to rebuild the school on the current site was considered and discounted."—[*Official Report, City of Edinburgh Council (Portobello Park) Bill Committee*, 26 March 2014; c 206, 172.]

Billy MacIntyre: Where is the reference to the option being discounted? I am not following that.

The Convener: Are you reading from the *Official Report*, Ms Cairns?

Diana Cairns: No, I am reading from my notes, which I have extracted from the *Official Report*.

The Convener: Well, we are looking at the *Official Report*.

Alison Connelly: The quote is:

"When the council officers considered the proposal in detail at the time",

which was in 2003,

"it became clear that that would be unachievable, so it was never progressed further."

Billy MacIntyre: What is the column reference?

Alison Connelly: It is column 206.

Billy MacIntyre: I have got it. Yes, that is my understanding.

Alison Connelly: You said:

"it became clear that that would be unachievable, so it was never progressed further."—[*Official Report, City of Edinburgh Council (Portobello Park) Bill Committee, 26 March 2014; c 206.*]

Billy MacIntyre: Yes. That was my understanding.

Alison Connelly: So it did go in as the first reserve to PPP2.

Billy MacIntyre: I do not know what detailed design went in.

Alison Connelly: It did, according to a council report.

Stephen Hawkins: Just to cut it short, the point that we are trying to make is that it is being made out that a rebuild on site is not possible at all, yet it was, and it still is.

The Convener: I understand that Ms Cairns wants to comment, but Mr MacIntyre can reply first.

Billy MacIntyre: Our fallback option is a phased rebuild on the current site.

Diana Cairns: As you know, we have submitted a document that says quite clearly in relation to PPP2 school rebuilding projects:

"Should either Tynecastle or Craigroyston be delayed unacceptably they will be withdrawn from PPP2 and substituted with Portobello. A feasibility study for Portobello already exists. This is being updated, together with appropriate costs, to ensure that should the need arise it can be slotted into the scheme with the minimum of delay."

That does not sound to me like a project that has been discounted.

Billy MacIntyre: I am not sure what the point is, I am afraid, convener.

Diana Cairns: The point is that it was not discounted and it was not unachievable.

Charles Livingstone: I am sorry, Ms Cairns. I think that the quotation that you just read said that a feasibility study was being updated.

Diana Cairns: Yes.

Charles Livingstone: If that is a reference to Atkins, it is obviously not a reference to Atkins as it stood. Some change to the proposal would have been implicit in that language, but if you cannot provide any more evidence, there is not much that we can say about that.

Diana Cairns: I think that, if the council says that it was ready to be slotted in, that meant that rebuilding the school on its current site without moving St John's was considered to be a viable project.

Billy MacIntyre: I am not aware of the timeline of what transpired between 2003 and 2006. However, I remind you that the statutory

consultation that was undertaken of three options in 2006 was based on the extended site of the current Portobello high school and St John's RC primary school.

Alison Connelly: Can we remind you of our original question, which was when that decision was taken?

Billy MacIntyre: I do not know at which point prior to 2006 that decision was taken. However, I am honestly not sure of the point's relevance, because that remains as a fallback option.

The Convener: As it is 5 to 1, I ask for final questions, if there are any.

Stephen Hawkins: Sorry, do you mean questions on this category?

The Convener: Yes, just on this category, given that we have spent an hour and 15 minutes on it.

Diana Cairns: I have a few questions for Mr MacIntyre.

James Gillespie's school is currently being rebuilt and is near completion.

Billy MacIntyre: It is currently being rebuilt, but it is not near completion. The project has just started.

Diana Cairns: It is currently being rebuilt on its existing site. What size is that site?

Billy MacIntyre: It is 2.3 hectares.

Diana Cairns: And how many pupils is that school for?

Billy MacIntyre: It is for 1,150 pupils.

Diana Cairns: Right. The new Boroughmuir high school building has recently received planning permission, has it not?

Billy MacIntyre: It has.

Diana Cairns: What size is that site?

Billy MacIntyre: It is 1.3 hectares.

Diana Cairns: And how many pupils is that school for?

Billy MacIntyre: It is for 1,165 pupils.

Diana Cairns: Right. If schools with those capacities can be rebuilt on sites of those sizes, surely Portobello high could be rebuilt on its existing site.

Billy MacIntyre: I beg to differ. The planning requirements around the Portobello area would restrict the new building to three storeys. To include all the provision that we want to see on the new site, including two full-size pitches, we believe that the best option is Portobello park. You have previously asked why we build schools on smaller sites elsewhere in the city. It is because the

availability of space—*[Interruption.]* If I could finish, rather than have you pointing at me.

Diana Cairns: I was putting my finger up, not pointing.

Billy MacIntyre: The availability of space elsewhere in the city is significantly more constrained. We have in Portobello an area of relatively unused space that we believe would be a better location for the new school.

Boroughmuir and James Gillespie's have extremely constrained sports facilities relative to most other secondary schools in the city. In fact, contrary to what was suggested at one of the most recent evidence-taking sessions, most secondary schools in the city have two pitches, and many have more than two. We are trying to deliver the best school that we can deliver in the Portobello area, and there is more space available in that area to provide that school.

Diana Cairns: Would you consider rebuilding James Gillespie's on Bruntsfield links?

Billy MacIntyre: That has not been considered. Bruntsfield links is a very well-used area of space.

Diana Cairns: Would you consider rebuilding Boroughmuir on Harrison park?

Billy MacIntyre: That has not been considered. Again, that is a very well-used area—

Diana Cairns: So why—

The Convener: Ms Cairns, the question has no relevance to the bill.

Diana Cairns: I think it—

The Convener: You might think it does, but it does not have any relevance to the bill.

Diana Cairns: I am questioning the rationale behind insisting on building on this land at all costs when there are alternatives that could provide an excellent new school for Portobello and preserve what is, despite what people might say, a well-used and well-loved park.

The Convener: So, there is no question, just that statement.

Diana Cairns: Well, I had asked Mr MacIntyre a question, but you jumped in.

Billy MacIntyre: I have made clear on many occasions—including earlier this morning and in the previous evidence-taking session—the many disadvantages that would be associated with building on the current site rather than on Portobello park.

The Convener: Thank you. That concludes the evidence-taking session for today.

Meeting closed at 12:59.

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