



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE

Thursday 12 June 2014

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**CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE
8th 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

CLERK TO THE COMMITTEE

Mary Dinsdale

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

City of Edinburgh Council (Portobello Park) Bill Committee

Thursday 12 June 2014

[The Convener *opened the meeting at 10:00*]

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

The Convener (Siobhan McMahon): Good morning and welcome to the eighth meeting in 2014 of the City of Edinburgh Council (Portobello Park) Bill Committee. Our only agenda item is completion of the bill's consideration stage.

As members know, last week a number of amendments by interested parties were suggested for lodging. I considered some of those amendments to be inadmissible, and those which I considered admissible were published on the Parliament's website. Comments on the published amendments were received and circulated to members on Friday and published on the Parliament's website. None of the amendments suggested to members last week has been formally lodged by a committee member.

Our task, therefore, is to consider the one amendment that has been formally lodged by a member of this committee: amendment 1, in the name of Alison McInnes. In addition, we are required formally to agree each provision of the bill at the appropriate point. Only members of the committee are permitted to participate in today's proceedings.

Members should have with them the bill and the marshalled list; as there is only one amendment, there are no groupings. First, I will call Alison McInnes to speak to and move amendment 1; I will then invite other members of the committee to contribute if they so wish before asking Alison McInnes to wind up and indicate whether she will press or withdraw the amendment. The amendment may be withdrawn only with the committee's unanimous agreement. If the amendment is not withdrawn, I will put the question on it. If we are not agreed, I will call a division, which will be conducted by a show of hands. If the result of the division is a tie, I, as convener, will exercise a casting vote.

Sections 1 and 2 agreed to.

After section 2

The Convener: Amendment 1 is in the name of Alison McInnes.

Alison McInnes (North East Scotland) (LD): In its preliminary stage report, the committee agreed to address concerns that the site might be used for a purpose other than the proposed educational function, should that purpose for any reason fail, by way of an amendment to the relevant section of the bill.

By way of background, I note that, in response to the committee's decision, the promoter put forward the terms of a proposed amendment that it felt would meet the committee's concerns and put beyond doubt that the park's inalienable common good status would be preserved in circumstances where it was no longer to be used for an educational purpose. An independent drafter was invited to consider the promoter's proposed draft amendment to ensure that it was sufficiently tight to deal with the committee's concerns and to provide an alternative if the view was that the draft did not achieve its proposed aim. It was subsequently advised that an alternative amendment could provide tighter safeguards, and the alternative amendment is the one that has been lodged in my name.

As we are all now well aware, the legislative background to the dilemma over local authorities' powers to deal with common good land relates to the Local Government (Scotland) Act 1973. Of relevance to the bill are sections 73 and 75 of that act. Section 73 confers power on a local authority to appropriate land vested in it for the purpose of any of its functions for a different function, but section 75(1) qualifies that in relation to common good land by providing that the power of appropriation of land belonging to a local authority applies to common good land

"with respect to which ... no question arises as to the right of the authority to alienate."

The implication is that where common good land is inalienable the power under section 73 does not apply and it is not possible to appropriate it from one use, such as recreation, to another use, such as education.

Sections 75(2) and (3) of the 1973 act provide a means for a local authority to apply to the Court of Session or the sheriff court for authority to dispose of inalienable common good land. However, sections 75(2) and (3) do not apply where a local authority wishes to appropriate the inalienable land for a different function. With apparently no other feasible mechanism to address that legal anomaly, the City of Edinburgh Council sought legal authority from the Parliament to appropriate the park for educational purposes.

Section 1 of the bill allows the promoter to appropriate the park for educational purposes by stating that the park is no longer to be treated as inalienable common good land for all purposes. To the extent that the promoter wishes to appropriate the park for its purposes as an education authority—specifically, its duty to provide sufficient school accommodation—the park is to be treated as being capable of being so alienated. When that provision is read alongside the 1973 act, we see that the permission to alienate for educational purposes permits the council to use sections 73 and 75 of the 1973 act to appropriate the park for that purpose.

Section 2 provides that the existing title conditions cannot prevent the council from using powers under the 1973 act in respect of the park. As a result, the title conditions may not be enforced to the extent that the council would be prevented from exercising those statutory functions.

The committee is keen to ensure that, once the park's status has been changed for the limited purposes in question, inalienable common good status should automatically reapply if that use ceases. The purpose of amendment 1, therefore, is to provide safeguards for any future use of the land and to protect its inalienable common good status in circumstances where the land is no longer used for an educational purpose.

Amendment 1 is designed to ensure that if the park is appropriated under the terms of the bill and if it then ceases to be used for educational purposes, it will revert under the terms of the bill to its legal status and be subject to the title restrictions on its use at the time of the cessation of use. The amendment also allows for the situation where the appropriation occurs but for whatever reason the park is not in practice used for educational purposes. In such a case, if the park is not used for educational purposes within a period of 10 years—if, for example, school accommodation was not provided—the legal and title restrictions will once again apply to the park when that period expires. In either situation, the legal and title restrictions will reapply to the park's use to ensure that it is used for either educational purposes or recreational use and that it cannot be appropriated for other council functions. The general law relating to regulation and disposal of common good land, including inalienable common good land, remains unchanged.

I move amendment 1.

The Convener: As no other member wishes to comment, I invite Alison McInnes to wind up.

Alison McInnes: I do not think that I need to wind up, convener. I have given a fairly comprehensive explanation of what I am trying to

do with the amendment, and I will therefore press it.

Amendment 1 agreed to.

Sections 3 to 5 agreed to.

Long title agreed to.

The Convener: That ends consideration stage of the bill. As the Parliament agreed yesterday that the final stage will take place on Thursday 26 June, the deadline for lodging final stage amendments will be 4.30 pm on Monday 23 June. Any member of the Parliament may lodge such amendments. The as amended version of the bill will be available on the Parliament's website by tomorrow morning.

It is for me as committee convener to lodge the motion necessary for the Parliament to decide whether the bill be passed. Are members content for me to lodge such a motion?

Members indicated agreement.

The Convener: Thank you. That concludes today's meeting.

Meeting closed at 10:07.

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e-format first available
ISBN 978-1-78457-605-9

Revised e-format available
ISBN 978-1-78457-619-6

Printed in Scotland by APS Group Scotland