

EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

Tuesday 14 September 2004

Session 2

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CONTENTS

Tuesday 14 September 2004

	Col.
ITEM IN PRIVATE	5
LATE OBJECTIONS	6
SITE VISIT	14
FACT-FINDING VISIT	15
NATIONAL AUDIT OFFICE	16
REVIEW OF FINANCIAL CASE	17

EDINBURGH TRAM (LINE ONE) BILL COMMITTEE **2nd Meeting 2004, Session 2**

CONVENER

*Jackie Baillie (Dumbarton) (Lab)

DEPUTY CONVENER

*Phil Gallie (South of Scotland) (Con)

COMMITTEE MEMBERS

*Dr Sylvia Jackson (Stirling) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

CLERK TO THE COMMITTEE

Jane Sutherland

LOCATION

Committee Room 5

Scottish Parliament

Edinburgh Tram (Line One) Bill Committee

Tuesday 14 September 2004

[THE CONVENER *opened the meeting at 11:30*]

Item in Private

The Convener (Jackie Baillie): Good morning, and welcome to this Edinburgh Tram (Line One) Bill Committee meeting. Let us get straight on with the agenda.

Item 1 is consideration of whether to take items 6 and 7 in private. Members have suggested that we should take item 7 in private, but that there is no reason to take item 6 in private. Do members agree with that suggestion?

Members *indicated agreement.*

Late Objections

11:31

The Convener: Item 2 is consideration of late objections. Committee members have been provided with a paper that details the late objections. Before we consider the paper, I remind members of their role at this stage. The committee is required to consider the eight late objections to the bill and to decide whether each objector has shown good reason for not lodging the objection within the specified period. I propose to consider the objections one at a time.

The first objection is from Scottish Natural Heritage. The lateness of the objection is down to the private bills process. SNH had understood that it would be a statutory consultee; however, as members will know, that is not the case in the private bills process. Are we happy with the reason that has been given?

Michael Matheson (Central Scotland) (SNP): I am happy with that. It would be helpful to clarify whether arrangements to address the problem will be made for future private bills.

The Convener: Yes, that would be helpful. We should avoid future repetition of this.

I have just been told by the clerk that the Procedures Committee is conducting an inquiry into the problem. We will refer the matter to that committee.

The next objection is from PW and Dr JM Gossip. The reason for lateness is to do with the post. The objection was posted on 20 March, but there was a delay before the private bills unit received it. The delay was minimal; the unit received the objection on 2 April. Members may recall that the closing date was 29 March. Is the reason for lateness acceptable?

Members *indicated agreement.*

The Convener: The next objection is from Judith Pearson. The text of the objection was received on 29 March, but the fee was not received until 7 April—because of pressure of work and the objector's being on holiday. Is that acceptable?

Members *indicated agreement.*

The Convener: The next objection is from Eric Innes. The objection was received on 13 April. In this case, there was a delay in the landlord of a property receiving notification because he was not living at the address. Is that an acceptable reason?

Members *indicated agreement.*

The Convener: The next objection is from CHAG—I do not know what the acronym stands for and no one could enlighten me. The objection was received on 18 August. The reason for the lateness of the objection was that the objectors were unaware that a private bill had been introduced, because they were not contacted by Transport Initiatives Edinburgh. In addition, the objectors had believed that, in reaching the current proposed route, TIE had undertaken all the necessary modelling. However, they are not now convinced that that modelling took place.

Phil Gallie (South of Scotland) (Con): We are talking about a local community group. People have come together to raise what they consider to be important issues. I acknowledge that it is not setting a good precedent to accept objections as late as this one but, under the circumstances, I see no disadvantage in accepting it. In fact, I see every advantage in accepting it, as doing so will further communication with the local people.

Michael Matheson: It is worth noting that the submission is very late—it was submitted almost four months after the closing date—although I take on board the reasons that have been given by the group. The group claims that TIE did not contact it. Who did TIE contact? Under what criteria was it operating in contacting interested parties?

Jane Sutherland (Clerk): Under standing orders, the Presiding Officer has determined that certain classes of people should be contacted directly, for example people who have a heritable interest.

The Convener: In addition, concerns would be raised by a number of people, particularly the individuals, community organisations and others who managed to object within the specified period prior to 29 March. Clearly, this objection was submitted much later than those objections.

Dr Sylvia Jackson (Stirling) (Lab): What is the process for people who are not contacted directly under the procedure that the clerk outlined? How did communities find out about this matter?

Jane Sutherland: Under standing orders there is a requirement to provide notification in newspapers. Two adverts were run in each of the *Edinburgh Evening News* and *The Scotsman*. TIE used a range of other mechanisms, which are detailed in the promoter's memorandum, such as roadshows, public meetings and a consultation leaflet that went out to a wide range of people.

Dr Jackson: Are community councils automatically told?

Jane Sutherland: No, I understand that they are not automatically told.

Dr Jackson: It might be useful if key community groups were informed.

The Convener: We can take that point on board.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): Given that, under the normal local authority planning process, community councils are statutory consultees—I am coming at this from a position of ignorance—I find it odd that in this case they are not. Why is that?

Jane Sutherland: At the moment, the guidance does not dictate that they must be consulted, therefore they are not.

The Convener: The guidance is silent on that. Nevertheless, substantial attempts were made to notify other groups through newspaper adverts, public meetings and leaflets. This is a subjective view, but I do not think that there can be many people in Edinburgh on the route of the tramline who could have missed the proposal. That said, Phil Gallie has suggested that we allow the objection to proceed. Do other members have a view?

Dr Jackson: I have some sympathy if the information has not gone through a community council route. I can see why there must be cut-off points, but I have become more and more aware through our work that people often do not find out about things until quite a late date.

The Convener: I accept the point, but in mitigation the group is not a community council. Other community groups have been able to object in the allotted time, which suggests that there is a degree of awareness along the route of the tramline. It is a matter for members, and at the end of the day I am open to suggestions. Phil Gallie made his point. I gather that you have some sympathy with it, Sylvia.

Dr Jackson: I do, because community councils have not been told. They are key organisations, and should be involved in the process.

The Convener: Do I take it that members want the objection to proceed?

Mr Stone: I go along with that, but somewhere we should minute the fact that the objection is four months late, and that our allowing it to proceed does not set a precedent for anyone who wants to object non-timeously. We should put a star on this objection and say, "Okay, we're into new territory, but don't think that this is going to be the shape of things to come for other bills." Otherwise, we will be giving a hostage to fortune.

Phil Gallie: As we scrutinise the bill, we will identify all kinds of issues, particularly at the preliminary stage. It seems to me that there is every chance that people might recognise points of value to which they feel that they should object or to which they should draw the committee's attention. Is there any means by which they can

do that or is that it, now that we have received all the objections?

The Convener: I understand that once we commence preliminary consideration, that is it. All those who have objected and whose objections are deemed to be admissible will be considered. However, I do not think that there is scope for more objections once we reach the end of the preliminary stage. The cut-off point will be when we move into the detail of the bill.

Phil Gallie: On that point, and given what Jamie Stone said, it seems to me that we are not really in a position to enforce the 29 March deadline. On that basis, objections that come in late should be considered on their merits at this point. Is that right?

The Convener: No. My clear understanding is that we have to apply a test of reasonableness as to whether it is legitimate that objections are late. Certainly, in relation to this objection, members felt that there might have been an opportunity for a wider audience to be notified, which was not done, so they were happy to allow the objection on balance, with Jamie Stone's caveat that the objection's admission must not be seen as a precedent to allow people to make late objections without adequate reason. That is how I interpret the situation; the clerk is not handing me a note, so that must be right.

Phil Gallie: I am sorry to persist, but it is important that we clear this up right now.

The Convener: Absolutely.

Phil Gallie: Does that mean that if one of the objections that we are looking at was deemed to have been submitted late and therefore to be unacceptable, that objection could be relodged and would have to be considered by the committee before the end of our preliminary consideration?

The Convener: We are not considering the substance of the objections at the moment. We are simply considering whether the late objections can be admitted. Once we have decided whether they can be admitted and we come to the stage at which we consider the substance of the objections, they will also be considered.

Phil Gallie: Even if they are inadmissible?

The Convener: No. If the objections are inadmissible, they are ruled out. We are considering whether they can be included in the admissible objections by determining whether there is a good reason for their being late. So far, we have said that they all have good reasons.

Michael Matheson: On the objection that we are considering just now, and in the light of the information that you have given to us, there are

two reasons given as to why it was late. The first is that the objectors were not aware that there was a bill and the second was that TIE had not contacted them. We have established that under standing orders the group was not entitled to be contacted by TIE, so the committee is stating that—given that further objections can be lodged during the preliminary stage—not being aware that a bill was coming before Parliament is a good ground for lodging an objection at such a late stage. If so, that has considerable implications for the committee.

The Convener: That appears to be what the committee is minded to do. However, I am happy to put the matter to the vote if members want that. I am told that we can decide on each objection's merits in respect of the reasons for its lateness and the committee can change its mind later on, although I would welcome consistency in the committee's operation. If members are minded to push the matter to a vote, I am happy to do that. Michael Matheson's interpretation of the situation is one that I share. I am in members' hands.

Michael Matheson: If we can take each objection on its merits, I will be reassured and let the situation stand.

The Convener: CHAG's objection is in. If anybody could find out what that acronym stands for, I would be most obliged.

The next objection is from Maidencraig residents association. The reason why the objection was late was the emergence of new information, which was a recent announcement by the City of Edinburgh Council about developing land that is adjacent to line 1 at Maidencraig. What are members' views?

11:45

Mr Stone: I am not sure whether the objection is strictly relevant, as it concerns a council decision to develop a piece of ground. It is additional. For that reason, I am not sure whether the objection is competent.

I catch the drift that the association knew about line 1 and did not object—so far, so good. The association decided to object when the council weighed in with its announcement. I am in a little bit of doubt about it. If we accepted the objection, the definition would become a bit woolly and—my God—there would be no end to objections.

Phil Gallie: It is difficult to evaluate the objection, given that we are considering lateness and the contents of the objection as presented to us. Does the land development relate to the tramline project?

The Convener: I understand that the development does not relate directly to the bill and

that issues of planning, rather than the private bills process, are involved.

Phil Gallie: Even if the development is a planning issue, is it associated with line 1?

The Convener: The development does not relate to land that falls under the bill's scope, so it is a matter not for us, but for the local authority and its due planning process. Irrespective of the content, we are here to determine whether the lateness is reasonable. I agree with Jamie Stone that the objection is inappropriate for the committee.

Dr Jackson: I tend to agree with you, but I see what Phil Gallie is getting at, so I ask what the development is about.

The Convener: While we find out, I will call Michael Matheson.

Michael Matheson: The development may be taking place on the back of the tramline's construction in that area. However, the residents association could pursue the matter through the local authority's planning process, which would give the objection more detailed consideration than we could, because the development is not linked directly to the bill, although it may be associated with the bill. We might not be able to do the objection justice.

The Convener: That assumption is reasonable. We do not know the precise nature of the development, which the submission in our papers suggests has recently been brought into the public domain. However, it is clear that the subject does not relate directly to the bill.

Mr Stone: If we apply *reductio ad absurdum*, objections might be made because somebody decides to open a fast-food outlet beside a halt or station when the tram is established. Such objections are often made, but they are not pertinent to us. If we do not draw a line, we will be all over the shop.

Phil Gallie: I see no problem with the objection, because we will ultimately consider the merits of all the objections. The project is major and involves huge expenditure. It will affect every citizen who lives around the line especially and every other citizen of Edinburgh. When we have an opportunity to listen to what people are saying about an aspect of the tramline's impact, we should give their views a chance to be aired. At the end of the day, we will decide whether the objection and the bill are related, and we can knock the objection out. However, the objection makes points that must interest the committee and relate to the tramline's long-term impact. It is antidemocratic not to give the objectors at least a chance to have their voices heard later on in the process.

Michael Matheson: As the convener has said, the objection does not relate directly to the bill. It may be associated with the bill, but it is not directly related to it. It is incumbent on us not to mislead an organisation that we can give due consideration to its objection when the matter has to go through the local authority planning process. It is more antidemocratic to kid on to someone that we can do justice to an objection when we cannot. When we reject objections, we must tell the objectors our grounds for rejection and must guide them to where their objections can be given due consideration in a proper democratic fashion.

The Convener: I do not want to cut off the debate, but—although members are expressing a degree of sympathy with the residents association—when we are unable to deal with an issue because a planning authority should rightly deal with it, we should not take on things over which we have no power. That said, part of the objection relates to the impact of the tram on local amenities. However, I do not think that any of the reasons given for lateness are acceptable. It is the reasons for lateness that we are being asked to consider. No indication is given about new or emerging information on the impact of the tram on local amenities or property values. As convener, I therefore suggest that we should reject the inclusion of the objection, because I do not think that the reasons for lateness are adequate. I acknowledge members' considerable sympathy for the substance of the issue raised in the objection, but we are being asked to consider merely the reason for lateness, not the substance. We could go to a division, but I suggest that we do not include the objection.

Phil Gallie: I will not press the issue to a division, but I am pleased that you have answered Michael Matheson's point by saying that the objection relates very much to the tramline and that it is only the reason for the lateness of the submission that is irrelevant to it. Given the rules on late submissions, I do not quite understand how other people can come along with late objections that we can consider. However, I will accept the majority view of the committee.

The Convener: Okay—we will move swiftly on. The next late objection is from a Mr Werninck. His objection was received in time, on 29 March, but the objection fee was not received until 5 April because Mr Werninck was originally unaware of the requirement to include it. Any comments?

Members indicated disagreement.

The Convener: I think the reason is perfectly adequate so we can accept the late objection.

The final late objection is from Historic Scotland. The problem is similar to the one we discussed earlier to do with SNH. Historic Scotland had

assumed that it would be a statutory consultee, but, of course, in the private bills process, it is not. The organisation realised that only when the committee invited it to comment when we wrote on 6 July. Is that a reasonable explanation for a late objection?

Members *indicated agreement.*

The Convener: The clerks will write to each late objector with the committee's decision. If the reason for lateness has been accepted, the objector will be made aware of the next steps in the parliamentary process.

Site Visit

11:54

The Convener: Agenda item 3 is the site visit. Members will recall that the committee discussed a possible site visit to the proposed route of the tramline—really so that those of us who do not come from Edinburgh and are not aware of the fine detail of the city can understand the area that the trams will travel through. Our briefing paper proposes that we should undertake a visit immediately before taking oral evidence. If we agree to go on a site visit, it is expected that we will be able to fix a suitable date within our programme.

The main aim is to give us an overview of the route. It is likely that we will want to go back to specific parts of the route at a later stage to enhance our detailed knowledge. It is suggested that the promoter organise and attend the visit so that it can provide us with further information in response to any questions that we might have, but its involvement with members during the visit would be limited to that role. I send that assurance to objectors, who might question why we are going round with the promoter, which will have a very limited role.

On the basis of the recommendations in the briefing paper, I ask the committee to agree to our undertaking a site visit. If that is acceptable, I ask the committee to confirm that we are comfortable with the promoter arranging the visit around the route under the terms that I have specified. We will agree a date when we discuss our work programme under item 7. Is that acceptable?

Members *indicated agreement.*

Fact-finding Visit

11:55

The Convener: Members may recall that, before the summer recess, we agreed that it would be useful to have a look at a tramline similar to that proposed in the Edinburgh Tram (Line One) Bill. After discussion with TIE, the suggestion is that we go to see the Nottingham express transit system, because that has been identified as the one most similar to that proposed by the bill. Our colleagues on the Edinburgh Tram (Line Two) Bill Committee are also discussing this proposal at their meeting tomorrow, and members will note from the briefing paper that we propose that members of both committees undertake the visit jointly.

Is the committee happy to undertake a fact-finding visit, that the visit should be to Nottingham and that the clerk should seek the necessary parliamentary approval for us to do so?

Members *indicated agreement.*

Phil Gallie: Are the costs of such a visit met by the Parliament or by the promoter of the bill?

The Convener: My understanding is that they are met by the Parliament, which is why we are seeking permission to make the visit.

National Audit Office

11:57

The Convener: Item 5 concerns a briefing from the National Audit Office. It is proposed that we have a joint briefing with the Edinburgh Tram (Line Two) Bill Committee. The National Audit Office has recently published a report into light rail and we would find it useful to consider that report, which makes a number of recommendations.

Given that the promoter and the objectors might find the information that is provided by the National Audit Office study to be useful, it is proposed that the briefing session be in a formal meeting so that the comments can appear in the *Official Report*. Do members agree to that?

Michael Matheson: I have a problem with the date of Thursday 23 September, which clashes with the Scottish National Party conference, so there is a good chance that I will not be at the meeting. I presume that my SNP colleague on the Edinburgh Tram (Line Two) Bill Committee will be in a similar position.

The Convener: That is disappointing. I had hoped that the committee's work would take precedence over your party conference, but I have been proved wrong.

I am sure that we can consider alternative meeting dates, although they will be quite difficult—I will ask the clerk whether it is essential that everybody be present. I understand that we will need to be quorate and therefore will need three members from each committee.

As the briefing will be in the *Official Report*, will that suffice to keep you apprised? Obviously, copies of the National Audit Office report will be available to members.

Michael Matheson: It might be that I can make the meeting, but at this stage, there is a possibility that I might not.

The Convener: We have already approached the Parliamentary Bureau and the Conveners Group for approval because of the timescale that is involved, but the cost should be minimal, so I do not foresee any difficulty with the arrangements. Are members happy with them?

Members *indicated agreement.*

Review of Financial Case

11:59

The Convener: Item 6 concerns the review of the preliminary financial case. We will publish the information that is in paper ED1/S2/04/2/5 along with the minutes—I am conscious of the fact that, although the paper was lodged as a private paper, we are discussing it in public. The paper lays out the specification for the preliminary financial case analysis and suggests four firms that should be approached and invited to tender.

I ask the committee to agree that the draft financial case analysis specification at annex A is acceptable, that the specification should be published—we have already agreed to do that—that the organisations that are listed in annex B should be invited to submit tenders by 23 September and that the committee's consideration of such tenders should be taken in private at a future meeting. Is that agreed?

Phil Gallie: Not quite and not without comment. You ask us to agree that the financial case is acceptable, but when I go through it, a heck of a lot of questions arise in my mind, perhaps because of my lack of expertise. In accepting our nodding it through and sending it to the experts, I presume that they will deal with it and that we will then get a chance to come back on the points of concern.

The Convener: That is exactly right. All that we are agreeing today is the specification so that we can appoint people to do the detailed analysis that will consider all the points that you make.

Phil Gallie: That is fine.

The Convener: Thank you very much. We now move into private, so I ask that the room be cleared. The official report can disappear too.

12:01

Meeting continued in private until 12.14.

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