

The long road to a new Portobello High School continues



Portobello Park Action Group vows to preserve park and urges council to focus on alternative sites for Portobello High and will present a deputation to the Full Meeting of the Council tomorrow 25 October 2012 at 10a.m.

Portobello Park Action Group (PPAG) is urging The City of Edinburgh Council to give up what it calls its costly and time-consuming 'twin track' strategy for a new Portobello High School (PHS) in favour of building on an alternative site. At the same time the group's battle to preserve Portobello Park as common good land continues.

PPAG spokeswoman Alison Connelly said:- "With last month's court decision confirming Portobello Park must remain a recreational space, it's now time to focus on finding a viable alternative site for Portobello High. As a group we are fully committed to doing what is necessary to uphold our values of conserving this valuable environmental space for future generations."

"The council's twin track strategy of pursuing legal action to build on the park whilst looking for alternative sites is not just time consuming and costly but also high risk as there is no guarantee of success. We urge councillors to concentrate on a more realistic strategy."

PPAG does not accept the council proposal that converting part of the existing PHS site back to parkland would compensate for the destruction of Portobello Park.

The story of Portobello High School began in 2006 when the council approved the site in the park for the new High School. The money is in place and in April this year the council approved the change of use of the land in the park as the site for the new building. Subsequently the PPAG successfully appealed to the Court of Session, meaning that the council no longer has the right to build the much needed new school. The legal bar is that the council does not have the right to use or 'appropriate' the land for any purpose, although it does appear to have the right to sell or otherwise dispose of it. The report to the council meeting tomorrow sets out the various options open to the Council now. These include the following:-

- 1. An appeal to the Supreme Court against one, or more, of the legal questions decided by the Inner House of the Court of Session.*
- 2. A review of the status of the land at Portobello Park to establish whether it might be categorised as alienable common good or not part of the common good.*
- 3. Disposal of the intended site for the school at Portobello Park which would be permissible under section 75(2) of the Local Government (Scotland) Act 1973 provided it is sanctioned by the Sheriff Court or the Court of Session.*
- 4. An application to the Sheriff Court or the Court of Session seeking authority to appropriate the Portobello Park site under the above mentioned section 75(2).*
- 5. A petition to the Court of Session to invoke the nobile officium.*
- 6. A change to the existing legislation for which three sub-options have been identified:(i) A Private Act of the Scottish Parliament (promoted by the Council);(ii) An Executive Act of the Scottish Parliament; or(iii) An Order made by the Scottish Ministers authorised by statute.*

The council have discounted an appeal to the Supreme Court on the basis of their legal advice.

The council may apply to classify the park as “alienable common good”. This is a matter which would require a petition to the courts to get a decision. The cost would be about £65,000.

The council could sell off the land. The problem with this is that although it is a neat solution, it is probably one that the court would frown upon, and could be reversed.

The council could ask for court authority to use the land as a site for the school in terms of Local Government legislation. This argument has not previously been used.

The council could apply to the Court of Session to use its overarching power to set out a legal remedy where there is not actually one available. The council views the problem, that they cannot simply use common good land for a use such as a school, as a gap in the law.

The council might seek a change in the law by The Scottish Government, but this would take about five months and around £50,000.

Another piece in the council’s armoury of arguments is that they could alter the plans to improve the park at the same time, by introducing a cycle path for example which is bound to be seen as attractive to the cycling lobby. The argument here is that the amount of land in the park would be reduced but the quality of what is left would be much improved by extra facilities such as two all weather pitches. There is a paragraph in the report which suggests that the future of the playpark in Magdalene Glen is now also tied in with this long-running saga.

The council also make a bold claim in their report, namely that PPAG accept that a new school is urgently required, and

that the campaign group accepts that the park is the most appropriate site. This does not seem to entirely square with what the campaigners themselves say.

Alison Connelly continued:-“We would welcome in principle the restoration of green space that was lost when the existing PHS was built on playing fields. However, the fact remains that Portobello Park is inalienable common good land and cannot be built upon. Moreover, a new park on the current school site would be much smaller than Portobello Park and it would not be protected as common good land, so would be open to development at a later stage.

“In addition the council has already reneged on a previous undertaking to provide replacement open space for that which would be lost, in March 2010, without consultation. We fear this could happen again.

“At this time, it’s crucial for the council to look forward and not lose an opportunity like building on the Baileyfield site, which provides many significant benefits including; no decant to another property, more space than the current PHS, greater access to the centre of Portobello via, road, cycle, pedestrian and bus routes and preservation of our green space.”

Baileyfield has been identified as a suitable location for a new Portobello High and is being considered as an alternative to re-building on the current site. The campaigners suggest that the purchase costs for Baileyfield would be off-set by the sale of the current Portobello High School site.

The other factors which have to be taken into account is that the contractors, Balfour Beatty will only hold to the same contract and price until 30 November 2012, for which the council extends its appreciation. The planning permission for the school remains in force until February 2014, and will fall if the development has not started by then.

Other deputations who will attend the meeting tomorrow include representatives from Portobello High School Parent Council and Portobello for a New School.

We are live blogging the Council meeting under our [TERLive!](#) section and you can also follow [on their Live Webcast here.](#)

The Report is reproduced here:-

[8.1 the New Portobello HS and New St John s RC PS](#)