

Our Ref: sb/dr/1952 01

Your Ref:

Date: 26 September 2012

Dear Ms Dye

NEW PORTOBELLO HIGH SCHOOL

Thank you for your email and attached letter of 23 September 2012 to the Council Leader and I.

The recent outcome of the appeal to the Inner House of the Court of Session was an unexpected shock and outwith our control however please be reassured that the Council remains committed to delivering a new Portobello High School as soon as possible. I would like to reassure you that we are already working very much on the basis which you outline in your letter and, while we recognise there is a need to respond quickly, we do need to take time to fully consider all options in detail.

You raise a number of points in your letter which I will address in turn.

Council Meeting

A report will be taken to the next scheduled meeting of the Council on Thursday, 25 October and this will consider two key questions; what legal options are available to build the new school on Portobello Park and what alternative site options are available in the event that this does not, ultimately, prove to be possible.

Whilst this may seem a long time gap before the issue is considered by Council; the actual paper will be published on 18 October and time is required to ensure this Report provides as much information as possible.

Legal Options

Turning first to the question of an appeal to the Supreme Court; this requires to be lodged within 42 days of the original judgment which is by 24 October. A requirement of any appeal to the Supreme Court is that it be supported by two Counsel who consider the appeal to be reasonable and, to that end, alternative Senior Counsel has already been commissioned to provide an opinion on this matter.

Sue Bruce, Chief Executive

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The amount of material involved in the submissions to the Court was considerable therefore this will take some time to review however we expect this opinion hopefully by the end of next week. Once we have that opinion the approach can be determined and an appeal could be lodged in advance of the Council meeting.

The Council is also, as you have suggested, already concurrently investigating other legal options to deliver the school on Portobello Park. Our external legal advisors were instructed to undertake this assessment on the day the appeal outcome was issued and discussions with the project team are already well advanced. All of the options which you identified in your letter have been included within that assessment together with several others. The assessment of options includes consideration of the potential timescales and options for further challenge.

On the separate question of the actual status of Portobello Park; if it is common good and, if so, is it alienable or inalienable our Legal Services team are already working with external advisors to review this as a matter of some urgency and priority. The very detailed information which has been identified on local social forums has already been identified together with the most recent blog posting by Andy Wightman. I am very grateful for the further information which you passed on in your email and this has already been forwarded to the Legal Team for consideration. Should there be any doubt or question regarding the common good status of Portobello Park then the appropriate action will be taken; seeking a declarator to the Court would be one such route were the circumstances to support that approach.

I note your request for a copy of the information on this topic that has already been released under Freedom of Information [ruling 079/2009 by the Scottish Information Commissioner] and our FOI Team has been asked to progress this as soon as possible.

Alternative Sites

As you may know, in June 2010, as part of the planning application process Smith Scott Mullan Associates were commissioned to update the original feasibility study on potential sites in and around the catchment area and to investigate any changes which had occurred in the intervening period.

Their report, which formed part of the formal planning application submission for the new school, concluded that 'Although we identified a number of changes which had occurred to the sites over an almost four year period, our conclusion from this process was that none of these had altered the fundamental position stated in our initial report'. This report can be accessed on the Council planning portal through the following link <https://citydev-portal.edinburgh.gov.uk/portal/getEdmDoc?docid=532672371>.

The Council Estates team has undertaken a search for any new potential sites in the area. Only one has been identified which is the 'Big W' site which is adjacent to Brunstane Primary School on the other side of the dual-carriageway. The site is 2.76 hectares and, therefore, slightly smaller than the existing school site of 2.9 hectares and just under the required site size for the school buildings only (excluding any playing fields) under the School Premises (General Requirements and Standards) (Scotland) Regulations 1967 which is 2.8 hectares.

The site is well below the originally designated target site size of 4.5 hectares which would have included provision for at least a single pitch. In addition, the location and access is considered to be poor and the site is not owned by the Council so may be expensive to acquire. This is being investigated further.

I understand that a public meeting was held in Portobello last Friday at which one of the points for discussion was the identification of any alternative sites. Obviously those in the local community are, arguably, the best placed to identify any other options which might have arisen since the matter was last considered in detail in June 2010. Whilst the preliminary feedback from that meeting is that no new options were identified, we await the full feedback and will obviously explore anything that has been identified as a possibility. Even at this early stage it is clear that many of the alternative sites in the previous feasibility study will continue to be unfeasible.

Whilst the site at Portobello Park remains, in our view, by far the best site available for a new Portobello High School in, or around, the catchment area if the legal impediment can be overcome; revised consideration must be given to any of the previously identified site options recognising that any alternative would represent a varying degree of compromise by comparison. An initial assessment has been undertaken of the area using the June 2010 report as the baseline point of reference. The previously identified sites have been reviewed and any changes in the interim assessed however consideration of alternatives is ongoing.

The principles which you have identified are helpful and are as would be expected. Whilst some of these principles such as ensuring that we have a school which is both fit for purpose and future proof would be pre-requisites for any option; others may be more difficult to achieve in light of the very limited options which exist for alternative sites.

Portobello Golf Course

Portobello Golf Course was one of the three options which was considered during the original statutory consultation process during 2006 and rejected in favour of the adjacent Portobello Park.

There were very good reasons why the Golf Course was discounted including the loss of the Golf Course itself; the difficulties and costs associated with any re-provision and also issues of accessibility and traffic due to the increase in traffic flows in surrounding residential areas.

However, one of the main issues remaining regarding the area occupied by the Golf Course is the same one which has beset the plan to build on Portobello Park and that is the status of the land and whether it is common good and, if so, if it is either alienable or inalienable. Our Legal Team and external advisors have also been asked to review this matter.

Regarding Jubilee Status, the following motion relating to Queen Elizabeth Fields by Former Councillor Hawkins was remitted from the Council meeting on 26 April 2012 to the meeting of the Transport, Infrastructure and Environment Committee on 18 June 2012 at which the motion was approved.

“Council notes the excellent commitment given to the commemoration of the Queen’s Diamond Jubilee by proposing 24 parks as dedicated greenspace by Fields in Trust. This act protects public greenspace and contributes to the advancement of equality of opportunity by ensuring that communities have access to recreational greenspace near to where they live.

Council will be aware of the contentious nature of building on Portobello Park, which forms a substantial area of parkland in Portobello and Joppa, whilst the continuation of Portobello Golf Course is uncertain in the medium term.

Therefore, Council agrees to include the area known as Portobello Golf Course as an addition to the agreed list to be dedicated as a Queen Elizabeth Field and instructs officers to conclude the necessary arrangements with Fields in Trust.”

Regarding the request to suspend with immediate effect any discussions with any groups on this matter, as this is currently an approved instruction from Committee this would require the approval of Committee to any variation thereto.

Public Meeting

I note your request to convene a Public Meeting in the Town Hall at Portobello, within 10 working days of the date of this letter, to be attended by senior officials and all relevant councillors, in order that the community can put questions directly to them, and seek reassurances on the various routes that you are pursuing.

I can fully understand why you have requested this and would like to reassure you that it is our intention to consult fully with the local community on our next steps but we can only do this once we have clear information on the potential next steps for the school. I would, however, consider that the best time to do this would be after the forthcoming Report is considered at Council.

However, if there are any immediate questions which I have not been covered in this response please address them directly to the project sponsor, Billy MacIntyre, who can be contacted by email on billy.macintyre@edinburgh.gov.uk.

Yours sincerely



SUE BRUCE
Chief Executive