



OFFICIAL REPORT
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Local Government and Communities Committee

Wednesday 10 May 2017

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
14th Meeting 2017, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

*Elaine Smith (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*Graham Simpson (Central Scotland) (Con)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Caroline Dicks (Scottish Government)

Alastair Hamilton (Fife Council)

Paul Kettles (Perth and Kinross Council)

Kevin Stewart (Minister for Local Government and Housing)

Kevin Wright (Aberdeen City Council)

CLERK TO THE COMMITTEE

Clare Hawthorne

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 10 May 2017

[The Convener opened the meeting at 10:01]

Strategic Housing Investment Plans

The Convener (Bob Doris): Good morning, and welcome to the 14th meeting in 2017 of the Local Government and Communities Committee. I remind everyone present to turn off mobile phones. As the meeting papers are provided for members in a digital format, members may use tablets during the meeting. That is normal and that is what we are doing if you see us on our phones or tablets. We are not doing anything else—I promise you that we are looking at our papers. We have a full house today; no apologies have been received.

Agenda item 1 is on strategic housing investment plans. The committee will hear from the Minister for Local Government and Housing on strategic housing investment plans, or SHIPs, as they have become commonly known. I welcome Kevin Stewart. Good morning, minister.

Kevin Stewart (Minister for Local Government and Housing): Good morning.

The Convener: I also welcome Caroline Dicks, who is head of affordable housing, and Lisa Bullen, who is planning team leader, with the Scottish Government. You are both very welcome.

Minister, I think that you have an opening statement for us.

Kevin Stewart: I welcome the opportunity to speak to the committee about local authority strategic housing investment plans, or SHIPs, as you have already called them, convener. The purpose of the plans is to set out the councils' strategic investment priorities for affordable housing over a five-year period in order to achieve the outcomes that are set out in their local housing strategies. We expect the documents to set out investment priorities for affordable housing, to demonstrate how those will be delivered, to identify the resources that will be required to deliver those priorities and to enable the involvement of key partners. I have brought with me the SHIPs that I received prior to Christmas to give folk an indication of what is in the documents. Some are much more comprehensive than others,

which is an issue that I am sure we will come back to.

SHIPs are part of the process that supports the planning and delivery of affordable houses across Scotland, and it is important that they engage with stakeholders and housing providers to ensure that plans are deliverable. Therefore, I expect to see collaboration between local authorities, housing associations, communities, developers, the Scottish Government and other stakeholders in the SHIP development process.

It is important to say that SHIPs are plans and not firm programmes, but they will be the key documents for identifying strategic housing projects to assist in achieving the target to provide 50,000 affordable homes. In setting out the plans, I expect local authorities to overprogramme to ensure delivery should slippage occur. At the committee meeting on 21 December, I agreed to send the committee some analysis of the SHIPs that were submitted in December 2016. The overall picture that that gave us was that we are making good progress on the 50,000 target, but need to do more to increase the potential cushion that we would have should some schemes fail to come forward. The next SHIPs are due for submission at the end of October 2017.

Please be in no doubt that the Government is ambitious in respect of housing. Access to good-quality affordable housing is a vital part of our drive to secure economic growth, promote social justice, strengthen communities and tackle inequalities. We are determined to increase and accelerate housing supply. We will support local authorities to deliver quality homes in mixed communities that fit local needs, thereby delivering the right homes in the right places for the people of Scotland.

The Convener: Thank you—that is helpful. I remember that you pledged the last time that you were at the committee to use the Christmas holiday period to look over some of the housing plans, so I hope that was an enjoyable festive period for you.

Kevin Stewart: It was a most enjoyable festive period for an anorak like me, convener.

The Convener: I have thought that about you for a while, and we now have it on the record. Excellent!

I have a bit of a constituency interest. The numbers that you have provided are helpful, as they give us something to follow throughout the years as we head towards the 50,000 houses target. Members will ask more about that, but I am particularly interested in house types. The biggest housing need in my constituency—I know that it is the same in my colleagues' constituencies—is for large family homes. In the data, I see unit numbers

and a breakdown between social rent, mid-market rent, low-cost home ownership and partnership support for regeneration, as well as total units, but I do not get a flavour of how many four-bedroom family homes are in the mix in the 50,000, or how many of the new starts in the next financial year will be such homes. Where does that information sit?

Kevin Stewart: That is a matter for local authorities. SHIPs provide a strategic overview. It is up to local authorities to look at the housing need and demand in their areas and to align their future planning to take account of that.

As I have been speaking to local authorities, housing associations and other partners, I have made it clear that the subsidies that we provide are a baseline. They can talk to my officials about delivering more larger homes, such as four or five-bedroom homes, and about levels of flexibility. The same applies to wheelchair-accessible homes: I am extremely keen to ensure that we deliver for all of the needs of the people. I am pleased that some housing associations have been making great strides in providing that type of housing, too.

The SHIPs do not deal with the level of detail of housing types—that comes out later in delivery. However, you can be assured that I will continue to spread the message about the Government's willingness to talk to local authorities and other providers about delivering such homes.

The Convener: That is helpful. It seems that the numbers exist but they exist across 32 local authorities. We hope that the local housing strategies articulate with the SHIPs, but the Government does not analyse by house type the 32 local authorities' local housing strategies. We take it on trust that local authorities have that right when it turns into the documents that we call SHIPs. Who monitors local authorities to make sure that they are getting the spread of house types correct for local needs and demands?

Kevin Stewart: The Government always faces the dilemma that some folk say that we are prone to overly centralising and others say that we are not centralising and controlling enough. We have to trust local authorities to do the right thing in analysing need in their areas. In my previous life as a councillor, I took a great interest in what my council was delivering—although it has to be said that that was at a time when there was not much building. I am sure that other former local authority members round the table did likewise.

We have regional teams on the ground across the country who have regular discussions with local authorities, housing associations and other stakeholders about delivery—relating to SHIPs, the local housing strategies and all other aspects.

Those discussions between local authorities and my officials continue, but it is in the interest of every local authority to make sure that it is delivering the right housing in the right places for the people in its area.

The Convener: There is a difference between monitoring local authorities and dictating to local authorities. Those are two different things. I absolutely agree with you that we should not be dictating to local authorities: they know their communities best and it is for them to get the strategy right. The Scottish Government may have a view on how many large family homes we need across the country: I do not know whether it does, but if so, we would want to make sure, when the numbers across the 32 local authorities are added up, that we are getting somewhere close to that aim. Does the Scottish Government have a view on how many large family homes we need across the country?

Kevin Stewart: I come back to the point that it is up to local authorities to analyse the issue and to ensure that the local housing strategies are absolutely right. I am doing everything possible by saying that we will be flexible in order that we can make sure that local authorities can deliver the larger housing that they need in their areas. It is important that we use the expertise of the local authorities, which should know exactly what is required, and for me to ensure that barriers are taken down so that they can deliver those houses in their areas.

The Convener: I may be a lone voice on this in the committee—I have no idea. We will have to reflect on the evidence after our session is complete. If the committee were to decide to assure ourselves that the 32 local authorities across Scotland have struck a good balance in respect of the house types that they are seeking to develop, and if we sought a more systematic way of capturing that information, might you and your officials be interested in discussing that further with us?

Kevin Stewart: As you and other members are well aware, I am always more than happy to co-operate with the committee. If my officials can provide you with further information—feedback from our regional teams or whatever—I will be more than happy to provide you with it.

The Convener: That is really welcome. Thank you.

Kenneth Gibson (Cunninghame North) (SNP): I want to explore that a bit further. We have two tables from the Scottish Parliament information centre. One of them is about unit information by tenure, which is divided into social rent, mid-market rent, low-cost home ownership and partnership support for regeneration. In

Glasgow, more than 4,000 units are social rent and the other three categories come to just more than 3,500 units. However, in North Ayrshire, for example, all 1,436 units are social rent—none is in the other categories. In East Ayrshire, there are only 780 social rent units, even though the population is similar to that in North Ayrshire, and there are no units in each of the other categories. What is the Scottish Government doing to encourage local authorities to ensure that they have that balance?

Kevin Stewart: I would encourage local authorities to do all that they can to ensure that need in their area is met. Kenneth Gibson mentioned North Ayrshire, and I know that he has a keen interest in what is happening in his constituency. He will know that I am quite pleased by some of the development that has taken place in North Ayrshire, particularly by Cunninghame Housing Association, which is a real get-up-and-go housing association. It provides homes that are required right across the Ayrshires and is about to move into Dumfries and Galloway. I would encourage every local authority and other stakeholders to take cognisance of need in their area.

I will have to get back to Mr Gibson with more detail about mid-market rent and low-cost home ownership in North Ayrshire and East Ayrshire, because I do not have that to hand.

10:15

Kenneth Gibson: Before I ask a follow-up question, I thank the minister for handing out the awards to Cunninghame Housing Association at the reception that I hosted a week ago yesterday.

On units by type, I noted the extraordinary differences between local authorities in the number of general needs and specialist provision units. For example, Argyll and Bute has 1,115 general needs houses planned, but only one for specialist provision, which seems to me remarkably odd. In my area of North Ayrshire, there are 865 general needs units and 571 specialist provision units, and Moray has 459 specialist provision units, compared to 723 general needs units. In one local authority, general needs units outnumber specialist provision units by more than 1,000 to one, whereas in the other two local authorities that I mentioned the ratio is three to two. In Edinburgh, for example, the ratio is 15 general needs units to one specialist provision unit, and the East Ayrshire figures do not seem to add up at all. There may have been some kind of typing error, but there seem to be radical differences between the provision of general needs housing and specialist provision housing, and I thought that that would, if not alarm the

Scottish Government, certainly draw comment from you.

Kevin Stewart: The most recent outturn figures show that 94 per cent of general needs housing was suitable for varying needs. I am looking to Caroline Dicks, who is nodding in agreement. That is the homes for life concept, basically. Although we are talking about general needs housing, we are getting much better at ensuring that those homes are adaptable.

Beyond that, I have been looking carefully at specialist provision to make sure that it is accounted for. The Government recently published the “A Fairer Scotland for Disabled People” plan—I am trying to find it now. In that plan, we set out quite clearly our ambition, which is to work together with disabled people’s organisations and the housing sector on how we improve choice and availability in relation to accessible housing, and to ensure that the housing-focused action in the delivery plan will support the delivery of more accessible homes throughout the country. We will continue to work with local authorities, disabled people and other stakeholders to make sure that realistic targets are set within local housing strategies for the delivery of wheelchair-accessible housing. Some 13 per cent of the housing that is outlined in SHIPs is that type of housing.

Beyond that, of late in my travels, of which there have been plenty recently, I have visited new developments that have a fair number of wheelchair-accessible houses, including the Glen Oaks Housing Association development at Arden in Glasgow. I cannot remember whether there are 42 or 48 houses there, but four of them are wheelchair accessible, and one of them has been allocated to a family with a six-year-old daughter who is wheelchair bound. That family is particularly happy with the home. The young lass is a great baker, and the fact that the kitchen units and oven could be lowered is just fantastic for them. We need to provide that kind of thing for such families.

When Glen Oaks came up with that development, it had nobody on its waiting lists who required a wheelchair-accessible home. However, it recognised that there was a need in Glasgow and it went ahead with that development with wheelchair-accessible houses. It went to other providers that helped it fill those properties quite quickly. I want not only the Glen Oaks of this world, the Rural Stirling Housing Association or Parkhead Housing Association, which I recently visited as well, to take account of that need, but all housing associations and local authorities to look at making such provision in the local housing strategy and meeting that need. I have said all along that this is a housing programme for all of

Scotland and all the people of Scotland, and I want to make sure that we get it absolutely right.

Kenneth Gibson: I understand what you are saying. The national figures for specialist provision seem reasonable, but someone in North Ayrshire is 571 times more likely to get offered a specialist provision house than someone in Argyll and Bute is, so there seems to be an issue about provision locally. I hope that the Scottish Government will take that back to local authorities and press for an increase in areas where that is needed.

If we look at rehab housing, again we see a huge disparity: there are zero units in Dundee, zero units in Falkirk and zero units in Inverclyde, but there are 102 units in North Ayrshire, 101 units in North Lanarkshire and 648 units in Glasgow. More than half of all rehab houses in Scotland are in Glasgow. There seems to be a huge disparity in such provision. Edinburgh has only 11 rehab houses, and there are only 20 in Fife, which is Jenny Gilruth's area. What discussion is the Scottish Government having about that issue, to ensure that appropriate housing is made available for people who require it?

Kevin Stewart: I do not want to repeat myself, but I want to ensure that appropriate housing is available for folk right across the country. Kenneth Gibson has asked for more detail on that, which we will provide to the committee. Beyond that, I would like to assure the committee again that the regional teams across the country continue to have discussions about what the needs of particular areas are. I do not have here the level of detail on individual local authorities that Mr Gibson requires, but we will certainly get back to the committee with further answers on that and we will give you an indication of what the folk on the ground are discussing with local authorities in that regard.

The Convener: That was really helpful. Kenneth Gibson raised again the theme of trying to assure ourselves that across the 32 local authorities there is a consistency of approach to housing and house types, including specialist housing.

Graham Simpson (Central Scotland) (Con): Thank you for coming, minister. I want to look at the 50,000 affordable homes target. For the record, will you tell us how many units are planned for in the SHIPs? There is a shortfall if you compare that figure with 50,000. Given that that is the case, how confident are you and how do you plan to fill that gap?

Kevin Stewart: The recent analysis shows that, in the SHIPs, affordable housing completions for 2016 to 2021, which is the period covered by the 50,000 period, are estimated to be 44,891. That does not include completions from the national

programme in 2017-18. The national programme includes such things as the home owners support fund, the open market shared equity scheme, the national housing trust initiative and the LAR Housing Trust. For example, if the OMSE scheme continues at the current rate of 1,700 completions per annum, it could contribute a further 6,800 units over the period 2017 to 2021. A further 8,859 completions are identified for 2021-22, and it may be possible to accelerate some of them into the target period. I am keen, as I think that we all are, to make sure that we have a cushion. As I said in my opening remarks, we know that often there is slippage, and I want to make sure that there is overprogramming as a cushion, so that we meet that target. I hope that that is clear enough for Mr Simpson.

Graham Simpson: Yes, that is clear. How realistic are the SHIPs? You said in your opening remarks that some are more comprehensive than others, which would indicate that you are not very happy with some of them. Can you give us more detail on that? You also said that the plans are not firm programmes. Given that that is the case, how confident are you that the figures are accurate?

Kevin Stewart: In December, some local authorities included vast detail in their SHIPs and identified sites, housing types and the entire gamut, whereas other local authorities submitted only figures on the number of houses that they expected to bring forward. We have expanded on that and in most places the detail has been teased out by teams on the ground talking to local authorities. As we move on, confidence grows. I am in some regards an optimist but in others a pessimist, and I want to make absolutely sure that we deliver our ambitious target during this parliamentary session. We will continue to have discussions, to try to get firmed-up proposals.

There have been some changes from December to now, and things have occurred that have filled me with some joy. I was particularly worried about delivery in certain parts of Scotland, but it seems that some folk have stepped up the plate, and that delivery looks much more likely now than it previously did. I would not go as far as to say that I am filled with the ultimate amount of optimism in that regard, but I would say that my glass is three-quarters full. The programme is leading to a situation in which some housing associations are moving into areas where they have never carried out any business before. We talked about Cunninghame Housing Association, which mainly delivers housing in the Ayrshires. It is now moving to Dumfries and Galloway, and what it will be able to deliver will be a great boon to the south-west of Scotland. That will help it to meet its social housing requirements in the south-west.

The one thing that I can assure the committee of is that I will continue to talk to my officials all the time, to make sure that we continue to bolster that number and provide an even greater cushion, so that we reach that target of 50,000, and in particular the target of 35,000 houses for social rent. I will continue to update the committee as and when you require me to.

Graham Simpson: You say that your glass is three quarters full, but what about the other quarter? Are there any areas of the country that we, as a committee, might want to look at?

Kevin Stewart: The south-west was an area where I had a particular concern and where I have less of a concern now. I will continue to look at all parts of the country to make sure that everybody is benefiting from the programme, as I have said numerous times to the committee.

I have been all over the place talking to folk, because the best way of dealing with housing is to get the on-the-ground knowledge from people about what is practical and what is not. The conversations that I have been having are pretty positive, but I rely on my eyes and ears on the ground—the colleagues of Caroline Dicks and Lisa Bullen, and regional officers—to say to me, “This is going well, but you may want to keep an eye on that”. They are the ones who communicate constantly about what is happening—or not happening. In the main, it is about what is happening.

10:30

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Government advice on SHIPs advocates a co-production approach, the idea being to involve people as early as possible in that process. Can you give some examples of stakeholders having engaged with local authorities as part of that process, perhaps with an eye to sharing good practice at the national level, where something has been done well?

Kevin Stewart: Let me relate a conversation that I had only yesterday with CCG Construction, which manufactures houses offsite. It talked about the co-operation that it had with East Ayrshire Council—I think that the level of co-operation there is quite high. East Ayrshire’s relationship with Cunninghame Housing Association, the main housing association in the area, is very good. In various places, people are talking about good levels of co-operation. Rural Stirling Housing Association has talked about the good co-operation that it had, going back a few months, with Stirling Council, the Scottish Government and other partners in delivering the first social housing in the village of Strathblane for 40 or 50 years. I

think that the level of co-operation is pretty high out there.

People also know that if they face any difficulties or barriers in what they are trying to achieve, my door is open. Folk are not backward in coming forward in discussing barriers, but it does not seem that the barriers are between local authorities and housing associations, for example. When I first took on my current role, I found that one of the barriers was between some of the developers and Scottish Water. Scottish Water has taken action to change its workforce into one that is more delivery focused, and it has improved a fair bit. I always say that if anybody feels that they have a problem, I would be grateful if they passed that on to me, because I cannot deal with things unless I know about them.

Jenny Gilruth: What feedback have you had from local authorities and what feedback do you give them as part of the SHIPs review process?

Kevin Stewart: I am reliant on the regional teams speaking to local authorities and hearing their views on how they think that the process has gone, and feeding back the Government’s views to them. We have an extremely good set of people on the ground who are in constant communication with local authorities and other partners. They are the eyes and ears that I rely on. If I may, convener, I would like to bring in Ms Dicks to say a little more about what those officials are doing.

Caroline Dicks (Scottish Government): The SHIPs review process for communicating with local authorities was agreed with the Convention of Scottish Local Authorities. Officials in our area teams look at a number of areas when SHIPs are submitted, and the minister has already mentioned things that they consider. We look at the projects that are listed as priorities, which should align with the strategy that has been set out for the area. We also look at the feasibility of delivery in relation to the timescales that have been set out for the projects.

The minister talked about some projects not happening and making sure that, if a project does not happen, there is enough capacity in the programme for other things to come forward.

We look at the resources that are set out in a SHIP, which includes the money that is needed to take the project forward. We also look at consultation with stakeholders—the committee has covered that.

We then write back to the local authority, covering any points that have arisen in the SHIP.

Kevin Stewart: Those are all positives. During discussions earlier in the year, some community housing associations in certain areas—and in one area in particular—were not happy about the lack

of input that they felt they had into the SHIP in their area. We will feedback to local authorities on that kind of issue as well. As I have said before in answer to questions at the committee and in answers to Mr Simpson, I am very keen for community housing associations to be involved in every part of the process. However, we will relay the feedback that we get and urge local authorities to do things a little bit differently when it comes to the next SHIPs in October.

Andy Wightman (Lothian) (Green): I will follow up on Kenneth Gibson's questions about specialist provision. You suggested that 13 per cent of planned SHIP developments are for specialist provision. How was that figure arrived at, and do you think that it is an appropriate figure, given the ageing population and the increased focus on the need to develop the independent living approach?

Kevin Stewart: Local authorities have to assess need in their own areas and take account of changing demographics when they make their planning assumptions. I will get officials to talk about how the figure of 13 per cent was arrived at, but the key thing for me is not just having 13 per cent specialist provision but ensuring that the stock that we deliver is capable of adaptation. It is important that, as can be seen in the most recent outturn information, we have reached the figure of 94 per cent of the housing that is delivered being for varying needs. Obviously, there is still room for improvement—but not much. We will continue to make sure that we create homes for life.

I ask Ms Dicks to talk about the 13 per cent figure.

Caroline Dicks: The projects are based very much on what the local authority assesses as being local need and, as Mr Gibson mentioned, the picture varies across different local authorities. Some local authorities place a much higher priority on providing such projects, whereas others place less priority on them. We have collated the figures nationally, based on the current SHIPs, and that is the current figure. SHIPs are live documents and will be updated again in October, so the figure might change—it might increase. If a local authority said in its strategy that housing for specialist provision was a particular priority, we would follow that through to see that the SHIP showed such projects in the authority's plans for funding going forward. That is the kind of thing that we do in assessing the SHIPs. The 13 per cent is just what the local authorities tell us that they want to provide over the next few years in the affordable housing supply programme.

Kevin Stewart: When I am and about, I make it quite well known that there are flexibilities in the subsidies, and that we look very carefully at bids for higher subsidies to provide the likes of wheelchair-accessible housing. I think that that

message is getting through. I reiterate that many of the housing providers—particularly housing associations—that I have visited of late are taking cognisance of what is required and are delivering wheelchair-accessible housing on the ground.

Andy Wightman: Let me tell you what is behind my question. In our budget review session, we had evidence from Independent Living Scotland, for example, which argues that although provision is fine in some areas, it is not fine in other areas. To what extent is the Scottish Government not just monitoring the match between the local housing strategy and the SHIP, but ensuring that certain local authorities make enough provision for people with special needs and, potentially, stepping in to encourage more such provision, if and where that is needed?

Kevin Stewart: I encourage disability groups to speak to local authorities and get involved in the formulation of the SHIPs. We talked about the disability action plan, and it is absolutely vital that local authorities listen to groups in their area if folks do not feel that there is enough provision. I will be very careful in what I say, because I do not want to identify individuals, but I am aware of some wheelchair-accessible houses that have been built to meet the needs of people who would have had to move away from the area if that had not happened. Local authorities, housing associations and other partners should be looking very closely at such need so that such circumstances do not arise.

I have said that people should talk to local authorities and I am willing to listen to folks' experiences. I would encourage local authorities and other providers in areas where it is felt that there is not enough housing to meet such demand to take advantage of the flexibilities with the subsidies. As always, if colleagues come across any difficulties on their own patches, I am willing to hear about those and to do what I can to encourage greater provision if it is required.

Alexander Stewart (Mid Scotland and Fife) (Con): We have touched on the mix and size of developments. It would be useful to find out how decisions are taken on which projects are finally approved. How do they become approved? How transparent is that process? How confident is the Government about those projects, in terms of needs and budgets? How are housing projects and strategies identified and put forward?

Kevin Stewart: We are reliant on local authorities to scrutinise exactly what is required in their areas and where it is required. Alexander Stewart will know, having recently retired as a councillor, that local authorities can have quite a high level of scrutiny. Scrutiny from the Government side is about making sure that the resources that we provide are utilised in the best

possible ways, for which we rely on our folk on the ground. As I am out and about, I come across those folk regularly and their knowledge of the projects is fairly high—in fact, it is very high. It is a combination of the right project management and scrutiny at the local authority level and, beyond that, the oversight of our folk on the ground in making sure that resources are being spent on the right things in the right places for folks throughout the country.

10:45

Alexander Stewart: How can we look at the overall budgets—those that are set and managed centrally as well as those that are managed locally?

Kevin Stewart: In some regards, there is probably no greater scrutineer of the budgets that are held centrally than me in making sure that every penny goes as far as it possibly can. With the moneys that are given directly to councils through the affordable housing supply programme, I have made it very clear that if councils are unable to spend the resource that they are given, I will have no qualms about moving it to authorities that are able to use it. That is another insurance policy, if you like, to ensure that we deliver the 50,000 target. I do not want to move resource in that way; I would rather that authorities spent their full allocations. However, if that does not happen, I will not be afraid to move resource to authorities that will spend it and deliver.

Elaine Smith (Central Scotland) (Lab): Thank you for joining us this morning, minister. I have a follow-up to that line of questioning. Kenneth Gibson explored rehabilitation—if that is the right term; perhaps “off-the-shelf purchases” is a better term. Could the resource that you mention be used to buy housing back for the public sector?

Kevin Stewart: It is for local authorities to choose to do that. Where it can be demonstrated that the use of grant to acquire housing for rent off the shelf is the most appropriate method of meeting the housing needs that have been identified in a particular council area and is consistent with the priorities in the SHIP and in other plans, grant subsidy can be made available through the AHSP to do that. We are aware that a number of local authorities have purchased ex-local authority properties with the support of an AHSP grant. I have no difficulty with that approach, as long as it meets the needs in that particular area.

The Convener: I will outline very briefly, and without identifying the family, a constituency case of mine. It is the third time that I have raised the case, which I think shows the policy challenges that we have. What you said was very interesting.

The case involves an elderly person who previously bought their council house, which is a second-floor, one-bedroom flat in perfectly good condition. Their health has started to fail and they are kind of in poverty. The house is not much of an asset, it is no good for them and they could feel a bit trapped in it. I am delighted that the housing association is considering buying back that flat, but the person needs alternative accommodation. Is there anything to prevent housing grant—the housing association grant or whatever—from being used to fund that purchase and suitable accommodation being identified for that individual, which then frees up a social rented tenancy elsewhere?

I am trying to identify where that grant would sit. Although it might not show up against the 50,000 target, that is a new social rented house brought back into the sector, so of course it should show up against the 50,000 target. The issue is making sure that each of the budgets talks to each other and that we are joining the dots on this. A lot of stress would go away for this particularly vulnerable constituent and a new house would come back into social rent.

Kevin Stewart: It is difficult for me to talk about an individual case, as you know. However, I would expect common sense to apply. If that house were to be purchased back into local authority or housing association control, it would be one added to the total because it is a new home that has previously not been available and is now available. It is difficult for me to judge a particular case without knowing the full detail of the property, the circumstances and various other things, but I would look for common sense to apply and for the local authority and the housing association to work in partnership to try to find the best possible outcome for folk.

The Convener: That is very helpful, because I did not realise until now that the housing association could make a case to the local authority to get grant funding to buy a house back. I thought the housing association would have to use its own resources to do that. That is really interesting and it helps me out in my local area.

Kevin Stewart: To clarify, it can be done in a mixture of ways. If you write to me, I will respond with what we think is possible. Obviously in the end it is a matter for the local authority and the housing association, but we can provide you with the details of how that could happen.

The Convener: I will certainly do that. I think that we have progress for my constituent, but the wider policy position is fascinating. That is very helpful.

I took the opportunity while my colleagues were asking questions to read through the Glasgow

housing strategy from 2017 to 2022—it is 100 pages long, so I read only some of it. What I gathered was that there is a target of 15,000 new builds in Glasgow, 70 per cent of which are to be social rent, and that sounds very impressive. I may have missed it, but I could not see in that what the house types are—I will go back and check that. What I did see was that the overcrowding level in Glasgow is 17.4 per cent, whereas the national average is 9 per cent. That is an indicator. The strategy, which we had a brief look at it this morning, may take that into account when it goes for its new-build programme, but overcrowding is another example of an indicator that we hope each local authority will use consistently and the Government will monitor nationally. Overcrowding in Glasgow is way above the national average, which suggests that larger new-build homes are pretty important. Of course for every larger new-build home you build and move an overcrowded family into, you free up another tenancy, so you have a double hit. Does overcrowding feature in your analysis of SHIPs?

Kevin Stewart: What you have read is Glasgow's local housing strategy. I would expect that to play a major part in the formulation of the delivery on the ground. Again, these are matters for local authorities. I have made my situation very clear. We are more than willing to have discussions about flexibility in grant subsidy if folk want to build houses with more bedrooms to resolve some of the overcrowding problems that you mention. I refer back to my last visit to Glasgow, which was to Arden a couple of weeks ago. The houses that are being built there are larger family houses, in some cases townhouses on three floors, which meet the needs of that particular area and provide much needed regeneration in a poorer part of the city. It would be wise for the local authority, in co-operation with its housing association partners, including those in the community housing association sector, to take complete cognisance of what the local housing strategy, which you have read for Glasgow, says and to make sure that the on-the-ground delivery reflects exactly what is required.

The Convener: That is very helpful, certainly for our committee as we try to get our heads round how each of the strategic documents not only feeds into meeting that 50,000 target but meets the housing needs on the ground. That is what we are wrestling with as a committee, so that answer is helpful.

Do any of my colleagues have further questions? Before we wind up, minister, is there anything else that you want to put on the record that you did not have the chance to say this morning? There is time for that.

Kevin Stewart: I thank the committee once again for allowing me to come here today. I am quite sure that, over the next few years, you will continue to scrutinise the housing programme. The committee should know that I am very focused on delivery to ensure that we reach the target of 50,000 affordable homes, 35,000 of which are for social rent, and the Government's commitment is backed up by £3 billion-worth of investment over the course of the session.

The only other thing that I would like to put on record is my thanks to partners across the country—local authorities, housing associations, developers and other stakeholders, including communities—who have not been backward in coming forward and telling me what they would like to see. Without them, we would not be able to do this and I would like to thank them very much, and I thank you for allowing me the opportunity to give evidence today.

The Convener: Thank you and thank you to your team. That is a nice way to end this session.

10:57

Meeting suspended.

11:03

On resuming—

High Hedges (Scotland) Act 2013

The Deputy Convener (Elaine Smith): Agenda item 2 is post-legislative scrutiny of the High Hedges (Scotland) Act 2013. The committee will take evidence from local authorities, and I welcome to the meeting Kevin Wright, environmental planner, Aberdeen City Council; Alastair Hamilton, service manager, Fife Council; and Paul Kettles, planning enforcement officer (north), Perth and Kinross Council. I invite each member of the panel, starting with Kevin Wright, to make some short opening remarks.

Kevin Wright (Aberdeen City Council): Overall, we have found the legislation to be of much benefit to the city. We have not had the greatest number of formal applications, but what we have seen is a huge number of inquiries with resolution as the end result because the legislation has been in place and therefore an application has not been required. Certainly from that perspective it has been incredibly beneficial.

However, my main concern about this review of the high hedges legislation relates to the numerous applications that we have experienced in Aberdeen for what are commonly coming to be regarded as non-hedges—things that are, in our experience, more trees than hedges—and I want to take this opportunity to flag my concern about this potential review expanding the remit of the 2013 act.

Alastair Hamilton (Fife Council): I suppose that the experience in Fife is similar to that set out by my colleague. There was an initial flurry of applications when the legislation was introduced, but that was perhaps representative of people seeing the legislation as a mechanism for advancing or pursuing historical cases or issues that had been in existence for a while. That led initially to a larger number of applications. For some of the people concerned, it probably heightened their expectations of what could be addressed, and they were then, I suppose, distilled through what actually could be applied under the legislation and through the definition of what is or is not a hedge. We will probably discuss later on where that sits in relation to trees, legal definitions and so on.

In Fife, we have had 23 formal applications over the time that the legislation has been in place. That might seem relatively low, and I point out that eight of those applications have gone through the whole process to reach some form of resolution or rejection. As I have said in my submission, that level of demand or number might not seem large,

but for the people who have had their issue resolved, this has undoubtedly been important and a success for them.

Paul Kettles (Perth and Kinross Council): I could simply reiterate the comments that my colleagues have made, given that we have experienced similar scenarios. In 2014, when the act came into force, Perth and Kinross Council received a flurry of applications; to date, we have received a total of 21, of which seven—or a third—were deemed not to be about a hedge, with remaining 14 subject to high hedge notices. Of those 14, seven were subject to an appeals process through the Scottish Government planning and environmental appeals division, and ultimately most of those that were appealed were varied.

As a consequence of the act, 12 of the hedges referred to in those 21 applications have been cut, and people have told us how grateful they are that the legislation has come in. Some of those applicants had been waiting for several years; indeed, correspondence that I received from lawyers on some of the situations actually dates back 15 years, and the people concerned are very grateful for the council taking action under the legislation.

We have also had people submitting applications on things that we would not consider to be hedges; woodlands, for example, have given rise to concerns from a lot of people. However, this is not a high trees but a high hedges act. I know that there has been a lot of discussion about the legal definition, and I trust that we might get some clarity out of this process.

The Deputy Convener: We have had a previous evidence-taking session on this matter, and I am sure that colleagues on the committee will want to pick up on many of the points that were raised in it. However, Mr Kettles's comments move us nicely on to the issue that Andy Wightman wishes to explore.

Andy Wightman: This act says that it is:

“An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.”

When I first looked at that, I was surprised not to find a definition of a hedge. Some of the concern that we have heard from the occupiers of properties who wish to use this legislation appears to hinge on the question, “When is a hedge not a hedge?” The definition in the act itself relates to a high hedge, which demands that the thing in question be a hedge in the first place. As the issue has been well articulated in the opening paragraphs of the Aberdeen City Council submission, I wonder whether you can give us your thoughts on the extent to which this is a

central problem with the legislation and/or with people's understanding of what the legislation is designed to do.

Kevin Wright: This is probably a two-part issue. We are quite clear in what we consider to be a hedge as opposed to what would be a tree. The big problem here is that people have put a lot of hope in this legislation resolving issues, and we have to tell some of them that they cannot use it because we deem the vegetation at the heart of the issue not to be a hedge. As you will see in my submission, we have a number of tests for distilling that.

Just to put into context how big an issue this is with the legislation, I note that we have only just about resolved two cases that have been going on for the best part of two years, with massive amounts of correspondence back and forth. In the initial stage—which spanned about a year—we tried to explain our position to the two correspondents. Although we were always saying no, we were getting dozens of questions back, which we were happy to answer. However, it got to the stage that we were spending so much time on the issue that we had to direct the applicants to our complaints procedures, because we could not get them to understand our position—or perhaps I should say we could not get them to take it on board. After all, with such emotive issues, there is a kind of refusal to accept something. If you are not involved in the situation, you can quite easily say whether something is or is not a hedge. Perhaps the act's biggest failure is that there is no clarification in that respect.

The Deputy Convener: Do you wish to come back on that, Mr Wightman, or do you want to hear from other panel members first?

Andy Wightman: It would be useful to hear from others.

Alastair Hamilton: It is a similar experience in Fife. In our customer guidance, we have included pictures and general information to manage people's expectations about what the legislation can deliver and achieve and about what is or is not a hedge under the definition.

I agree with Kevin Wright that, because there is no other route to achieving a definitive legal conclusion on what is or is not a hedge, the matter is to some degree left to the local authority's subjective judgment. The public—or the complainers—feel that they have to continually enter into that discussion with the local authority in order to gain clarity or to be satisfied that its decision is justified.

Paul Kettles: I think the inclusion of the phrase "2 or more trees or shrubs"

in the act has led to a lot of confusion and assertions from members of the public that the local authority is electing to interpret the matter in certain ways. In our submission, we suggest that a way round that is to take out section 1(a) and to leave sections 1(b) and (c), which means that the act applies to a hedge that

"rises to a height of more than 2 metres above ground level and ... forms a barrier to light."

11:15

Many people have approached us in advance of making an application, asking, "Is this a hedge or not?" Quite often, even on the telephone, when we ask them, "What is it?", they will say that it is three trees in their neighbour's back garden. From the way in which the act has been drafted, they think that their application will be valid, but, as I have said, this is not a high trees act—it is a high hedges act. Fundamentally, it must first be a hedge, and defining that is difficult. Before I came into planning, I was in horticulture, so I know that when someone says, "Design me a hedge", it is quite clear what they mean. There is a process that you go through with regard to the species that you use, the planting arrangement and the density. To me, therefore, it is relatively clear what a hedge is and what it is not, but the way in which the act has been narrated gives rise to some confusion.

Andy Wightman: That is very helpful. We have been sent a copy of a letter from Aberdeen City Council to one of the applicants in Aberdeen, which makes it very clear that, in your view, you cannot consider any application that does not, in the first instance, relate to a hedge. It is fair to say that other local authorities have not been quite as clear and robust in applying that test and have been prepared to admit for consideration vegetation that meets the tests of paragraphs (a), (b) and (c) of section 1(1), but which is not in fact a hedge—that becomes clear only at a later stage.

Mr Wright described tests that Aberdeen City Council applies on what is a hedge, but they are not statutory tests. Given that all this revolves around legal meanings, would it be helpful, as a matter of principle, to introduce a new section to make it clear that the act applies only to hedges, with a hedge being X, Y and Z, before going on to say that nothing other than a hedge can be considered to be a high hedge? Would that help to resolve some of the difficulties?

Kevin Wright: That is probably exactly what we need. To go back to my colleague's comment of a minute ago, the fact that a high hedge has in the first place to be a hedge is often overlooked by people who are looking to put in an application: they jump initially to the three tests. Nobody here is saying that a row of trees cannot have the same

effect as a hedge; a row of trees can certainly meet those three tests, but it is not a hedge. It would be extremely useful if the act and the guidance were to make it abundantly clear that whether there is a hedge is the first test, and also if further definition were perhaps to be provided in the guidance.

The Deputy Convener: Before I bring in Mr Gibson, I would like clarify something with Mr Kettles, given his horticultural background. We have just heard Mr Wright say that a row of trees is not a hedge. However, when the original bill was being considered, it was rows of trees—rows of leylandii—that had been planted as hedges that were causing problems, because they were so fast growing and so dense that they were cutting out light to people's gardens and preventing their enjoyment of their gardens. Therefore, when does a row of trees become a hedge?

Paul Kettles: It is down to the pattern—the arrangement—of planting. I have dealt with typical situations in which leylandii are planted at 600mm or 700mm centres in a row, along a boundary, and there is no dispute. That is a hedge; it forms a solid barrier. However, I have also dealt with Lawson cypress in a garden, which had been planted just to form part of that garden, with planting underneath them. They were forming a barrier to light, but I would say that they were not a hedge because there were clear gaps, and the pattern of planting—the arrangement—did not resemble a hedge in any way. Tree planting does not morph into a hedge just because the crowns coalesce. You have to look at where the stems are and the relationship between them—in other words, the pattern.

The Deputy Convener: If leylandii had been planted as a hedge, and that was confirmed by the owner to a person who moves into the house next door who moved into the house next door—we have heard evidence of such a case—do you agree that even though they formed a row of trees, because they were leylandii and were indeed high, that could constitute a hedge?

Paul Kettles: Yes—but each case is looked at on its own merits.

Kenneth Gibson: The evidence that we have received this morning would disappoint all the witnesses we had at a round-table discussion, because from what I have heard, it appears that all the witnesses want to further neuter this already fairly toothless legislation.

My constituents who have raised concerns about the matter not only balk at having to pay the outrageously high fee, which is not returned to them when there is a finding against the person with the high hedge, but face all the semantics around what is and what is not a hedge.

It is clear that the meaning and spirit of the legislation are to make it clear that if someone's quality of life is being ruined by leylandii or other shrubs or even trees, blocking out their light and making their life a misery, it should be dealt with. Let us think about the case of an 80-year-old constituent who buys a house in large with her life savings and who has a husband who is suffering from dementia. If, a couple of years later, huge trees suddenly sprout up and block the light, why should that person not get restitution? There is some talk about what constitutes a hedge, but the spirit of the legislation is quite clear on that.

Surely the legislation should not be made more toothless by making it apply only to hedges, as people would understand a hedge, but should include the things that we want to exclude. What are people meant to do about high trees? Are people meant to be able to plant trees wherever they like and ruin someone else's view? We have taken evidence from people who had trees surrounding their property on all four sides, who were told, "Tough. It's not a hedge. Go away." People who are not affected by the issue might think, "So what?", but for the people who are directly affected by it, it is a quality-of-life issue. The people concerned are often very elderly and they get deeply upset.

Mr Wright talked about people who have corresponded with him umpteen times. That is because they feel that they have been let down by the legislation. I know that you are wincing, but I can honestly say that, across the parties, the intention of the MSPs involved in passing the act was not to have very narrow legislation, but to have legislation that could be interpreted in a commonsense way.

I will make one other point before I let the panel come in. We have had evidence of people deliberately trying to get round the legislation by chopping every second tree of a leylandii hedge or whatever you want to call it, knowing that the remaining trees will sprout sideways and have the same adverse impact on the person who made a complaint. The council has just shrugged its shoulders and said, "Sorry—it's not a row of two trees". Well, it might not be a row of two trees above 2m, but it certainly is a row of two trees below 2m. Surely the council should be taking a more flexible and more human approach to the issue by looking at the impact on people's lives and saying, "As far as we're concerned, this has been deliberately planted with a view to obscuring someone's light." Whether or not the trees are planted in a straight line, in a slight curved or are not specifically a hedge should not really be at issue. Surely the issue should be the impact on the people's lives that are blighted, Mr Wright.

The Deputy Convener: I will need to bring in all the members of the panel, because Mr Gibson has asked if the intention is to neuter the legislation, but I will start with Mr Wright.

Kevin Wright: The first point that I would come back with is that there are a number of cases in Aberdeen in which I would love to use the 2013 act. There is a particularly heartbreaking case that I have probably been dealing with for two years now. I very much see the stress of the citizen concerned, given the situation that he is in, with young children, in his first home, and the impact that he is experiencing. However, in his instance, the trees do not constitute a hedge.

As a local authority, we are asked to implement the legislation. If I am asked to justify my decision, I cannot stand up in front of a group of people and say, "The legislation says this, but I thought I'd be a bit flexible about it." When it comes to whether it is a hedge or trees that were not planted as a hedge, there is not flexibility in the legislation; we do not have the legal opportunity to exercise such flexibility.

We have had a number of very emotive cases in which we would have liked to take action, but we have also had other cases in which we, as a local authority, have had—quite literally at times—to sit on the fence between properties. On one hand, we have somebody who is looking to remove trees from somebody else's land, but we have to look fairly at the impact—indeed, the legislation requires us to do that—on the owners of the trees as well.

I will turn the scenario round slightly. We have a case that has been going on for some time on Deeside involving a house that has probably been in place for about 200 years. There are many mature trees in the garden—certainly, at the back of it. The garden used to back on to fields, but about four years ago, a brand new property was built what was, quite honestly, a reasonable distance away from mature trees. However, the house was put on the open market. The land was not bought by the owner and built on; it was sold separately. The owner of the property moved in two years ago and decided to seek an application to have the trees removed, which I would say would be incredibly unfair on the owner of those trees. They are trees; they are not a hedge. However, we have somebody who chose to buy a property and move into that situation.

I know that those are only two scenarios, but I just wanted to highlight that there are other parties and other owners involved.

Kenneth Gibson: The commonsense approach would deal with that. I have had a similar case. I looked at it and said, "Come on." Such cases are not what we are talking about: we are talking

about people who are planting stuff and deliberately trying to avoid legislation. I raised the example of people chopping down every second tree. Surely the council should say to them that they are clearly trying to avoid the impact of the legislation.

To be frank, I say that Mr Kettles wants to weaken the legislation, so that it applies only to hedges, which is not what was intended. I assure you that when we debated and discussed the original bill some years ago, people wanted to include things beyond what the public walking along the street might recognise as a hedge.

The Deputy Convener: I will bring Mr Kettles in first, because he was named.

Paul Kettles: As planning enforcement officers, we have to operate within the terms of the Town and Country Planning (Scotland) Act 1997. When we look at situations, enforcement action is discretionary, so there is a degree of subjectivity, but we must nevertheless remain within the terms of that act. In respect of this situation, I think that we are operating within the terms of the high hedges legislation. I think that Perth and Kinross Council has, in every application that it has dealt with, operated within the terms of the legislation because, fundamentally, the subject of the application must be a hedge.

I know that we could debate the matter for a long time, but in the end my colleagues and I look at applications, and we consider that we are operating within the act and within the spirit of the act, because it is not a high trees act. If you want to bring in a high trees act, you should introduce such legislation.

Kenneth Gibson: I am wondering why you do not want to extend the act to trees. You seem to want to dilute it. No one has responded about what happens when somebody cuts down every second leylandii in order to get round the legislation.

Kevin Wright: That is a case of somebody getting around the legislation. Thankfully, we have not had that situation in Aberdeen. If we had received an application and then those works had been undertaken, we would have had to seek legal advice on whether we could still go forward with the application because, ultimately, it is the legislation that is pointing out what a high hedge is.

If somebody removes every second tree, as unfair as that approach is, then, by the definition that we currently have, it is no longer a hedge but a row of trees. If they remove every second tree, the canopies will not coalesce, therefore it is not a hedge. If it is not a hedge, we cannot use the legislation.

11:30

One thing that I will say that may help our discussion is that when we are talking about rows of trees, one of the things that we take into consideration—we have all alluded to it—is the space between the trees. Elaine Smith brought up a perfectly good question with regard to leylandii trees. Is a row of leylandii trees a hedge? They can be viewed as being a hedge, but could equally be viewed as individual trees. It would not be like saying that a beech hedge is a row of maintained beech trees.

As we were talking about rows of trees, I was madly flicking through the guidance for a particular sentence. It says:

“For example, well-spaced tree lines are not generally considered as a hedge, even if the trees join to form a canopy.”

Mr Wightman asked whether guidance on the types of subjects that I have raised and tests that we use would be useful. It absolutely would be, because then we would all be working to something that is defined.

Could I make one further point?

The Deputy Convener: Briefly, please, because I want to bring in Mr Hamilton.

Kevin Wright: Earlier in this meeting, and in some responses to the previous public consultation, we have heard expressed the idea that councils are avoiding using the legislation. It takes me between 10 and 15 hours, over a period, to deal from start to finish with a high hedge application. In a number of cases that we have dealt with—one, in particular—I have racked up more than 60 hours dealing with councillor representations, MSP representations, going through our complaints procedures, and answering to senior staff within my organisation. I would much prefer to be able to use the legislation. The work that is involved in telling somebody that we cannot use the legislation is extensive.

The Deputy Convener: Mr Hamilton, do you wish to neuter the legislation, as Mr Gibson suggested is the case?

Alastair Hamilton: No, I do not, and I think that I speak for all my colleagues when I say that that is not our intention and it is not how we apply the legislation. If Parliament wishes to expand and extend the act's remit, that is within its gift as part of how it considers the legislation further.

Mr Gibson's passion highlights how emotive the subject can be. Part of the problem is that we who implement the legislation face passion on both sides—passion on the part of the aggrieved party who has to alter their hedge and on the part of the party who is potentially affected by the hedge. The

legislation itself has to be robust enough to deal with that, because not only are we addressing potential harm from a hedge, we are also justifying why we have the right to affect a person's property and what they wish to do with it. That principle is part of the basis of planning legislation. As I said in my submission, the high hedge legislation is not implemented across the board by planning services; in some places, other services deliver it.

I want also to pick up the issue of planting hedges, which Kevin Wright also picked up. You would have to be careful about that in respect of the breadth of what the legislation sought to cover if you started to apply it to already established trees. There are many residential areas in Scotland where there are mature trees—houses are within or next to existing woodland, so such application of the legislation could have a significant consequence for the tree population. Some are protected by tree preservation orders, so you would need to be very careful in seeking to broaden the legislation. No doubt some trees have an impact on people, but the principle of the legislation involves concerns about leylandii and planting of hedges, so if there were to be an attempt to make the legislation more prescriptive or precise, there would need to be very careful consideration in relation to dealing with the planting of hedges and the point at which that becomes a problem.

Kenneth Gibson: In my overlong first question, I made a point that might not have been picked up. Do you feel that, if an application is successful, the cost of that application should be borne by the person against whom the case is found? In others words, do you think that, if the applicant's application is dismissed, he or she should pay the cost but, if it is successful, the person who has breached the law should pay it? At the moment, people who make applications have to pay up to £500 and are wondering why that money should not be restored to them if they are found to be in the right.

The Deputy Convener: Mr Kettles is nodding.

Paul Kettles: Yes—I agree with that point whole-heartedly. If a local authority serves a high hedge notice on a hedge owner and they have the opportunity to address the issue but do not do so, we should seek to get perhaps half the fee back, or set up some other arrangement whereby the applicant is refunded, either in part or in total.

The Deputy Convener: Mr Wright, do you have an opinion?

Kevin Wright: I tend to agree. However, it is worth noting where the idea for the fee came from in the first place. In normal circumstances, the council would not offer this service. Following the introduction of the legislation, the fee was used as

a way for councils to recoup expenses for the time spent dealing with applications. I do not disagree with Kenneth Gibson's suggestion; that approach is only fair, given that a person will in the first place have had a good opportunity to address the issue. I would be keen to see any good mechanism that would ensure that the local authority did not end up being out of pocket as a result of dealing with applications.

Alastair Hamilton: That is a good point. The legislation was drafted on the basis that the local authority would be the route of last resort. The emphasis was very much on the issue being resolved, where it could be, by mutual agreement and collaboration between both parties, whether through a formal route involving solicitors or just through neighbourly discussions, which would obviously be the most beneficial way to resolve issues. That is implicit in the legislation.

One of the other things to bear in mind is that, although it might perhaps seem unjust that the person who is affected by the hedge pays the fee, there might not be an impetus on the person who has to undertake the mitigation work also to pay a share of the fee. That comes back to the point that Kevin Wright made about making sure that there is clarity about recouping costs from the party who has to undertake the work.

Andy Wightman: Is it your view that if—as the legislation currently stands—an application was rejected because the subject was not a hedge, the applicant should have to pay the full fee? At the moment, an application that is made and rejected in those circumstances is a very modest piece of administration, but the person must pay the full fee.

Alastair Hamilton: If the same principle applies as when a planning application is subsequently refused, they should pay the fee. In terms of where the legislation is coming from and the fee structure that is applied under it, if the authorities assess that there is work involved, they are entitled to place a reasonable fee in respect of the cost of that work.

Alexander Stewart: The guidance talks about “dealing with it in a timely manner”,

which has caused some difficulty. Many witnesses have felt that that is a bit too subjective and gives some landowners the opportunity to make alterations between the application and action taking place. I would like your views on the phrase “timely manner”, which is in the act and has caused that situation to arise.

Kevin Wright: I cannot think of any problems that we in Aberdeen with timeliness have had in going through the process. However, the overall process is particularly long. You will probably be

aware that it is a very open process in as much as we are, whenever we receive information, required to copy that information, redact it if there are things in it that require redaction, and then pass it on. Within that, there are stipulated timeframes that we have to give people as well. In reality, “a timely manner” is probably approaching three months. I can well imagine that timeframe being deemed to be unacceptable but we would, with best efforts, struggle to get it much below that.

Alastair Hamilton: Undertaking such work creates an enforcement process for which it can be difficult to prescribe a precise period for delivery. There are, especially with alterations to hedges and vegetation, wildlife considerations that need to be built in. There are close periods for breeding seasons during which it may not be acceptable to cut or alter a hedge—when there are nesting birds, for example. There are also issues, depending on the scale of the works, about how long that might take to factor in. It is a very area in which it is very difficult to be precise, and none of us who implements the legislation would prolong it unnecessarily. Flexibility needs to be built in to cover the vagaries and unknown issues that can arise.

Paul Kettles: In Perth and Kinross, within probably eight weeks of receipt of the application we will have made a decision—as in issuing a notice—on an application that we have determined is not subject to an appeal. As has been mentioned, the notice for the compliance period will have to take account of wildlife. I have issued one in the past 10 days, and the compliance period is until September, which takes it right out of the nesting season.

In addition, we go on the premise—as we do with an enforcement notice—that, if the application is subject to an appeal, the reporter will always expect the local authority to act reasonably. That is the test. I would always ask, “Is it reasonable for me to ask this individual to cut a hedge within three weeks?” Some of the hedges that we receive applications about are 75m long; I would say that, in those circumstances, that timeframe would be unreasonable, but we have to perform the test anyway. I looked at our cases online, and we seem to average about the same timeframe as planning applications—six to eight weeks—for issuing decisions.

Jenny Gilruth: Which department within your authority carries out site visits to assess whether a hedge is a hedge or not—if that makes sense? When we took evidence previously, we heard that there is a lack of continuity across the country in respect of who does that. Is it somebody from the planning department? Is it somebody with a history of dealing with hedges? I would like to get an overview of who makes the final decision.

The Deputy Convener: We will start with Mr Kettles, who seems to be both.

Paul Kettles: I work in the planning service, but my background is in horticulture and arboriculture, so I was identified as the appropriate person.

11:45

Alastair Hamilton: In Fife Council, high hedges applications are dealt with by planning officers. We also have an in-house arboriculturist whom we can call on for advice.

Kevin Wright: I work in the planning team, and I am the sole officer in Aberdeen who deals with high hedges.

Jenny Gilruth: Mr Hamilton, you said that Fife Council uses planning officers—and what else?

Alastair Hamilton: We have an arboriculture specialist who deals with tree preservation orders and is qualified and previously worked in horticulture. We have her assistance not so much in defining whether something is a hedge—that is very much part of the assessment through the planning process and application of the legislation—as in identifying mitigation strategies, timescales, types of trees and the different impacts of all those.

Jenny Gilruth: Would she be called on to carry out site visits as a matter of course, or only in unusual circumstances?

Alastair Hamilton: She would not do so as a matter of course. The planning officer who is dealing with the case would do that. The arboriculture specialist is on hand; we take a flexible approach.

Graham Simpson: Do any of you have examples of people who have had a high hedge notice issued to them simply refusing to go along with it?

Kevin Wright: No. I am thankful that Aberdeen City Council has been successful so far.

Alastair Hamilton: No—although Fife Council had an appeal because the party who had complained felt that the mitigation was not significant enough. They appealed and additional work was required. By and large, the pattern so far seems to be that, once the parties are involved in the process, more often than not some mitigation occurs. Something is done that addresses the issue either before the case is resolved or at the outcome.

Paul Kettles: Perth and Kinross Council has had compliance with every notice that we have issued. In one case, the hedge owner did not comply by the date by which we required him to comply, so I took steps to take direct action. I

contacted a contractor who said that he was scheduled to cut the hedge—its owner had contacted the contractor and the work was carried out within two weeks after the date. We have had full compliance.

Graham Simpson: It is clear to me that the act is unclear: that is obvious from what you have all said and from what previous witnesses have said. We need clarity on the definition of a hedge. Maybe it is just a personal opinion that I am asking for, but do you think that the provisions should be extended so that they definitely cover trees and we do not get bogged down with the word “hedge”?

Paul Kettles: I live in big tree country, in Perth and Kinross. Perth and Kinross is a tourist destination, and one of the attractions is the tree cover. I am not saying that, if we opened the act up to cover trees, it would devastate trees in Perth and Kinross, but it would be opening a door to something at a time when we are seeking to preserve and protect trees. If we were to broaden the act to include trees, that could give rise to a significant loss of urban trees.

Alastair Hamilton: My answer would have to be no. To do that would open up a significant area of unforeseen consequences through the impact that it would have on the tree cover in Scotland.

Kevin Wright: It looks as though you are getting a resounding “No”. I would not like to see the legislation extended. That would have a massive impact at a time when local authorities are beginning to recognise the benefits that urban trees bring to our cities. We are struggling enough to keep our tree cover without producing a piece of legislation that means that people can insist that the owners of trees have them cut down.

The Deputy Convener: Before we conclude, I am going to ask each of the panel what specifically could improve the act to help you to carry out your job and to help people to get satisfaction. Before I do that, Andy Wightman has a question.

Andy Wightman: I have a general question. As you are aware, the committee is more likely to hear from people who are dissatisfied with the legislation than from those who are satisfied with it. Mr Hamilton mentioned at the beginning that the legislation is designed very much to be used as a last resort when reasonable endeavours have not succeeded. In general terms, do you think that the legislation is working well?

Alastair Hamilton: The legislation seems to be working well. All that I can go on is the fact that the number of applications that we have received has not been as significant as we expected. I do not know whether that is to do with the breadth of the act. All I can say is that the people who have

benefited from their problems being resolved will inevitably feel that the legislation has achieved its purpose.

We have discussed a number of the difficulties with this type of legislation, which is different from legislation that covers planning permission for a fixed structure like a wall or a building because of the fact that we are dealing with something that is alive, that grows and that is to a degree semi-permanent. The impact of deciduous trees might be less when they are not in leaf, for example. A number of difficulties are embedded in applying the act, but on the whole, within the scope of what it covers at the moment it achieves what it needs to achieve.

The Deputy Convener: Mr Wright, earlier on you mentioned that the threat of the legislation had been helpful.

Kevin Wright: Indeed.

The Deputy Convener: Could you expand on that, given Mr Wightman's question?

Kevin Wright: Especially in the first six months of the legislation being in force, we were getting emails and telephone calls from people looking for a bit more information on the act and what could be done. That is happening less often now, but we continue to get inquiries.

You will be aware that part of the act requires people to try to resolve the problem. Often, there have already been conversations, but we also encourage people to put a letter out to their neighbours highlighting the act and where they can find it. It is very rare that we hear back from those people. Over the years, it has been nice to be contacted by a good half dozen or so people who say that they do not need to come back to us because just the threat, if we want to use that word, of the legislation has been useful.

Alastair Hamilton: I have a further observation on that that the committee may want to ponder. A premise of the act is that the neighbours try to resolve the problem themselves and I suppose that in those circumstances we would not necessarily know whether the legislation had been helpful because the problem will have been dealt with by the neighbours.

Paul Kettles: I am aware that we have had people contact us in advance of putting in an application. We have explained the situation to them and they have gone and contacted the hedge owner, their neighbour, and made them aware of the act and the matter has been resolved.

Even for sites for which we do not issue a high hedge notice, I tend to include in a report a very short paragraph mentioning some work that I have noticed could be done, for example, on dead

branches or dead trees within a given area—perhaps straying slightly outwith the high hedge issue, but nevertheless pointing out that there is scope for doing work. On two occasions, that work has been undertaken by the owner. Once, they clear-felled a woodland, not that I asked for that, but without a notice being issued it was cleared. We had another situation in which the individual went in and thinned out trees, reduced the crowns and so on, and that was not subject to a notice being issued. Comment was made about the management of their trees and it was responded to positively.

Kenneth Gibson: Mr Wright said earlier that he thought that the act was “incredibly beneficial” and created a lot of hope, whereas Mr Hamilton said that it heightened expectations.

One of the intentions of the act was that people would resolve their problems privately. The anecdotal information that the committee received about the English act was that more than 90 per cent of issues were resolved because the act hung over people like the sword of Damocles and they thought that they had better just sort things out. Obviously and unfortunately you end up with the intractable cases.

One other point is that the only local authority in Scotland that reduces fees according to someone's income is South Ayrshire Council and I wonder whether the variance in fees from £172 to £500 puts people off applying for a high hedge notice. It is a lot of money to cough up if you will not necessarily be successful at the end of the day. That is why I asked earlier whether there should be full cost recovery if an applicant was successful. Do you have any evidence, anecdotal or otherwise, that the cost of the application is stopping people from applying for a notice? I am well aware that the councils should not be out of pocket, which is why they charge fees, but is that having an impact?

The Deputy Convener: I ask all witnesses to answer that question, and also to make any final remarks that you wish to make about what could be done to make the act better or to make your job in implementing it easier, because we are now coming to the end of this session.

Paul Kettles: Clarifying the guidance on the definition of a hedge is one change that could be made. Perhaps some pictorial guidance might be helpful for members of the public. We issue our own guidance sheet, which is on our website. Informing members of the public about what is or is not likely to be a hedge might be helpful, even in pictorial form.

In so far as the high hedge notice fees go, we have set ours at £270 in Perth and Kinross and we have received 21 applications to date. I think £270

is quite a reasonable fee by comparison with others. I have had only one individual, who was a senior citizen, who said, "I cannot afford £270." That is one response out of all the inquiries that I have received. It might be useful if we had a fee set. Just like the planning fees are set, why not set a high hedge notice application fee across Scotland?

12:00

Alastair Hamilton: You asked what might improve the act. I made an observation earlier about dealing more effectively with subjectivity, to give a bit more confidence in the act to those parties who are told that the local authority does not accept the planning as a hedge, by including some appeal process mechanism. That adds to the longevity of the process, but we can get into a situation, as colleagues here have explained, of repeated correspondence to try to justify our decision. An appeal process might be a way to expedite that and build up some sort of case law. I hope, and I have no doubt, that the committee's deliberations will include some of the decisions that reporters have issued in their consideration of high hedge cases and will bring together those conclusions.

I sit on the development management subcommittee of Heads of Planning Scotland. When application fees were discussed around that table, with 32 local government planning authorities as well as the national parks, the number of applications that we had in Fife, at 23, was I think the largest number that had been received. Our fee is £385. A number of other authorities had higher fees and a number had lower, but there did not seem to be any relationship between the number of cases submitted and the fees that were set.

Kevin Wright: I will look at the question about fees first. When the act came into force, we were required to ask our council members for delegated powers to make decisions on any applications that we received. As part of that, we were asked to monitor for 12 months whether the fee was putting off potential applicants and then go back to the committee.

In that 12-month period, we had only two people who inquired about the high hedges legislation and who announced that they would not be able to afford the fee. In those situations, we encouraged them. The first steps that have to be undertaken by somebody who is looking to apply do not cost much. They are putting the problem in a letter, discussing it with the neighbours and even going through mediation. We are quite lucky in Aberdeen in that we have a free mediation service. We do not know, and this is part of the evidence gathering, whether they got to a certain stage and

resolved the issue or got to a certain stage and did not come back to us to say, "We have tried every avenue and we are having to stop because we cannot afford it."

I will move on to what I would like to see to make life easier and to help our citizens with the act. If you are used to looking at legislation, the act is quite clear that you have to have a hedge before you can class it as a high hedge, but that is commonly overlooked by those who perhaps are not used to looking at legislation. Although legislation is not necessarily meant to be the easiest thing in the world to read, the act is aimed at householders in general. Perhaps there could be a very clear statement at the start of the act, if that is the decision of the committee, that you have to have what is considered to be a hedge, before you can apply the tests of a high hedge. From a guidance perspective, I would encourage a narrative or a suite of tests that can be applied fairly across Scotland so that we have a standpoint and definition of what a hedge is.

The Deputy Convener: That brings us back to where we started. On behalf of the committee, thank you for coming along this morning.

12:04

Meeting continued in private until 12:58.

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