OFFICIAL REPORT
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Local Government and Communities Committee

Wednesday 24 October 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
28th Meeting 2018, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Alexander Stewart (Mid Scotland and Fife) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jeremy Balfour (Lothian) (Con)
Claudia Beamish (South Scotland) (Lab)
Mary Fee (West Scotland) (Lab)
John Finnie (Highlands and Islands) (Green)
Lewis Macdonald (North East Scotland) (Lab)
Alex Rowley (Mid Scotland and Fife) (Lab)
Mark Ruskell (Mid Scotland and Fife) (Green)
Kevin Stewart (Minister for Local Government, Housing and Planning)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Local Government and Communities Committee

Wednesday 24 October 2018

[The Convener opened the meeting at 09:34]

Planning (Scotland) Bill: Stage 2

The Convener (James Dornan): I welcome everyone to the 28th meeting in 2018 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones. As meeting papers are provided in digital format, members may use tablets during the meeting.

The first agenda item is day 4 of stage 2 of the Planning (Scotland) Bill. I welcome to the meeting the Minister for Local Government, Housing and Planning, Kevin Stewart, and his accompanying officials. MSPs who are not members of the committee but have lodged amendments to the bill will be in attendance today; they are very welcome.

Section 10—Simplified development zone schemes

The Convener: Amendment 232, in the name of Kevin Stewart, is grouped with amendments 233 to 235, 237 to 240, 245, 249, 251 to 255, 279 to 283 and 285 to 289.

The Minister for Local Government, Housing and Planning (Kevin Stewart): These amendments will rename "Simplified development zones" as "Masterplan consent areas". There appears to have been some confusion around this part of the bill. There is a misconception that planning permission is not needed for those areas. In particular, the committee heard at stage 1 that the use of the word "simplified" was being interpreted by some people as deregulating rather than strengthening planning.

I want to support and encourage more public sector-led development, and the mechanism puts planning authorities in the lead in planning their places, rather than having them just react to developers' proposals. Early and effective community engagement and a strong design-led approach to delivering quality development will be required in all cases. This is neither a developers' charter nor a bid to lower standards. Indeed, the previous convener noted that the evidence that the committee has heard is that the proposal sounds just like enhanced masterplanning. It is a master plan and it will give up-front consent for the type of development that the planning authority considers most appropriate for an area. "Masterplan consent areas" is therefore a more accurate name, which should remove any misunderstanding about what we are trying to achieve here.

I move amendment 232.

Graham Simpson (Central Scotland) (Con): This is pretty straightforward. On the face of it, it might look like there is not much point in changing the name, but nor is there any great objection to it, therefore we will support the amendments.

Amendment 232 agreed to.

Amendments 233 to 235 moved—[Kevin Stewart]—and agreed to.

The Convener: Amendment 236, in the name of the minister, is grouped with amendment 284.

Kevin Stewart: I am happy to speak to amendments 236 and 284. They respond to a point made by the Delegated Powers and Law Reform Committee at stage 1 and they follow up on a commitment that I made to reconsider the matter.

To avoid any further confusion around the terminology for those and the following amendments, I will be referring to masterplan consent areas when discussing provisions relating to simplified development zones in the bill.

The bill, as introduced, would have allowed a scheme for these areas to disapply the normal controls on the display of advertisements and apply the controls set out in the scheme instead. However, the Delegated Powers and Law Reform Committee was concerned that that would remove parliamentary oversight of the rules of the display of adverts. In response to those concerns, amendment 236 removes that provision.

I want planning authorities to lead and incentivise development through the up-front consideration and granting of a range of consents, reducing uncertainty for all. We heard from Renfrewshire Council, which prepared Scotland's first town centre simplified planning zone, that despite the scheme granting planning permission, the on-going need to apply separately for advertisement consent within the area can cause delay and reduce certainty and confidence among investors.

I maintain that it would be useful and proportionate if a masterplan consent area scheme could include scope to grant advertisement consent in addition to the range of other consents.

Section 183 of the Town and Country Planning (Scotland) Act 1997 already allows for regulations to make different provision for different areas when it comes to advertisement controls.

Amendment 284 would add masterplan consent areas into that non-exhaustive list of types of area for which different types of provision can be made. The amendment would allow the existing control of advertisements regulations to be amended to make special provision for masterplan consent areas, so that the planning authority could consent to advertisements through a scheme within the parameters permitted by the regulations.

Planners would apply the same thinking and scrutiny that would otherwise be applied to the consideration of individual applications, and provide a more holistic, streamlined consenting framework within the scheme. This approach addresses the Delegated Powers and Law Reform Committee's concern about a loss of parliamentary oversight, because any future amendments to the control of advertisements regulations in relation to these areas would be subject to parliamentary scrutiny. I am grateful to the committee for highlighting this issue and I ask it to support amendments 236 and 284.

I move amendment 236.

Graham Simpson: As convener of the Delegated Powers and Law Reform Committee, I welcome the minister's amendment.

Amendment 236 agreed to.

The Convener: Amendment 12, in the name of Graham Simpson, is grouped with amendments 295 and 20. Amendment 20 is pre-empted by amendment 156 in the group on simplified development zones: land which may or may not be included.

Graham Simpson: I offer my apologies as I may take a while on this, but amendment 12 is important and is part of an important grouping.

Initially, the bill had no mechanism for capturing any land value uplift, which is an issue that the committee looked at very closely at stage 1. An article in *Planning Resource* this month said:

"More than eight in ten planning and development professionals believe Scotland's new planning bill will fail to provide a system capable of improving housing and infrastructure delivery, according to a new survey."

The omission of the reference to land value capture was, in my view, a clear missed opportunity. In the Conservative manifesto for the 2017 general election, we said that communities and public authorities should,

"benefit from the increase in land value"

achieved through gaining planning permission. Ruth Davidson has given a couple of speeches that back the idea, and she has argued that Scotland should build a new generation of new towns to ease the country's housing shortage.

My amendment 12 would provide a powerful tool to enable local authorities to build new communities as well as extensions to, or significant developments within, existing settlements. I have lodged the amendment to provide that, where a planning authority establishes a masterplan consent area, it may include provision for compulsory purchase. The amendment sets out the basics of how the purchase price is to be fixed and requires ministers to set out the rest of the detail about the process by way of regulations. That would include how any provision of the Land Compensation (Scotland) Act 1963 is to be disapplied or modified for the purposes of this scheme.

Amendment 20 simply provides that, where regulations are made by ministers, the regulations should be subject to affirmative procedure.

The Convention of Scottish Local Authorities has stated that there is potential for land value capture to be a useful tool for councils. Shelter and the Adam Smith Institute have supported such a reform. Councils would be able to invest money that is gained through their own decisions to grant planning permission in affordable housing, new roads and better infrastructure. We could avoid wrangles when deciding who pays how much and for what—wrangles that often hold up development. We could deliver varied places, unlock land for smaller builders and self-builders—the focus of an amendment that was debated previously—and we could deliver more houses and more affordable houses. It is genuinely exciting but it is far from new: we should learn from the past.

09:45

The Town and Country Planning Act 1947 enabled the state to acquire land at levels close to existing use value until it was replaced by the Town and Country Planning Act 1959 and by new compensation arrangements in the Land Compensation Act 1961—and the Land Compensation (Scotland) Act 1963.

Alongside powers provided within the New Towns Act 1946, the 1947 act enabled the establishment, through development corporations, of post-war new towns. The new towns programme ultimately led to the establishment of 32 communities for 2.8 million people and successfully paid back its entire borrowing for the delivery of the towns in 1999. I live in one of those towns, East Kilbride, which was the first in Scotland.

Analysis by the Centre for Progressive Policy indicates that, across England, land that is awarded planning permission is worth more than 275 times the agricultural value, and that it

generated £18 billion in increased land values in 2016-17. In England, the state collected around £5 billion through section 106 agreements, the community infrastructure levy and public land sales, leaving private landowners and their intermediaries with pre-tax profits of around £13 billion. During the stage 1 debate on the bill, I said that planning is often all about money, and those figures illustrate that point very well.

Importantly, amendment 12 in my name would provide for

"compensation that is payable in respect of land purchased under this section."

That is only fair. I know that Andy Wightman is a long-standing supporter of land value capture, but amendment 295 in his name does not include a provision for compensation and that does not seem fair to me. Although the Scottish Conservatives will therefore not support his amendment, I accept the principles behind what Mr Wightman is trying to achieve. I guarantee that we can work together ahead of stage 3 and encourage the Scottish Government to get on board with us if amendment 12 is agreed to. We cannot keep kicking this can down the road.

The issue has been examined across the United Kingdom. Just last month, a report of the UK Parliament's Housing, Communities and Local Government Committee concluded that extra funding for new local infrastructure and affordable housing could be raised by reforms to how the increase in value of land that results from public policy decisions is captured. The committee argued that there is scope for raising additional revenue through consideration of new mechanisms for land value capture, and reform of the way in which councils can compulsorily purchase land.

The committee's report also highlighted the success, which I have already mentioned, of the first generations of new towns that acquired land at or near to existing use value and captured uplifts in land value to invest in new infrastructure. They have called for reform of such powers through amendment of the Land Compensation Act 1963, which would lead to a much-needed boost in house building.

Last week, *The Sunday Telegraph* reported that the Chancellor of the Exchequer may announce such proposals in next week's budget, but we do not need to wait for England to move on this or for the Scottish Land Commission to report—Scotland can be at the forefront of this radical shift in public policy. I believe that amendment 12 would help to transform the landscape of residential and economic development in Scotland and could play an important part in a radical new planning system. I urge the committee to support it.

I move amendment 12.

Andy Wightman (Lothian) (Green): Graham Simpson has articulated the case for land value capture. The Scottish Greens have a manifesto commitment to secure reform to the planning acts to allow local authorities to acquire land at its existing use value. I am also aware, as Graham Simpson has said, that this was a manifesto commitment of the Conservative Party in the 2017 general election. It was also a recommendation of the UK Labour Party in its recent white paper on housing. It is a topic of growing interest among policy makers and I echo Graham Simpson in reminding members that a provision enabling it was introduced in section 48 of the Town and Country Planning (Scotland) Act 1947, which was repealed in 1959.

In the UK, 90 per cent of new housing is built by speculative volume builders. That is a very strange model of house building compared to those in the rest of the continent, where builders compete first for land. They have to pay the uplift value, which is ultimately transferred on to house buyers. Typically, 30 to 50 per cent of the costs of new housing is land value, created entirely by the public, through planning authorities acting in the public interest in granting planning consent. If we eliminate that process, we can invest 30 to 50 per cent more in higher-quality, longer-lasting, larger, more energy-efficient homes, or build more at the same cost. As Mr Simpson pointed out, our sister committee in the House of Commons conducted an inquiry into this topic in September this year and made recommendations.

Amendment 295 is my version of a provision that is similar to amendment 12. Like amendment 12, my amendment restricts the deployment of a land value capture mechanism to masterplan consent areas. This is not because I think that it should be so restricted—it should be far more widely available—but because I am conscious that in reintroducing provisions that were last enforced 50 years ago, there is significant risk of causing uncertainty and confusion in the land market. Therefore, the need to have a proportionate approach at this stage is critical.

The establishment of masterplan consent areas creates the ideal environment within which to reintroduce the concept in a controlled and manageable way.

I carried out a consultation on this proposal during May and June. I received 23 responses of which 11 were in favour, nine were opposed and three had mixed views. Those who were supportive included Planning Democracy, Rural Housing Scotland, the Scottish Federation of Housing Associations and the Chartered Institute of Housing. Those who were against the proposal included the Scottish Property Federation, Homes

for Scotland, Persimmon Homes and Scottish Land & Estates.

I attended a meeting of the compulsory purchase specialists and met the authors of a recent Scottish Land Commission paper on the topic. As a consequence, I developed an amendment that is more tightly drawn than amendment 12 and was informed by my consultation, from which two key principles emerged.

The first is that the existing use value of any land in a masterplan consent area must be established and known at the point at which the land is so designated. In Germany this is described as the land price freeze mechanism. To leave the valuation until some years hence, as amendment 12 does, would risk interfering with the legitimate expectations of the landowner, who may have undertaken preparatory works, with the attendant risk of a legal challenge under article 1 of protocol 1 to the European convention on human rights.

The second principle is that the provisions are made available only to meet the housing needs of the community and to uphold the human right to housing. Those concerns are reflected in my amendment 12. This makes the public interest clear and provides a robust defence under the public interest exemption in article 1 of protocol 1 to the European convention on human rights.

I am aware that the Scottish Land Commission is currently undertaking work in this area. However, I do not know when the next legislative opportunity will arise, or whether I will be around to take advantage of it.

This is a planning provision. This is a planning bill. We have a planning bill about once a decade. Both amendment 12 and amendment 295 represent a tightly focused and proportionate measure that would allow local authorities to use the power in defined circumstances in the public interest. As Graham Simpson has mentioned, that has the potential to transform the supply of housing, particularly affordable housing, in rural as well as urban areas.

As duplication would arise in the bill were amendments 12 and 295 both to be agreed to, I will not move amendment 295. That is on the understanding that Graham Simpson agrees—I think that I have already heard him do that—to discuss how his amendment 12 can be further amended before stage 3 to accommodate the principles that I outlined earlier. Those principles arose out of consultation with interested parties and, in my view, are essential to a workable, fair, proportionate and legally defensible mechanism to capture land value.

Kevin Stewart: Mr Simpson said that there is no mechanism for land value capture in the bill. There is a mechanism. The infrastructure levy is a mechanism for capturing an element of land value and the bill also seeks to clarify the use of section 75 planning obligations. Both amendments apparently seek to require ministers to make provision in regulations on the compensation payable for compulsory purchase. The intention behind the amendments, shown by their headings, may be to make provision for the compulsory acquisition of land, but they do not actually use the word “compulsory” in the substantive provisions. The sections that these amendments seek to introduce would, in fact, operate to regulate the voluntary acquisition of land only in certain situations.

However, as I recognise that the intention is to create rights of compulsory purchase, I will consider the amendments on the basis that that is what the proposed provisions would do.

The compulsory purchase of land is a very serious issue. Since the 18th century, the process for compulsory purchase in the United Kingdom has been almost exclusively laid down in detail in primary legislation, to make sure that the power is not abused. I see no reason to change that.

The Scottish Government is interested in the concept of land value capture and that is why we have asked the Scottish Land Commission to investigate options for capturing uplifts in value in Scotland more effectively. The commission is due to report back in spring 2019.

Graham Simpson mentioned new towns quite a lot in his speech and the Scottish Land Commission has recently carried out a study of previous attempts to capture land value uplifts. Although new towns were a successful approach, the 1947 development charge was not successful and, in fact, it discouraged development. That is why we need to look at this area very carefully indeed.

The proposal that is in front of us would ignore the on-going work and the range of options for land value capture that could potentially be considered in Scotland. There is a range of ways of attempting land value capture, and changing the compulsory purchase compensation rules is only one of them.

Once we have the Scottish Land Commission’s report, we will consider whether we should move towards consultation and the preparation of legislation. If the commission concludes that changes to compulsory purchase compensation would be helpful, it may be possible to combine changes to compulsory purchase with the proposed bill on compulsory sale orders that is

being considered for later in this parliamentary session.

There are a number of technical deficiencies in amendments 12 and 295 that I consider make them unacceptable in their current form. For example, Andy Wightman's amendment 295 would require the local authority to value all the land in the area to which the scheme relates, not just the land that the local authority proposes to purchase. There are issues with the valuation methods contained in amendment 12 that could, in some cases, lead to higher compensation than would be payable at present.

I also question why the rules would apply only in a masterplan consent area: what justification is there for paying less than market value in this area and not in another? If a landowner inside the masterplan consent area will potentially receive less for their land than one outside the area, is that fair? Surely it will lead to more opposition to masterplan consent areas, when they are meant to be a collaborative, positive tool that can support and speed up much-needed development. One of the key criticisms of the current compulsory purchase system is that it is too complex, with multiple overlapping processes. How does it help to add another one?

Beyond those specific issues, there is a more significant principle at stake. I recognise the rights to housing that Mr Wightman has cited, but rights can never be considered in isolation. The rights to housing have to be balanced with the rights to property that are also enshrined in the Universal Declaration of Human Rights, and, of more direct relevance to the powers of this Parliament, in the European convention on human rights, with which legislation of this Parliament must be compatible.

The courts have long held that compulsory purchase is compatible with the ECHR, but only where exercised proportionately and when owners receive fair compensation. As a general rule, the taking of property without payment of an amount that is reasonably related to its value would not be justifiable under the ECHR. In the absence of special justification, fair compensation would be expected to equate to the market value of the land taken. Although there may possibly be scope for making changes to the rules for assessment of land compensation in certain circumstances, this will require very careful scrutiny and justification.

10:00

Both amendments imply that the compensation that is payable in such circumstances will be less than is currently considered to be market value, and there must be real doubt about whether compulsory purchase along the lines proposed would be compatible with the ECHR. If it were not compatible, the amendments would be outwith the legislative competence of the Scottish Parliament. I hope that committee members will take that issue very seriously.

In short, it is premature to attempt to change the rules for compensation for compulsory purchase through amendments to the bill without proper analysis and consultation. No formal public consultation has taken place on this key issue. Mr Wightman has mentioned some of the views that were expressed in his own consultation, but he has not published the full results of that consultation.

Andy Wightman: I would like to put it on the record that I will publish my findings.

Kevin Stewart: That is fine, but they are not published yet.

The Scottish Land Commission, the Scottish Law Commission, the Royal Institution of Chartered Surveyors and Homes for Scotland all agree with my analysis and have expressed concerns about the proposals. The Scottish Compulsory Purchase Association has also written to the committee, setting out its concerns in some detail.

The Scottish Government has asked the Scottish Land Commission to investigate the options that exist for more effective land value capture, and it needs the time and space to complete its work. I therefore ask Mr Simpson not to press his amendment 12 and Mr Wightman not to move his amendment 295.

The Convener: I invite Graham Simpson to wind up.

Graham Simpson: I do not have much to add but I hear what the minister is saying and I am prepared to speak to him afterwards. On this occasion, however, I will press amendment 12.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 12 agreed to.

Amendment 295 not moved.

Amendments 237 to 240 moved—[Kevin Stewart]—and agreed to.

The Convener: Amendment 241, in the name of the minister, is grouped with amendments 242, 13, 243, 244, 246 to 248, 250, 293 and 156. I point out the following pre-emptions: agreement to amendment 242 would pre-empt amendment 13, and agreement to amendment 156 would pre-empt amendment 20.

Kevin Stewart: The Delegated Powers and Law Reform Committee suggested that the types of land that may not be included in an SDZ or a masterplan consent area should be set out in the bill. I accepted that point and undertook to lodge an amendment to that effect, including a power to add or remove entries by regulation. My amendments in the group fulfil that commitment.

I want to see masterplan consent areas being used in a wide range of circumstances. I also want to make these provisions as clear and as easy to follow as possible, rather than adding complexity. Amendment 250 provides restrictions on world heritage sites and their buffer zones, European sites as defined in the amendment, sites of special scientific interest, national scenic areas, Ramsar sites, marine protected areas and places covered by orders under part 2 of the Nature Conservation (Scotland) Act 2004. Those are all international or national designations. That is clear, easy to understand and the appropriate level of restriction to set in primary legislation.

It is unlikely that planning authorities will want to introduce masterplan consent areas in those designated areas, but I am happy to provide clarity on the issue to remove any doubt and avoid any confusion. We have worked with the relevant agencies—Historic Environment Scotland and Scottish Natural Heritage—and they agree with my approach.

I want to see the mechanism used more widely and confidently to promote good placemaking. Significant restrictions in locally designated areas would continue to curtail the scope for planning authorities to proactively plan for the right kinds of development in their places, so I am not proposing to include local designations within the restrictions in the bill. That means that we can give authorities the opportunity to decide for themselves what works best in their area.

On amendment 13, in the name of Graham Simpson, I have some serious concerns about preventing masterplan consent areas in conservation areas and green-belt land. Preventing the designation of masterplan consent areas in conservation areas would take away that opportunity for planning authorities to actively plan for and support town centre investment and regeneration. Many local authorities may want to use that approach to deliver on the town centre first principle.

For example, schemes could allow for certain changes of use within town centres, helping vacant units come back into productive use. At stage 1, the committee heard evidence from Petra Biberbach of Planning Aid Scotland that there are currently more than 30,000 empty homes, most of which are in town centres. She emphasised the need for a more imaginative approach to unlock them and to repopulate our town centres.

I know that some authorities are already keen to follow the example of Renfrew town centre and use the provisions for simplified planning zones to support their town centres but are unable to do so because of current restrictions on SPZs in conservation areas.

If the committee supports amendment 13, it would significantly limit the potential of masterplan consent areas to make a difference to our town centres and to support their vitality and vibrancy.

Amendment 13 would also restrict masterplan consent areas in the green belt. Scottish planning policy makes it clear that green-belt designation is a tool for local authorities to direct development to suitable locations. Local authorities can set out uses that are appropriate within the green belt, such as the reuse of historic agricultural buildings, or recreational uses that are compatible with an agricultural or natural setting. Recently, we have been approached by a local enterprise that sees the potential in the reuse of steadings to support the rural microeconomy. A masterplan consent area could facilitate the types of developments that are appropriate within green belts, but that opportunity would be lost if there were a full restriction in green belts.

It is important to provide clarity in the bill on the scope of masterplan consent areas, but any restrictions should be set at the right level and not limit the ability of local authorities to proactively and positively plan good-quality development and investment in their local areas. I would be happy to discuss the issue further with Mr Simpson before stage 3 to ensure that we get the detail right.

I move amendment 241.

Graham Simpson: I welcome the minister's comments. Amendment 13 simply sets out to replicate the current position on simplified planning zones and where they cannot be set up. The Government's amendment 250 places similar restrictions on where such areas can be set up. That amendment is okay and, in some respects, it goes further than amendment 13. However, it does not include green-belt and conservation areas. Having considered what the minister has said today and having spoken to stakeholders and

others, I am minded to agree with the Government, so I will not move amendment 13. I welcome the fact that, again, Mr Stewart has responded to the Delegated Powers and Law Reform Committee. I will support amendment 250. We will also support Government amendments 241 to 248, along with amendment 293, which can best be described as technical.

Amendment 156 appears to be a tidying-up exercise. It seeks to roll together regulation-making powers that will be dealt with under the affirmative procedure, and we support it, too.

Andy Wightman: Amendments 13 and 250 seek to implement the recommendation that the committee made in its stage 1 report that the bill should specify where masterplan consent areas cannot be designated. In principle, I have no objection to that, but I do not agree that the list of such designated sites should include national scenic areas.

National scenic areas include settlements where there is a need for more affordable housing. Those areas include—I have the map in front of me—large parts of Wester Ross, Assynt, Sutherland, the whole of Harris, south Lewis, Kintail, Loch Shiel and a quarter of the Cairngorms national park. As the minister is aware, SNH has a consultative role when a development of more than five houses is proposed in a national scenic area, but it does not have a consultative role when any such proposal is specifically provided for in the local development plan. The minister will probably be aware of the recent controversy over affordable housing in north Skye; he will also be aware that circular 9/1987 contains the relevant rules in that regard.

It is my view that masterplan consent areas could play an important role in providing rural housing, especially where the land value capture provisions are made use of, but also where they are not. To exclude them by law from being available in national scenic areas is illogical when development can already take place under existing planning provisions. In many areas, masterplan consent areas have the potential to provide a more effective means of providing affordable rural housing. For those reasons, I cannot support amendments 12 and 250. I would welcome further discussion with the minister on the points that I have made, with a view to lodging a possible amendment at stage 3 to remove national scenic areas from the list of designated sites.

Kevin Stewart: I am grateful to Mr Simpson for indicating that he will not move amendment 13, and I would be more than happy to have further discussions with Mr Wightman and others on national scenic areas, so that we get the provisions absolutely right for stage 3.

Amendment 241 agreed to.

Amendment 242 moved—[Kevin Stewart]—and agreed to.

The Convener: Does any member object to a single question being put on amendments 243 to 250?

Andy Wightman: Yes.

The Convener: Given that a member has objected, I will put the question on each amendment individually.

Andy Wightman: I point out that I have no objection to amendments 243 to 249 being taken en bloc.

The Convener: Does any member object to a single question being put on amendments 243 to 249?

Members: No.

Amendments 243 to 249 moved—[Kevin Stewart]—agreed to.

Amendment 250 moved—[Kevin Stewart].

The Convener: The question is, that amendment 250 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 250 agreed to.

10:15

The Convener: Amendment 296, in the name of Monica Lennon, is grouped with amendments 297 to 301.

Monica Lennon (Central Scotland) (Lab): I welcome the minister's comments in his opening remarks on simplified development zones, which are being reframed as "masterplan consent areas". My view is that the use of masterplan consent areas has to be as transparent as possible. They should support the local development plan as the foundation of a plan-led system. The best way for that to happen is through designating masterplan consent areas during the formulation of the local development plan. If that is

not possible, the local development plan should be amended to include any new masterplan consent area.

We have to be careful not to undermine the local development plan-making process, especially when we are all trying to increase community involvement. It is right that SDZs, or masterplan consent areas, align with the local development plan. My amendments 296 to 298 would restrict the ability of planning authorities to produce SDZs or masterplan consent areas "At any time".

I have been a bit sceptical about SDZs during our scrutiny of the bill. Simplified planning zones have been completely underused—I think that we have heard of two examples. Masterplan consent areas have the potential to be a very good tool, but they will be resource intensive, and I hope that that point will be considered.

I move amendment 296, and I will move amendments 297 and 298.

The Convener: Adam Tomkins was going to speak to amendment 299. Will you be speaking on his behalf, Graham?

Graham Simpson: Yes, if that is okay, convener. He is at another committee at the moment.

Mr Tomkins lodged amendments 299 to 301 in this group. His amendment 299 would ensure that there is a regular period for a planning authority's evaluation of whether a masterplan consent area would be beneficial to an area. Basically, that would ensure that the authority must take a look at the matter every five years. I think that that is entirely sensible, so we will obviously support it.

Amendments 300 and 301 go with amendment 299. Amendment 300 simply sorts out some rather woolly drafting. I will therefore be moving those amendments.

Monica Lennon's amendments 296 to 298 seem fairly straightforward and should help to improve the process, so we will support them.

Kevin Stewart: Amendments 296 to 298, in the name of Monica Lennon, would greatly damage the appeal of masterplan consent areas and restrict their use. I cannot support that.

Throughout the process of planning reform, I have been clear that we need to strengthen the ability of planning in Scotland to deliver good-quality development. Masterplan consent areas could be a powerful tool to support the delivery of local development plans, but I do not believe that their preparation can or should be tied to the local development plan preparation cycle. There are several reasons for that.

First, masterplan consent areas are a delivery mechanism, so they should be prepared within the plan's delivery period. Planning officers from Glasgow and Edinburgh told the committee that the mechanism could support the delivery of the development plan. I agree with that. It follows that, for that to be done effectively, there has to be a plan in place first.

Ms Lennon's amendments would mean that preparation of masterplan consent areas would need to be twin-tracked with the preparation of the local development plan. That could lead to authorities wasting effort and valuable resources in preparing a scheme to support a proposed allocation that may not end up being included in the final plan. That would be costly and ineffective, and it would be a real and damaging deterrent to the use of the mechanism.

For many sites, only once the local authority is into the delivery phase of the plan cycle will the need for a masterplan consent area emerge. For example, if nothing is happening on a site that is part of an area's spatial strategy and land supply, the authority might want to prepare a scheme to support its deliverability and to attract investors.

Secondly, we need to ensure that masterplan consent areas can be brought into play to react to changing circumstances in any area. Ms Lennon's amendments would limit the ability of planning authorities to respond quickly and decisively to significant events. For example, if a major local employer was going into administration and its site was threatened with closure or was closed, the local authority should be able to step forward and take action, at that point, to support jobs for its people in its area. The authority could set out alternative uses for the site, putting in place conditions for the right kind of development, protecting and enhancing the local economy, and working with the community to provide a new vision for that place. If Ms Lennon's amendments were supported, the authority would have to hold back, possibly for years, while it got its local development plan under way.

Thirdly, the amendments could place significant pressures on local authority resources. We have to be careful about not overloading the development plan process with full technical appraisals. Up-front work will be required from planning authorities to prepare masterplan consent area schemes. We want to allow them the time and the space to do that properly, when they are not in the midst of working on their local development plan. We have seen the implications of that in each of the pilots that we are supporting, where the local authority planners have been trying to progress their scheme at the same time as they have been preparing their local

development plan. That has led to resourcing issues and has impacted on timescales.

We need to learn from those very real experiences. Both the Renfrew town centre and the Hillington Park SPZs were prepared outwith the development plan process. They were fully consulted on but did not attract objections. To delay such schemes by waiting for the local development plan is not necessary and would, in turn, delay investment in places around Scotland, such as the £25 million that the Hillington Park SPZ has generated for its local area.

The preparation of schemes must not be limited to twin tracking them with the preparation of the local development plan. I strongly urge the committee to reject Monica Lennon's amendments to ensure that masterplan consent areas are properly considered and taken forward by planning authorities at the most appropriate time and in a way that can have the greatest positive impact.

I turn now to Mr Tomkins's amendments 299 to 301. The bill includes a duty, in paragraph 5 of schedule 5A, on authorities to publish a statement setting out how they have considered in which parts of their area it would be desirable to make a masterplan consent area scheme, in order to bring that type of mechanism further to the fore in authorities' thinking.

Under the current legislation, planning authorities are already required to consider in which part or parts of their area it is desirable to create simplified planning zones and to keep that question under review. However, given the extremely limited number of zones that have come forward to date, it is arguable that planning authorities have not been regularly considering the matter.

Opportunities to radically reposition planning as a leader and an enabler of development should not be lost. I have therefore set out a more transparent approach, whereby planning authorities have to regularly publish a statement on how they have fulfilled their duty to consider making masterplan consent area schemes.

It might be possible to link that with local development plan delivery programmes, which are to be updated annually. That could help to provide us, the wider community and industry with a picture of how each authority is considering delivery of their local development plans, and the use of schemes as part of that. The bill's provisions allow ministers to use regulations to prescribe minimum standards for how frequently planning authorities must consider the question of which part or parts of their area it would be desirable to make a scheme for.

Mr Tomkins's amendments would require authorities to do that at least once every five years. I am happy to accept that requirement and leave it open to local authorities to report more often if they so wish.

Monica Lennon: I welcome the minister's remarks. They give me the opportunity to come back.

It is regrettable that we have heard quite a bit of scaremongering. The minister began by saying that the amendments would be "greatly" damaging. However, I want to go back a step.

The bill contains proposals to shift local development plan making to a 10-year cycle. It provides for a high-level document that sets out a vision and a 10-year strategy for an area. I welcome the fact that we will maintain a plan-led system in Scotland, but that is a highly discretionary system that allows skilled planning professionals and their colleagues to apply the right discretion and flexibility. We hope to have a generation of local development plans that provide certainty and guide development to the right places.

Kevin Stewart: Will Monica Lennon give way?

Monica Lennon: In a moment, minister. Around this table, we hope that the plans will remain flexible in their approach.

It would be unfair if, when it comes to shocks to local economies, businesses closing down and so on, we let it hang here that the sole responsibility to sort that out lies with planning departments. I can think of many times in the past few months when East Kilbride, Scotland's first new town, has seen closure after closure on the high street and in local business parks. I raised the situation with the previous cabinet secretary for the economy but it took six weeks to get a response about what the Government can do to work with local government—I had to raise the point with the First Minister to get a reply.

It not simply a case of what planning does. I do not think for a minute that planners will sit on their hands and not face up to the challenges, but we are not talking about planning alone.

The minister talked about things being resource intensive. The biggest barrier is not about what is in the local development plan; it is about the resources.

Kevin Stewart: Will the member give way?

Monica Lennon: In a moment. We have talked at length about a 23 per cent reduction in the planning authority workforce since 2009. You cannot be serious about economic growth when you cut council budgets, leaving us to look at that level of decline in the planning workforce.

We need highly skilled planners who can do economic development and liaise with the private

sector so that we do not get to the point at which we have to react to shocks in the economy. We should have robust development plans and strategic development plans that mean that we can prepare for challenges to our economy.

I am happy to give way at this point.

Kevin Stewart: First, I have to say that I am not scaremongering; I am giving very real examples of what can happen. I am not saying that economic shocks are the sole responsibility of planning departments—far from it—but we have to be able to give people the tools to react to difficult situations that can arise, even in the best of economic times.

As I have clarified, masterplan consent areas are a tool to support the delivery of the plan rather than an integral part of the plan. It is therefore not necessary to trigger an amendment to an LDP whenever a scheme has to be made. I do not think that Ms Lennon is suggesting that LDPs should be amended every time the planning authority grants planning permission, so why should they have to be amended when the authority makes a masterplan consent area scheme?

10:30

Ms Lennon's amendment risks putting planners back on the treadmill of constantly updating plans rather than focusing on placemaking and delivery—that is ultimately what matters, not added procedures.

The Convener: Could you finish, please?

Kevin Stewart: I am finishing now, convener. We have included provisions on consultation, engagement and publication of masterplan consent area schemes, so there is no need to amend a local development plan to ensure that those steps are carried out.

Monica Lennon: One of the reasons why I lodged the amendments is that we all want to increase public confidence in the planning system. We have talked at length about the local development plan-making process and the need to get more people from the community around the table to make sure that we are making sensible decisions about the communities in which they live.

We could have a situation in which a local development plan has just been signed off—has just been adopted—and then, weeks later, various different masterplan consent areas come forward. What does it say to the people who gave up their time to come to public meetings and get involved as stakeholders when things rapidly change?

I welcomed the minister's initial clarification this morning about masterplan consent areas. I think that there are other worthwhile amendments that would curtail the minister's right to designate them because he is not a planning authority—it is the planning authority that, working with the community, knows best about the area.

In principle, I have come round to the minister's idea of the masterplan consent area. However, it is really important that we maintain public confidence, and I do not see the problem in making sure that the process is properly aligned with the local development plan. I do not think that anyone needs to be frightened that there is a lack of masterplan consent areas. For masterplan consent areas to be effective, the most important thing is for hard cash to be available to invest in areas. It is not the planners who hold the purse strings on these things; I think that we have to remember that too.

I press my amendments.

The Convener: The question is, that amendment 296 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 296 disagreed to.

Amendment 297 moved—[Monica Lennon].

The Convener: The question is, that amendment 297 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 297 disagreed to.

Amendment 251 moved—[Kevin Stewart]—and agreed to.

Amendment 298 moved—[Monica Lennon].

The Convener: The question is, that amendment 298 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 298 disagreed to.

Amendments 299 to 301 moved—[Graham Simpson]—and agreed to.

The Convener: Amendment 93, in the name of Andy Wightman, is grouped with amendments 14, 302, 94, 303, 95 to 97, 304 and 256. I point out the following pre-emptions—pay attention.

Amendment 93 will pre-empt amendment 56 in the group "Directions etc: form and publication". Amendment 14 will pre-empt amendment 252 in the group "Simplified development zones: renaming". Amendment 303 will pre-empt amendment 293 in the group "Simplified development zones: land which may or may not be included" and amendment 253 in the group "Simplified development zones: renaming". Amendment 95 will pre-empt amendment 57 in the group "Directions etc: form and publication". Amendment 96 will pre-empt amendments 254 and 255 in the group "Simplified development zones: renaming". Amendment 304 will pre-empt amendment 256 in this group.

I ask Andy Wightman to make some sense of that and to move amendment 93 and speak to all the amendments in the group.

Andy Wightman: Thank you, convener. I suspect that we will need to make sense of some of that at a later stage.

The amendments in my name in the group are designed to limit the power to initiate the designation of masterplan consent areas to planning authorities alone, and to remove the various powers of ministers to direct planning authorities otherwise. In other words, masterplan consent areas are not to be considered as an alternative form of statutory planning application procedure that are open to anybody to pursue, including my sister in Switzerland, who featured in stage 1 debates.

In our stage 1 report, we recommended that proposals for masterplan consent areas should form part of a local development plan and that only planning authorities should have the statutory right to introduce proposals for a scheme. That recommendation was never intended to prevent any party, including my sister in Switzerland, from requesting, suggesting or advocating that there should be masterplan consent areas—it merely removes the statutory right to make such a request.

Amendment 93 would remove the power of Scottish ministers to direct a planning authority to make a scheme.

Amendment 14, in the name of Graham Simpson, would remove the statutory right of third parties to apply to have a scheme made and to have the right of appeal when that is refused.

Amendment 94 would remove the Scottish ministers' power to direct a planning authority to notify them of any proposed scheme.

Amendment 95 would remove ministerial powers of call-in.

Amendment 96 would remove the power of Scottish ministers to make a direction or to make or alter a scheme when a direction has been issued under paragraph 6, which will be deleted by amendment 93.

Amendment 97 would remove ministers' direction-making powers over procedures.

Amendments 302 to 304, in the name of Monica Lennon, would remove provision from new schedule 5A of the 1997 act. I think that I agree with them, but I will listen to what she has to say.

I move amendment 93.

Graham Simpson: Amendment 14 is one of the many amendments whose meaning people must find completely baffling. It is one of those amendments that mean that members need to check the bill and see what lines 29 to 39 say and work out what it will mean if they go. I can save members the effort of doing all that and explain.

Amendment 14 would remove from third parties or individuals the power to request a masterplan consent area. During stage 1, Andy Wightman referred several times to his sister in Switzerland, as he has said, and questioned whether she could request such a zone. I will call amendment 14 "the Andy Wightman's sister amendment", because it will make a change to new schedule 5A, which will be inserted into the 1997 act by section 10 of the bill, so that a person is no longer allowed to request that an authority considers setting up a masterplan consent area. That will be achieved by

deleting paragraphs 7, 8 and 9 of new schedule 5A. The amendment is quite straightforward. It is what the committee has recommended, and I urge the committee to support it.

I welcome amendments 302 to 304, in the name of Monica Lennon, and amendments 93 to 97, in the name of Andy Wightman, which he has already explained.

Monica Lennon: I support amendment 93, in the name of Andy Wightman, which will delete ministers' ability to direct planning authorities regarding simplified development zones.

I clarify to Andy Wightman that amendments 302 to 304 are consequential on previously debated amendments 296 to 298, which sought to tie simplified development zones into the local development plan timeline and procedure in order to prevent contradictory and parallel procedures. As I explained, that was to ensure consistency and remove any potential for duplication of provisions in the 1997 act.

Andy Wightman: I am just trying to follow that. The amendments are consequential to amendments that have just been voted against, so I presume that Monica Lennon will not move them.

Monica Lennon: Oh yes—Andy Wightman lost me the vote. I will take the convener's advice.

The Convener: It is up to you.

Monica Lennon: Okay—I will move them and give Andy Wightman a chance to change his mind.

The Convener: Right.

Monica Lennon: We will see how we get on.

I will finish, in support of Graham Simpson's and Andy Wightman's amendments, by repeating a point that I made earlier—ministers are not planning authorities and do not have the same expertise, and neither have they gone through the in-depth process of consulting the public and putting together a local development plan. I am happy for a masterplan consent area to be one of the tools that a planning authority can use to meet the needs of the local population, but I do not believe that they should be at the disposal of ministers.

Kevin Stewart: The amendments in this group would have a severe impact on the operation of this positive new part of the planning system. The process that we have set out for making or altering a masterplan consent area is well thought through and we have been testing it in a series of pilot projects, as I have already mentioned.

Our provisions are more streamlined than the existing provisions for preparing simplified planning zones. They ensure that appropriate and tailored engagement is carried out and that representations are taken into account. We have explored the new process with planners working on the simplified planning zone housing pilots, who are grappling with the old legislation. Those planners view our changes as a marked improvement: they are proportionate while ensuring greater early engagement.

Ms Lennon's amendments 302 to 304 propose the removal of numerous sections of the process without replacing them with alternatives. I recognise that Ms Lennon sees that approach as supporting her other amendments, which have already fallen, to tie masterplan consent areas to local development plans, but what she is proposing would create a vacuum. To put it in simple terms, local development plans set out spatial strategy for a whole local authority area, while masterplan consent areas issue consent for the development of a specific area, with any associated conditions.

I do not consider that the procedures and consultation requirements for local development plans are appropriate for masterplan consent areas. I cannot see how Ms Lennon's amendments would allow both processes to function properly or be achievable in a reasonable timescale with the resources that are available in planning authorities. I ask Ms Lennon not to move those amendments.

Mr Wightman's amendments seek to take ministers out of the picture in relation to masterplan consent areas. However, I believe that there is value in ministers having those powers. The power to direct a planning authority to make or alter a masterplan consent area scheme, or for ministers to make or alter a scheme themselves, could be used to very positive effect in Scotland—for example, to pursue the delivery of priorities in the national planning framework, which will have been fully scrutinised and approved by Parliament.

Ministers could also direct that a scheme should be brought forward to support other projects of national or regional significance. For example, in the case of a serious economic event such as the closure of a major employer, a scheme instigated by ministers could help to drive forward action with all levels of government working together, to enhance the place's prospects.

10:45

For example, there is a very similar provision in Ireland where orders can be made requiring a planning authority to prepare a strategic development zone scheme and to bring it forward within two years. That provision has been used in a very positive way to deliver developments of national significance, including the redevelopment of Dublin docklands and strategic housing

developments. This is not about centralisation or taking control away from local authorities, and I do not expect the power to be used often. Indeed, I will actively encourage and support authorities to be proactive in bringing forward masterplan consent areas where they are clearly needed.

As for notification and call-in, my proposal is for masterplan consent areas to have fewer notification stages than are required under the current simplified planning zone provisions. The bill does not repeat the requirement for planning authorities to notify ministers as soon as they decide to make a masterplan consent area or when they place it on deposit for representations. That is not necessary. I have taken a more proportionate approach under which ministers are allowed to issue a direction setting out particular types of schemes that should be notified to them.

The approach should work in a similar way to the notification of applications direction, under which certain planning applications are notified to ministers where issues of national importance might be involved—for example, where there are objections from a statutory agency or where the planning authority has a financial interest in a masterplan consent area. A scheme will issue a consent and, for the sake of consistency, I think it right for the planning authority to notify ministers of its intention to adopt the scheme only in some limited circumstances. Ministers intervene very rarely in planning applications, and I expect that to be the case for masterplan consent areas, too.

Amendment 97 would delete the provisions that would allow ministers to issue directions about procedure and provision of information. Although I would not expect to use the power regularly, it is important that we cover those unique situations in which something specific has to be done about a specific scheme that would not be applicable to all schemes. Examples could include requiring the planning authority to consult a particular local organisation that has a special interest in the scheme. Such case-specific requirements could not be predicted or set out in regulations but could be issued as a direction to the relevant authority.

Moreover, the power in paragraph 24(1)(b) of new schedule 5A to the 1997 act, to be inserted by section 10(2) of the bill, could be used by ministers to require additional information from the planning authority to inform their decision whether they should call in a particular scheme before it is made. It is important to have these powers in place in the interests of full and proper engagement and to ensure that any decisions made by ministers in exercising their functions are made on a fully informed basis.

Amendment 14, in the name of Graham Simpson, would remove the power for a person to request a masterplan consent zone to be made. This is an established process, and we are not aware of any wider evidence with regard to such a proposal or any calls to remove this power. It is worth looking at the Hillington Park simplified planning zone as an example. Since its adoption, planning authorities have been notified of approximately 28,000m^2 of additional floor space, which equates to over £25 million of investment in the area. That scheme was initiated by a party other than the planning authority—in that case, the landowner.

However, the proposal in amendment 14 would not just remove a right of landowners. We see masterplan consent areas as a positive delivery tool supporting all kinds of developments that offer benefits to different types of groups. For example, a community group could request a scheme to support delivery of its local place plan, or a business improvement district or local chamber of commerce might propose one to support town centre regeneration. The scheme could be used to put in place the consents that are needed to help their vision become a reality and could also unlock funding streams for the community to take forward those plans.

We have proposed a well-structured process for masterplan consent areas, with proportionate powers for ministers to intervene in appropriate circumstances, which are in line with similar arrangements for planning applications. The amendments that members propose would leave the process unbalanced and full of holes, so I ask the committee not to support them.

My amendment in the group, amendment 256, is a technical one that simply makes clear the exact day on which a period ends when the start and end months have a different number of days. Given the size of this group of amendments, I hope that we can avoid a debate on the wonders of the Gregorian calendar.

Graham Simpson: Will the minister take an intervention?

Kevin Stewart: Yes.

The Convener: Very briefly, please.

Graham Simpson: I will be brief. I have listened carefully to what the minister has said. He has made cogent arguments on amendment 14. I will still move it but, from what he has said, it seems that there is an opportunity to have further discussions on the issue and perhaps be rather more specific in the bill about who or what organisations can propose consent areas.

Kevin Stewart: I am always happy to have further discussions. I am sure that the committee would not want to prevent community groups and business groups from putting forward their vision.

To conclude, there is considerable and growing support for planning to actively enable the delivery of high-quality development, and masterplan consent areas will be an important tool in the box for achieving that. Part 2 has been carefully designed and we have been working with authorities to fully test it. I ask the committee to reject amendments that will undermine our good work in this important area. However, I am more than willing to have further discussions with members on aspects of the issue.

Andy Wightman: I welcome the minister's observations. The concern that some of us had at stage 1 was that the process by which masterplan consent areas can be applied for confers wide powers, which could easily be used to bypass planning authorities. The proposals give a lot of power to ministers to influence development against the wishes of those authorities. That is where some of the concerns came from.

I want to respond to the minister's arguments about places such as Hillington Park and about chambers of commerce or community groups. Nothing in my amendments would prevent any party, including my sister in Switzerland, from advocating, requesting or suggesting masterplan consent areas or from publicly campaigning and tabling motions in local authorities to have such areas. Indeed, I think that they are a useful mechanism and that, potentially, many people should argue for them. All that my amendments do is remove the statutory right to make an application. I certainly want us to move over time to a more public-led model of development planning rather than the system that we have at the moment, which is dominated by private interests.

I am content to revisit some of the amendments. I listened carefully to what the minister said and, in light of his comments, I will not press amendment 93 or move amendments 96 and 97. He gave cogent reasons why the provisions that those amendments would remove are in the bill.

I listened to what Graham Simpson had to say, and I still support amendment 14. Masterplan consent areas should be introduced only by planning authorities, although I agree with Graham Simpson that we could perhaps have further discussions to widen that out before stage 3.

Amendment 93, by agreement, withdrawn.

Amendment 56 moved—[Alexander Stewart].

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 56 agreed to.

The Convener: I call amendment 14, in the name of Graham Simpson, and I remind members that, if agreed to, the amendment will pre-empt amendment 252.

Amendment 14 moved—[Graham Simpson].

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 14 agreed to.

Amendment 302 not moved.

Amendment 94 moved—[Andy Wightman].

The Convener: The question is, that amendment 94 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 94 agreed to.

The Convener: I call amendment 303, in the name of Monica Lennon, and I remind members that, if agreed to, the amendment will pre-empt amendments 293 and 253.

Amendment 303 not moved.

Amendments 293 and 253 moved—[Kevin Stewart]—and agreed to.

The Convener: I call amendment 95, in the name of Andy Wightman, and I remind members that, if agreed to, the amendment will pre-empt amendment 57.

Amendment 95 moved—[Andy Wightman].

The Convener: The question is, that amendment 95 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 95 agreed to.

The Convener: I call amendment 96, in the name of Andy Wightman, and I remind members that, if agreed to, the amendment will pre-empt amendments 254 and 255.

Amendment 96 not moved.

Amendments 254 and 255 moved—[Kevin Stewart]—and agreed to.

Amendment 97 not moved.

The Convener: I call amendment 304, in the name of Monica Lennon, and I remind members that, if agreed to, the amendment will pre-empt amendment 256.

Amendment 304 not moved.

Amendment 256 moved—[Kevin Stewart]—and agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

After section 11

The Convener: I call amendment 305, in the name of Lewis Macdonald, whom I welcome to the meeting.

Amendment 305 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 305 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 305 agreed to.

The Convener: This might be an appropriate time to have a very brief break. If everyone could be back in five minutes, that would be great.

11:00

Meeting suspended.

11:06

On resuming—

Before section 12

The Convener: Amendment 43, in the name of Andy Wightman, is grouped with amendments 44, 45 and 140.

Andy Wightman: Section 10(2)(e) of the Town and Country Planning (Scotland) Act 1947 provided that

"the use of any land for the purposes of agriculture or forestry ... and the use for any of those purposes of any building occupied together with land"

did not constitute development. That exception is restated in section 26(2)(e) of the 1997 act. Amendment 43 would remove that exception and bring agricultural land and forestry land use into the planning system by classifying such usage as development for the purposes of planning law.

There are several reasons why I think that it is right to do that. Section 57 of the Climate Change (Scotland) Act 2009 introduced a duty on ministers to prepare a land use strategy. Work on that is still on-going, but given that the strategy is spatial and covers rural land use, it is self-evident that such a strategy should be part of the planning system in order to ensure that democratically accountable decisions can be made about two land uses that cover extensive areas of land.

It is worth noting that the impact will be minimal as far as agricultural land is concerned, since virtually no new land is coming into agricultural use that would constitute development. However, bringing agriculture firmly within the planning system will allow for more coherent spatial planning in relation to hydrology and flood control, soil and vegetation management and the protection of vital areas of land for food growing.

Land use in relation to forestry is expanding and the impact of the change will be most keenly felt in the forestry sector. Currently, Scottish planning policy provides for local forestry and woodland strategies in the form of supplementary guidance. Indeed, this year, Highland Council has been consulting on its latest strategy.

Given that forestry development has important implications for landscape, road infrastructure, hydrology, industry and employment, it should be governed by the planning system rather than, as at present, by a Government department—Forestry Commission Scotland—that operates outside the spatial planning system.

Amendments 44 and 45 would introduce into primary legislation a definition of what constitutes a change of use in relation to a dwelling house that is intended to be used as a holiday home or as a short-term let, respectively. Currently, either of those two changes of use might constitute a change of use according to the land use class orders, depending on circumstances.

Amendment 44 seeks to bring holiday or second homes, as they are also known, into the planning system. The Scottish Government—in SSI 2013/45—defines such premises for council tax purposes as homes that are occupied for at least 25 days per year and are not the main residence of the owner. That means that the properties are occupied only for specific times of the year and are left vacant the majority of the time.

Data published by the National Records of Scotland in May 2018 indicated that there are 25,713 holidays homes in Scotland. However, the true figure could be much higher as it has been reported—and it is known—that owners are increasingly reclassifying properties as commercial holiday lets in order to take advantage of taxation loopholes, most notably the small business bonus scheme. Indeed, some councils, such as the City of Edinburgh Council and West Dunbartonshire Council, no longer record how many second homes there are in their localities because of that complication.

The impact of second homes on local housing markets has been a long-standing issue in rural Scotland and remains a serious problem in areas such as Applecross, Arran and the east neuk of Fife. For example, in the neighbouring data zones of Elie and Earlsferry, out of a total of 937 dwellings, 422 or 45 per cent of properties are second homes. I understand that the local school has closed as a consequence. None of that has been governed by any planning decision made by a democratic planning authority.

Over the summer I conducted a consultation on amendment 44, which received responses from residents, industry and planning authorities. The Cairngorms National Park Authority, for example, pointed to one of its publications, which calls second homes “problematic” and “ineffective stock”.

Amendment 44 would ensure that, where a property is currently used as a main home, and there is an intention to change that use to anything else, including use as a holiday home, the proposal cannot be given effect to without any consideration of the possible impacts on local housing markets and availability. That would allow planning authorities to regulate the use of domestic property to ensure the most appropriate balance between homes for local people and holiday homes for external interests.

Amendment 45 seeks to provide a clearer and simpler definition of what constitutes a change of use from a domestic dwelling to a short-term let. As members may be aware, I have been working on the topic for more than a year in response to widespread concerns about the rapid growth in homes used for certain purposes. The concern is not about home sharing, where the owner rents out a room or two or perhaps even the whole property for a few weeks and where the property remains their home—historically, that has meant taking in lodgers—but is about homes being used as commercial lets, where the property ceases to be a domestic dwelling and is converted into a commercial property that is let out for short periods of time, typically on a global online platform.

Currently, short-term lets are not included in the Town and Country Planning (Use Classes) (Scotland) Order 1997. Class 7 covers hotels and hostels but does not include short-term lets. That means that the use is sui generis, or in a class of its own, and that any proposal to change the use from class 9—houses used as main or sole residences—to a short-term let is, on paper, a change of use that requires consent. However, such a change of use has to be material before any consent is required and the principal means of assessing materiality in Edinburgh and elsewhere has been to take account of the intensity and frequency of use by visitors.

For example, an application for a certificate of lawfulness for a short-term let operating in South Queensferry without consent was refused on the basis that the intensity and frequency of use

exceeded 30 per cent of the year. That and many other applications in the Edinburgh area have been upheld by the reporter on appeal. However, such assessments are incredibly time-consuming to undertake and typically rely on neighbours documenting the comings and goings of visitors and submitting that as evidence of a breach of planning. That is hugely disproportionate.

In addition, the current planning provisions are open to legal challenge. One case that was planned to be brought before the Court of Session by a woman who lives in California and uses her property in Edinburgh as a short-term let has been dropped, but others are in the pipeline.

What is required is a straightforward definition in planning law of what constitutes a change of use from a dwelling house to a short-term let. The key issue here is the distinction between a property being used as a permanent home—a sole or main residence, or a place for a family to live—and its being used as a commercial short-term let. Amendment 45 would put such a distinction into law.

The purpose of amendment 45 is not to prescribe the number and location of short-term lets. That is a matter for planning authorities, through their development plans and development control. Amendment 45 would allow authorities to develop policy and implement development control in a more effective and meaningful manner.

Finally, I note that a number of detailed issues were raised in the consultation responses that I received, which I will publish. I will seek to address those issues between now and stage 3. I invite members to support amendments 43, 44 and 45.

I move amendment 43.

11:15

Claudia Beamish (South Scotland) (Lab): Good morning. I lodged amendment 140 and the consequential amendments 141 and 142, which will be considered in groups 10 and 12, with the intention of protecting areas of flood risk from the exercising of agricultural permitted development rights, which can proceed without a full planning application being necessary.

An example of that in my region involved permitted development rights being used, ultimately, to develop housing on a flood plain. Initially, land on a flood plain was raised under permitted development rights for the purpose of constructing an agricultural shed. Although the Scottish Environment Protection Agency had concerns about that, it had no remit in relation to the permitted development rights status of the land. The changes made the flood plain issue a serious concern. Unfortunately, that led to the developer making a subsequent, successful application for housing, an application for which had previously been declined. SEPA voiced its concerns about the application, given the history of the site, but the local authority's declining of the application was overruled by the Scottish Government inquiry reporter. The reporter concluded that, because the land had been raised and was therefore out of the flood plain, the application should not have been rejected.

I believe that that example illustrates the existence of a concerning loophole in the law as it stands. Although I stress that the developer adhered to the planning process and did not breach it with their application for housing, the application created tremendous anxiety and resentment among members of the community, who were perplexed by a system that appeared not to be able to protect them. Only two years ago, unprecedented destruction was caused by flooding across the country as a result of adverse weather conditions, and the likelihood of such conditions recurring will increase, given the climate change challenges that we face. It is therefore vital that we protect our flood plains and have legislation in place to do so. That means future proofing.

However, following discussions with the Scottish Government and SEPA, I am considering not moving my amendments. I understand that work to look at the extension of permitted development rights is already under way. I note that, in the sustainability appraisal scoping report, the removal of permitted development rights from areas of flood risk has been highlighted as a measure that should be considered, and I am reassured that SEPA will engage further on the issue. That said, I seek reassurance from the minister that that is the case and that he will also consider the issue in the context of the national planning framework and the national policy review.

Kevin Stewart: As we move to the part of the bill that deals with development management, I would like—at the risk of sounding like a stuck record—to take a moment to reiterate the Government's purpose in introducing the bill. The aim is to streamline the planning system and remove unnecessary process for planning authorities and applicants so that resources can be focused on creating great places and delivering the development that our communities need.

There was very little in the bill as introduced on development management. That is because the independent panel did not find that any major changes were needed in that area. The decisions that are made—which are made mainly by local planning authorities—are led by the development plan, but the material considerations that may be relevant to each case are also taken into account.

Planning authorities have substantial flexibility in their ability to request additional information from the applicant, to consider the individual local circumstances that apply in each case and to impose conditions on the development if that seems necessary. There are practical issues that we need to address through training and guidance and improvements in technology, but we do not propose to change that basic system.

The flexibility for planning authorities to consider what is relevant in each case is essential, given the wide range of issues that the planning system deals with and the different circumstances that apply in every case. I recognise that many of the amendments that have been lodged seek to address important issues, but a blanket requirement in primary legislation is not always the best solution. The committee has agreed that, in future, policies should be an integral part of the development plan, through both the national planning framework and the local development plan. That gives policy additional weight and scrutiny, while still allowing planning authorities to decide which policies are relevant in individual cases.

Members have said that they do not want the bill to be centralising, but many of the amendments would limit authorities' ability to deal with applications in a way that suits their local and individual circumstances and to balance the various issues that are involved in order to make the best decision in the overall public interest. Blanket statutory requirements also run the risk of imposing additional costs and delays in cases in which they are not necessary. Although the impacts of individual amendments may be small, I ask members of the committee to consider the cumulative impact of all the amendments that have been lodged.

The first group of amendments relate to the meaning of development with regard to what does or does not require planning permission. Essentially, section 26(1) of the 1997 act provides that building and engineering operations, or any material change of use, are development, which requires planning permission. Section 26(2) excludes certain things from that, such as works that affect only the interior of the building, ordinary use of a house and garden, maintenance of roads, sewers, water pipes and so on.

Andy Wightman's amendment 43 seeks to remove the exclusion for the use of land for forestry or agriculture so that any material change of use for such purposes would require planning permission. It is not clear what the implications of such a change would be—for example, what sort of changes of use in relation to agriculture and forestry might be considered to be material and would therefore require planning permission before they could be carried out. It would certainly have a significant impact on those sectors and the rural economy of which they are part, as well as on planning authorities. Even where planning permission was not required, people would need to stop and consider it, and perhaps request a certificate of lawful use or development, just to be sure. All of that would introduce delays and costs to business and regulators.

Some of the activities that would be brought into the planning system by amendment 43 are already regulated by other means. Environmental impact assessment regulations apply to proposals to carry out a range of agricultural operations and woodland creation projects where the result would have a significant impact on the environment. The legislative framework that covers the regulation of forestry in Scotland is in the process of being modernised, and forestry will be fully devolved to the Scottish ministers from April next year. The updated regulatory regime has been consulted on widely and is expected to work effectively for landowners, local communities and consultees. It includes well-developed procedures for preparing and assessing forestry projects such as woodland creation, felling and restocking against internationally recognised sustainable forest management criteria.

Irrigation, which would be brought into the definition of development by the removal of section 26(2A) of the 1997 act, is subject to control under other environmental regulations, managed by SEPA. On the other hand, the removal of the clarification in subsection (2A) that drainage and water management projects are development, and are therefore currently subject to planning controls, could lead to some of those activities being left unregulated.

Overall, I am concerned that amendment 43 would unravel an interlocking system of regulation, resulting in possible duplication and adding unnecessary burdens and confusion.

I turn to Claudia Beamish's amendment 140, which would require planning permission for any of the operations and activities that are currently exempt from planning control where certain flood risk criteria were met. The criteria themselves are not necessarily clear cut, as Ms Beamish found in a discussion with our officials. It is not obvious how the person carrying out an activity would obtain the planning authority's opinion first. The wording is taken from the Flood Risk Management (Scotland) Act 2009, but it relates to mapping and assessment at a strategic level and is not intended to be used in the planning system.

The final subsection of amendment 140 is particularly broad; it applies to anything that affects the features, even if it improves them, and could impact on clearing vegetation, even in

gardens or on road verges. I am aware of some of the concerns about activities that are already classed as development but which are granted planning permission by permitted development rights, such as excavations and engineering operations for agriculture. What benefits from permitted development rights is, however, a separate matter from the definition of development and would be unaffected by the amendment.

SEPA and local authority flooding officers already have a significant and highly technical role in the planning system. Flooding is a material consideration and flood risk is considered fully through the system. Reducing flood risk is a priority for the Scottish Government and we will be working through national planning framework 4 and Scottish planning policy in due course and will consider in discussion with SEPA and others whether any changes need to be brought forward to strengthen policy in relation to development in areas of flood risk.

We will also be reviewing permitted development rights after the bill has been passed. I ask Claudia Beamish not to move her amendment. I will be happy to include her in the discussions when the time comes.

I turn to amendments 44 and 45. I share Mr Wightman's concern about the availability of homes in popular tourist areas. The Government has taken a number of measures to encourage the use of existing properties as main residences, allowing local authorities to remove council tax discounts on second homes and supporting the work of Scotland's empty homes partnership, which tackles the wide range of reasons why a property might be empty and helps to provide case-by-case solutions for people. We also introduced the land and buildings transaction tax additional dwelling supplement in April 2016, which has made it more expensive to purchase second homes in Scotland.

I am of course aware of the concerns in parts of the country, particularly Edinburgh, about the effects on long-term communities of houses and flats being used for short-term letting. We need to consider how we can address those concerns while not undermining the economic benefits of tourism, particularly in areas that want to increase holiday accommodation.

I am very sympathetic to the intention behind the amendments. However, there are significant difficulties with their wording, which means that I cannot support them in their current form. I hope that Mr Wightman will be open to further discussion before stage 3 to see whether we can resolve some of these issues. Principally, the types of accommodation that would be controlled by the amendments are not clearly defined. There is provision for ministers to issue guidance, but that does not allow us to refine what would require planning permission; interpretation of legislation is a matter for the courts.

Clearly, defining what is a holiday home, second home or short-term let requires detailed consideration of for how long, how often or in what circumstances a property needs to be used in order to fall into those categories. If someone is working on an extended contract in another part of the country and is living in rented accommodation, would one or other of the properties constitute a second home? If someone is staying in a short-term let on a business trip, is that different from a holiday let? I wonder whether a provision for regulations might help to clarify those issues better than guidance would.

11:30

Amendment 44 would change the definition of development to include any change in the use of a sole or main residence that changes its purpose. Although it refers in particular to use as a second home or a holiday home, it does not exclude other changes in purpose. For example, it is not clear whether that would include secondary uses such as turning one room into an office or a childminding facility, which currently do not necessarily require planning permission. That needs to be clarified.

Amendment 45 would exclude a residential lease and a letting property that is the sole or main residence of the landlord from being considered to be a short-term let. However, under amendment 44, such properties might be considered to change the purpose of the dwelling, which would make those exemptions irrelevant.

We must be conscious of the implications of addressing such problems through planning legislation. First, the proposals would apply across Scotland, requiring additional planning applications in areas that want to increase holiday accommodation, as well as in those that see a need to control it.

Secondly, creating a requirement for planning permission does not translate into being able to refuse permission if there are no material planning considerations involved, and it is not clear whether a change in how a dwelling is occupied would be a material consideration in all cases. Robust development plan policies would also be needed to ensure that any decisions on applications could withstand challenge.

Thirdly, neither amendment would affect existing second homes or short-term lets. Although owners might want to apply for certificates of lawful use that establish the planning status of their property, the proposals might even create a premium price for existing properties in some areas, making it

even harder to bring them back into use as a main residence.

Fourthly, planning permission is a one-off decision and would not address the various concerns that have been expressed in relation to the management of short-term letting, such as health and safety and antisocial behaviour issues. Andy Wightman has written to me jointly with Alex Cole-Hamilton, Ruth Davidson and Kezia Dugdale, calling for the extension of licensing controls to short-term letting. In our exchanges on a recent parliamentary question, he sought clarification on whether any such licensing scheme would give all local authorities powers and allow them to decide whether to develop their own schemes or choose to have no scheme, in line with local needs. That degree of local flexibility on the need for control would not apply with a national requirement for planning permission.

We have made a commitment in the programme for government to consider the matter further, to look at what the evidence tells us and to ensure that local authorities have the appropriate powers to manage short-term letting. To that end, we have set up a short-term lets delivery group of officials from across Government.

As I have said, we cannot accept the amendments in their current form, but I am happy to work with Mr Wightman in advance of stage 3 to see what we can take forward to enable the planning system to contribute to addressing the problems. I ask the committee not to support the amendments in this group.

Thank you for your forbearance, convener; I had to address a number of technical issues.

The Convener: Thank you, minister.

Graham Simpson: I will try to be brief, but this is an important group.

Amendment 43 seeks to bring agriculture and forestry within the meaning of "development". The committee has had correspondence on that from NFU Scotland, whose strong view is that it would be wholly impractical for farmers when going about their everyday business. It went on to say that it would introduce

"a vast burden for local authorities and potentially jeopardise food production in Scotland."

Those are strong words, convener. I am pretty sure that Andy Wightman would not wish to jeopardise food production. As the minister has said, the amendment could have a significant impact on agriculture. I will cut to the chase: I will not support amendment 43.

I turn to Andy Wightman's amendments 44 and 45. Amendment 44 says that if a property stops being used as someone's main home and is used "for any other purpose"—with ministers issuing guidance on what is meant by that—that should be regarded as a change of use that requires planning permission. However, as the minister himself has said, that could include, for example, using a home for a childminding business—or for any other business, for that matter. Amendment 44 is far too wide, vague and open to interpretation, so I will not support it.

Amendment 45 is slightly different. It is specifically about people's homes being let out as short-term holiday lets. We have to be careful about that. The self-catering sector is very important. It generates £723 million a year in economic activity in Scotland and supports 15,000 full-time jobs. However, it must surely be right that the local council can control things and protect areas from losing their identity and their desirability as places in which to live permanently. We have to recognise that there have been concerns about that in parts of the country, and especially in Edinburgh. At this point, Scottish Conservatives think that amendment 45 can be supported. However, I say to anyone in the sector who has misgivings that they should carry on talking to us. If changes are needed for stage 3, we will look at them. The minister says that he is open to discussion about that, and I encourage him to move forward with that offer and to talk to everyone.

I am reassured by Claudia Beamish signalling her intent to withdraw amendment 140, which deals with flooding. I can see where she is coming from, but the terms of the amendment are too wide for us to support at this stage. Therefore I hope that she will withdraw it.

The Convener: Before I let Monica Lennon in, I say to members that, at the appropriate time, I looked round to ask whether anyone wanted to come in, and nobody indicated that they did. I ask members to ensure that, in the future, they catch my eye before the last speaker responds.

Monica Lennon: You are very fair, convener, although it is hard for me to catch your eye when we are sitting side by side.

The Convener: Well, you have the advantage, then: you could just come in.

Monica Lennon: I will be very brief.

Amendment 43 would represent a major shift in where decision-making power lies when it comes to forestry. I do not believe that such a shift would be without merit, but I would like more time to speak to colleagues and other stakeholders on such a change. I have not yet abstained on any vote on the bill, but I will do so today. I would like to speak further to Andy Wightman about that amendment.

The minister made very valid points on amendment 44—it takes me back to my development management days, which reminds me, convener, that I should have declared earlier my interest as a member of the Royal Town Planning Institute. Amendment 44 could have unintended consequences and needs a bit more work, so I will not support it.

In contrast, amendment 45 is more tightly drawn, so I echo Graham Simpson's remarks and will support it today.

The Convener: I invite Andy Wightman to wind up.

Andy Wightman: To cut to the chase, I will seek to withdraw amendment 43 when it comes to the vote, and I will not move amendment 44.

The minister talked about some places wanting to control—meaning to limit—and others wanting to increase short-term lets. The planning system is there to do precisely that, and to provide planning authorities with the means to regulate the use of land and property in the way that they see fit.

The essence of amendment 45 is to draw a distinction between property that is someone's main home and property that is no longer a main home. That is a legitimate and valid distinction between two separate uses.

Kevin Stewart: My main difficulty with amendment 45 is in the definition, which is not in that amendment. I am more than happy to have further discussions with Mr Wightman and other members to see how we can deal with that, but I cannot support an amendment that does not give the full story and all the information that is required. I am more than happy to have the discussions with Mr Wightman and any other member to get this right, but I am not happy to support amendment 45 at the moment.

Andy Wightman: I understand that and, as I indicated in my opening marks, there is drafting work to be done on amendment 45. The key distinction is between property that is a "sole or main residence", which is language that appears in amendment 44 but not, I concede, in amendment 45, and property that is not.

Planning authorities across the country are deciding on or determining applications to build self-catering accommodation. I found any number of them during my research. The consents are typically granted, because people want to support the tourism economy, and such consents typically prohibit the use of such property as a "sole or main residence". Planning authorities are used to doing this kind of regulation.

The problem that we have with short-term commercial lets, particularly with the conversion of existing homes to commercial letting where the property is no longer somebody's home, is that the materiality of that change is being assessed on the basis of intensity and frequency of use, which is a virtually impossible task. Notwithstanding that, Edinburgh has more than 100 enforcement actions out on those grounds, but it is not easy.

On the minister's point about regulation, I noted that the programme for government contained a commitment to explore licensing powers. I want to be clear about the distinction between licensing and planning. For example, in the Licensing (Scotland) Act 2005, on alcohol premises, the first provision that one has to satisfy if one is applying for a licence is that the premises from which one intends to conduct the activity of selling alcohol has planning permission for that purpose.

Similarly, for short-term lets, I envisage a licensing process that is designed to ensure that standards relating to fire safety and gas safety checks and so on are adhered to and in which licences can be granted only to premises that have planning consent for that use. I reiterate that the current means by which that planning consent is being granted is difficult and time consuming, as the intensity and frequency of use are the key criteria.

I will move amendment 45. I want to get its provisions into the bill and I say in unambiguous terms to the minister that I would welcome sitting down with him at the earliest possible opportunity to make sure that we bring greater clarity to the planning system on what constitutes a change of use in this field. It is the necessary precondition to any licensing scheme that might be proposed. Otherwise, the danger in having a licensing process that is quasi-judicial and has limited discretionary grounds for refusal is that one might find that a licence is granted for a short-term let but the property from which that activity is planned to be carried out does not have planning consent. That would be a bizarre state of affairs.

Amendment 43, by agreement, withdrawn.

Amendment 44 not moved.

Amendment 45 moved—[Andy Wightman].

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 45 agreed to.

Amendment 140 not moved.

Section 12 agreed to.

11:45

After section 12

The Convener: Amendment 207, in the name of Pauline McNeill, is grouped with amendments 228, 229, 113, 114, 307, 209 and 210. However, I note that Pauline is not here, in which case we will move to amendment 228, in the name of Claudia Beamish.

Claudia Beamish: Amendment 228 is in the same vein as my amendment 220, which was not agreed to and which, as members will recall, sought to set up a low-carbon infrastructure commission with responsibility for establishing national infrastructure needs assessments. Amendment 228 would place an additional requirement on developers making applications

"for planning permission for a national ... or a major development ... to include a national infrastructure needs assessment (within the meaning)"

that was referred to in amendment 220.

As amendment 228 stands in its own right, I will, with members' forbearance, briefly explore the issue that it addresses. Given that the more substantive amendment 220 was not agreed to, I will not press amendment 228. However, I must reiterate that any development that involves a high level of investment should last for a considerable length of time into the future. It is therefore vital that such developments be designed in line with a low-carbon future. That becomes even more imperative, given the Intergovernmental Panel on Climate Change's report on the need to ensure that emissions do not cause temperatures to rise by more than 1.5°C. We must not build infrastructure that will need to be retrofitted or will go out of date quickly.

I welcome comments from members on amendment 228. If appropriate, I will consider lodging an amendment at stage 3 to ensure that the infrastructure and major developments that we design are future proofed appropriately.

I move amendment 228.

John Finnie (Highlands and Islands) (Green): I will restrict my comments to amendment 229, which seeks to insert further considerations after section 32 of the Town and Country Planning (Scotland) Act 1997. It says:

"Where an application for planning permission is made by a local authority or a health board, the application must include evidence that matters of population growth and population projection have been considered in relation to the development to which the application relates."

We are therefore talking about an evidenced position, for which evidence could be drawn from the local development plan and the local housing strategy.

Let me give an example of where such a provision would have helped, had it been in place; I will spare the authority in question its blushes. If a newly constructed primary school was found on day 1 to be grossly inadequate for the population's needs, that situation would lead to additional costs, additional disturbance and more building.

Similarly—in particular, with the challenges in rural areas—an understanding of the population and its impacts can affect the capital building programmes that are undertaken by health authorities. That could be a factor in longer-term issues such as the relationship between housing and employment and—strange though it might seem; indeed, we will come to the matter later—one might also see it as an issue in relation to demolition of property, especially if, like me, you want previously populated areas, including many Highland glens and other rural parts, to be repopulated.

In a previous intervention, the minister encouraged us to stop and consider. Well, I hope that issues of population and population growth will be considered as material factors, and that members will support amendment 229.

Monica Lennon: Amendment 113 would require ministers to make regulations on the health impacts that would have to be considered. Basically, it is about ensuring that health impact assessments are carried out on major and national developments. I have lodged a package of health-related amendments because planning can impact on and, indeed, transform our physical and mental health. A health impact assessment could cover, for example, housing quality, access to natural environment, pollution, walking and cycling routes, car dependency—[*Interruption*.] Did someone want to come in there, convener?

The Convener: No.

Monica Lennon: I am sorry. I was getting distracted.

Such an assessment would bring into sharp focus the positive and negative impacts that development and planning decisions can have on health. It would provide another tool for planning

decision makers. I believe it would be proportionate because it would apply only to national developments and major developments of a scale that would be likely to impact on significant numbers of people.

Daniel Johnson is unable to be here this morning, so I will speak to and move amendment 307 in his name. It seeks to ensure that MSPs, MPs and councillors in a locality are informed when a major development application is made in their constituency. The proposal is quite straightforward and is to be commended.

Alex Rowley (Mid Scotland and Fife) (Lab): Amendment 114 aims to ensure that we have greater information and transparency with regard to a development's impact on the capacity of local public services. I certainly know from experience that that is an issue in Fife, but I also believe it to be an issue across Scotland.

Amendment 114 would place a requirement on the developer to consult public authorities and to produce as part of their application a report setting out what the impacts would be and potential effects on capacity. Moreover, local authorities would have to take that into consideration when making a determination on a planning application and would be able, through the section 75 planning obligation, to have negotiations on the matter.

Yesterday evening, we received a note from Homes for Scotland that I think was helpful, even though it opposes amendment 114. It states:

"It is important to anticipate and plan for the infrastructure needs of Scotland's growing population".

Of course, we will all agree with that, but Homes for Scotland goes on to say that

"Alex Rowley's amendment 114 seems to support the unsustainable tenet that those who build new homes should be responsible for their customers' other needs."

I argue that there is a responsibility not only on the developer but on the planning authority in that respect. If you are building a number of family homes that will house children, you have a responsibility to ensure that the education facilities are in place locally for those children. That does not necessarily mean that it is the developer's responsibility to pay for a new school; however, if the development will put pressure on the capacity of a school, the developer might be responsible for ensuring that, say, an additional classroom is available.

Andy Wightman: The potentially interesting amendment 114 is modelled on the environmental impact assessments that are required in certain instances. One of the problems with such assessments, particularly with regard to major developments, is that they are drawn up and paid for by the applicant and are frequently found to be deficient. Indeed, there is a strong argument for taking something as important as environmental impact assessments out of the hands of applicants. The danger, I imagine, is that if the applicant must prepare a report about a proposal that would impact on education, health and leisure facilities, they will be motivated to try to underplay those impacts.

Surely planning authorities have provisions in planning law—section 75 agreements and so on—to ensure that services that consequentially need to be upgraded can be upgraded. I am aware of many planning determinations that are on hold and are awaiting the construction of a new school or a general practitioner surgery, for example. I wonder what would be the added value in requiring the applicant to prepare such a report.

Alex Rowley: The next point from Homes for Scotland feeds into that point. It said:

"Applicants, in any case, have no hope of being able to prepare this information in the absence of information from public authorities."

The responsibility is on the applicant to have a dialogue with the public authorities, which would have to say what the implications of the development would be.

For example, in Kelty, the village where I live, there is a local development plan for a development of 900 houses. NHS Fife was consulted but gave no input, and there is no mention in the proposal of any impact on the local national health service. However, the local health centre has written repeatedly to the planning authority to object to the application on the basis that if the development goes ahead, it will not have enough GP capacity or physical capacity in its building to take people from that development or people who move into the village on to its books. It has been quite clear that the practice would have to close its list and it would not be able to provide the rounded medical services that would be required for those 900 homes.

The developer has agreed to make a contribution, but the planners and the head of planning in Fife responded that that could not be linked to a section 75 agreement because NHS Fife had not identified at the local plan stage that a health need would attach to those 900 houses.

My point is that putting the responsibility on the applicant to consult local public authorities would bring about greater transparency because the local health authority or whatever would have to respond. If it did not respond, it would be clear when it came to the application stage that it had not. The responsibility for taking the application to the next stage sits with the authority as well as with the applicant.

Homes for Scotland, which represents developers, also made another pressing point. It said:

"At present, the ability of those authorities to provide this information, or to calculate it in a way that is reliable and proportionate, is not where it should be."

That needs to be addressed. A requirement that put the onus on the health or whatever authority to respond would mean that that information would have to be brought forward.

Homes for Scotland also said:

"Infrastructure requirements of planned development (both as shown on maps and as required by wider policies and targets) should be anticipated years ahead of the application stage by the public authorities responsible for meeting the needs of society."

That is not happening and there is nowhere in the legislation that suggests that it should happen.

Monica Lennon: Will the member take an intervention?

The Convener: It must be very brief.

Monica Lennon: This has been a really helpful exchange. It strikes me that for major planning applications there is a requirement to do early consultation of stakeholders and communities. The type of question that members of the public ask when they come along to events—I am sure that members have all been to them—are about the impact on local schools, health services and so on. A developer that goes to such events but does not understand the area and has not done the baseline work to understand the data will not bring a well-thought-out proposal.

I accept that there might be issues to do with data sharing in the public sector. I imagine that putting the onus on the applicant can only improve good practice, but is Alex Rowley saying that the critique of the report would still lie with the planning authority, which would look at the numbers, understand the data and, we hope, get the best outcome for communities?

12:00

Alex Rowley: It would, and—

The Convener: Alex, will you try to bring your remarks to a close?

Alex Rowley: If an applicant were to say that there will be no impact on health services—I gave the example of the village that I live in, where 900 houses are to be built and the view has been taken that there will be no impact on health services—that could be challenged at the planning stage. However, my amendment 114 would mean that when the application was submitted, it would say quite clearly that the developer had consulted the various authorities and would state the impact on local public services.

At the current time, the system is not working. More and more houses are being built and pressure is being put on public services. Just look at the incredible—

The Convener: Alex—you really need to draw your remarks to a close.

Alex Rowley: This is important, convener.

The Convener: Other members want to come in.

Alex Rowley: There is an incredible situation with education in respect of the Dunfermline eastern expansion, where there has been catchment review after catchment review and kids are being sent further and further away from their communities because nobody planned properly for the education of the children in that major development. That cannot be allowed to continue. We need legislation that will ensure that the impact on local services is very clear at the early planning stage of proposed developments.

The Convener: Thank you. Graham Simpson wants to come in, then Annabelle Ewing will speak.

Graham Simpson: Convener, I am aware that we are up against the clock, so I am happy not to speak to the current group of amendments.

The Convener: Okay. Thank you.

Annabelle Ewing (Cowdenbeath) (SNP): I listened carefully to what Mr Rowley said. As the constituency MSP for Cowdenbeath, I am well aware of the issues. Constituents across the constituency constantly raise concerns about how the planning process interfaces with health service impacts. However, taking into account all the circumstances, including in particular potential inherent conflicts of interest, I would have thought that the planning authority is best placed to consider and deal with the health service capacity impacts. I would have thought that planning authorities should be doing that routinely at present.

The member may not be aware that, further to amendments that the committee has agreed to at stage 2, a number of changes will come in to ensure that the local development plan takes the capacity of health services into account and looks at the impact on education services, and that the national planning framework considers the impact of the development on the capacity of the existing health services in the area. I appreciate that the member is not currently a member of the committee, so he may not have been aware that the committee has been looking at these important issues very carefully and, further to discussion in

committee, has agreed that these issues should be far more front and centre in the planning process.

For those reasons, I think that we have moved on apace from what the member talked about, and I will not be supporting his amendment.

Kevin Stewart: Can I ask for some clarity, convener? Is amendment 207, in the name of Pauline McNeill—

The Convener: It has not been moved.

Kevin Stewart: Will Daniel Johnson's amendments 209 and 210 be moved?

The Convener: No.

Kevin Stewart: Okay. I will move straight on to amendments 228, 229 and 114, all of which require applications to include information on the capacity of infrastructure and services. Those are key issues that planning authorities must consider. In particular, they should be considered in development planning, in partnership with other parts of the local authority and community planning partnerships. One of the aims of having a chief planning officer is to ensure that the planning service is fully involved in on-going conversations about the capacity of services and where additional provision is needed. Such information will then be taken into account in considering applications. However, I do not believe that those proposals put the responsibilities in the right places.

Amendment 228, in the name of Claudia Beamish, appears to require an applicant for a national or major development to submit a national infrastructure needs assessment as prepared by the low-carbon infrastructure commission that is proposed in her amendment 220. As that amendment was not agreed to, this provision now has nothing to refer to. I hope that Claudia Beamish will therefore seek to withdraw amendment 228.

Claudia Beamish: Does the minister recognise the importance of such issues in the future proofing of major infrastructure projects? How will that be done, if it is not to be in this way?

Kevin Stewart: As many folk are aware, we are ensuring that the next national planning framework is aligned with national transport strategy in order to get that absolutely right. At regional and local levels, I have argued—not only as a minister or a member of the Scottish Parliament, but as a councillor—that local authorities need to take more cognisance of their local development plans when they are putting together their capital spending plans, to ensure that they are aligned.

Amendment 114, in the name of Alex Rowley, would similarly require applicants for major developments to prepare reports on their likely effect on a range of services. Scottish ministers would be required to make regulations on what consideration is to be given to such issues before planning permission is granted. It would also require such a report to be considered before the planning authority enters into a planning obligation. The amendment specifies a somewhat arbitrary category of development and list of issues that must be considered in all cases. It seems to me to be unlikely that, for example, a large wind farm would have any impact on such services, while a relatively small housing estate that would not count as a major development could have a significant impact in a particular area. There is also no detail on how such assessments are to be carried out, and it is left to the applicant to decide what other public amenities might be relevant. However, information on the capacity of services lies with the local authority and the local health board, which are surely better placed than an applicant to consider the impact of new development on their services. The planning authority is also already legally obliged to consider such issues where they are relevant. Amendment 114 would only add unnecessary process to the system, and I cannot support it.

Amendment 229, in the name of Mr Finnie, would require that all applications for planning permission from health boards and local authorities should include evidence of consideration of population growth and projections. As I said before, it is important to define carefully the developments affected by such requirements. In this case, the requirement would apply to all applications by local authorities and health boards, no matter how small the development—so that even making a new entrance to a building or putting up a fence would count. On the other hand, applications relating to new service provision may be made not necessarily by the health board or the local authority but by a private sector development partner, or a separate provider such as a GP or dental practice. Therefore I do not believe that amendment 229 hits the mark at which it is aimed. However, again, discussions on population projections and the need for new service provision should be happening at the development planning stage and be taken into account in all relevant cases. Such information should not need to be provided separately for each application. Amendment 229 would add unnecessary requirements that would be irrelevant to many of the applications to which it applies.

John Finnie: Would the minister accept that there is always discretion to go into layers of detail? In any case, the information should be available to inform decision making.

Kevin Stewart: The issue, again, is the definition of the amendment. I have said to the committee on many occasions during the bill's passage that, if any member requires help with definitions and getting an amendment right, I am more than happy for them to talk to officials, as indeed Ms Beamish and certain others have. If Mr Finnie wants to talk to officials in order to get things spot on, I am happy for him to do so, but I hope that he will not press his amendment this afternoon.

Amendment 113, in the name of Monica Lennon, would require Scottish ministers to make regulations on the consideration of health effects before the granting of planning permission for major or national developments. Health can indeed be a material consideration in deciding an application, depending on the nature of the development and other circumstances of the case, and where it is a material consideration, planning authorities are required to consider it. Part of the vision of national planning framework 3 is the creation of living environments that foster better health. Of course, we will be reviewing that, together with relevant parts of Scottish planning policy, after the bill.

In addition, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 include requirements to consider significant environmental impacts of, among other things, population and human health. The regulations have their own detailed list of criteria with regard to the applications to which they apply. That list might not necessarily cover every single major or national development, but it identifies those where such assessment is relevant, including some local developments. I therefore believe that we have sufficient provision in place to allow for consideration of health impacts, where appropriate, and I do not support amendment 113.

Monica Lennon: A frustration in my area, South Lanarkshire, has been that, with certain major applications—say, for an incinerator—stakeholders have been told that the issue of health would be considered later by SEPA through its licensing regime. It is therefore not always the case that health is front loaded and fully considered by planning authorities. Does that mean that those authorities are not upholding the law and planning requirements, or is there a lack of guidance to facilitate consistency across Scotland?

Kevin Stewart: As Ms Lennon is well aware, because she regularly raises this issue, I cannot comment on live applications. However, I will ensure that officials write to her with all the details and guidance that apply in such cases.

Convener, I believe that Ms Lennon said that she was going to move amendment 209, in the name of Mr Johnson. Is that correct?

The Convener: No. She is going to move amendment 307.

Kevin Stewart: Ah. In that case, I will turn to that amendment now.

I am not aware of any particular calls for councillors, MSPs and MPs to be directly notified of planning applications. All local authorities publish weekly lists of new applications for planning permission, which are available on their websites, and information relating to major applications can easily be extracted from authorities' online systems. Major developments will also have been subject to pre-application consultation, including local advertising, and might have been included in the consultation process for the local development plan.

I should warn members that, as drafted, amendment 307 would require notification of a range of subsidiary applications for approval in addition to the main planning permission, and list MSPs, in particular, might find themselves receiving more notifications than they might have expected. However, that is not a significant burden for planning authorities, and I am happy to support the amendment.

The Convener: I call Claudia Beamish to wind up.

Claudia Beamish: I do not wish to, convener.

Amendment 228, by agreement, withdrawn.

Amendment 229 moved—[John Finnie].

The Convener: The question is, that amendment 229 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 229 disagreed to.

12:15

Amendment 113 moved—[Monica Lennon].

The Convener: The question is, that amendment 113 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 113 agreed to.

Amendment 114 moved—[Alex Rowley].

The Convener: The question is, that amendment 114 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 114 disagreed to.

Sections 13 and 14 agreed to.

After section 14

Amendment 181 moved—[Kevin Stewart].

The Convener: The question is, that amendment 181 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

Against

Lennon, Monica (Central Scotland) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 181 disagreed to.

The Convener: I am delighted to say that that brings us to the close of today's consideration of the Planning (Scotland) Bill. Day 5 of stage 2 will take place on 31 October, when the committee's target is the end of section 26. Any further amendments on provisions up to that point should be lodged by 12 noon on Thursday 25 October, which is tomorrow.

Kevin Stewart: That cannot be right, convener. [*Interruption*.] Can I get clarity on where you intend to get to next time?

The Convener: Day 5 of stage 2 will take place next Wednesday, and the committee's target is the end of section 26. I suspect that that is a bit ambitious, given where we are just now. Any further amendments on provisions up to that point should be lodged by 12 noon on Thursday.

I thank the minister for attending and close the meeting.

Meeting closed at 12:17.

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