



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 7 September 2016**

**Session 5**



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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**3<sup>rd</sup> Meeting 2016, Session 5**

**CONVENER**

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

**DEPUTY CONVENER**

\*Elaine Smith (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Kenneth Gibson (Cunninghame North) (SNP)

\*Ruth Maguire (Cunninghame South) (SNP)

\*Graham Simpson (Central Scotland) (Con)

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

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Petra Biberbach (Independent Review of the Scottish Planning System)

John Hamilton (Independent Review of the Scottish Planning System)

John McNairney (Scottish Government)

Kevin Stewart (Minister for Local Government and Housing)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

The James Clerk Maxwell Room (CR4)



**Scottish Parliament**  
**Local Government and  
 Communities Committee**

*Wednesday 7 September 2016*

*[The Convener opened the meeting at 10:01]*

**Interests**

**The Convener (Bob Doris):** Good morning. I welcome everyone to the third meeting this year of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones, as they can interfere with the sound system. Meeting papers are provided in digital format, so you may see members using tablets. I am assured that that is only to access our briefing papers to inform our questioning during the session.

We have received no apologies for this morning's meeting.

Agenda item 1 is a declaration of interests. I invite Ruth Maguire, who is joining our committee, to declare any relevant interests.

**Ruth Maguire (Cunninghame South) (SNP):** I have no relevant registrable interests to declare.

**The Convener:** Thank you very much, Ruth, and welcome to the committee.

Although Mairi Evans had only a brief stint on the committee, I put on record our thanks to her. She engaged fully in the committee's work in the short time that she was a member of it. I thank her for that.

**Decision on Taking Business in  
 Private**

10:02

**The Convener:** Item 2 is a decision on taking business in private. Do members agree to take items 4 and 5 in private?

**Members indicated agreement.**

## Independent Review of the Scottish Planning System

10:02

**The Convener:** We plough on to item 3, under which we will take evidence on the independent review of the Scottish planning system from members of the independent panel. That will be followed by evidence from the Minister for Local Government and Housing.

I thank John Hamilton and Petra Biberbach for coming to the meeting. Good morning. You are very welcome. We are very grateful to you for coming along. It has been indicated that Petra Biberbach might make an opening statement on behalf of both of you. If that has been intimated to you in advance, we would welcome that. After that, we will move to questions.

**Petra Biberbach (Independent Review of the Scottish Planning System):** Great. Thank you very much.

I am from PAS, which was formerly known as Planning Aid Scotland, and my colleague is John Hamilton of Winchburgh Developments Ltd. As you know, we were members of the independent panel that the former Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, Alex Neil, appointed in September 2015 to undertake a review of the Scottish planning system. The panel of three was chaired by Crawford Beveridge, who is chair of the Scottish Government's Council of Economic Advisers. Unfortunately, Crawford is unable to attend the committee meeting.

We are very grateful to have the opportunity to address the committee following the submission of the panel's report in May. I will outline the skills and experience that we bring.

As chief executive of PAS, I lead a small team that supports more than 420 volunteers who provide independent advice, information and education programmes on how to get involved in the planning system. They are primarily planning professionals. I chair the planning and access committee of Loch Lomond and the Trossachs National Park Authority, and I am on the boards of Zero Waste Scotland and the Link Group, which is a national housing association.

John Hamilton is the chief executive of Winchburgh Developments Ltd, the company delivering the largest housing growth area under construction in central Scotland. He is the immediate past chair of the Scottish Property Federation, and is a member of the SPF police board.

**John Hamilton (Independent Review of the Scottish Planning System):** The policy board.

**Petra Biberbach:** Sorry—the policy board. There is a distinction.

John also served as a non-executive board member of the City of Edinburgh Council's 21st century homes programme for the first six years of the programme.

The terms of reference that were set by the then cabinet secretary called for ideas to improve planning in six key areas: development planning; housing delivery; planning for infrastructure; streamlining development management; leadership, resources and skills; and community engagement.

During the review, we received more than 400 written submissions and heard oral evidence from more than 100 people. Given the relatively short period that was allowed for our report's production, the scale of the response from the planning profession, the development and house-building industries and the public reflects the need for wide-ranging reform of planning.

Our report contains 48 recommendations in the six areas that were identified in the cabinet secretary's brief, and was submitted to the Scottish Government immediately prior to the election on 5 May. This is an important point: we regard the recommendations as interlinked so, for example, creating earlier engagement in the development plan-making process requires community councils to be involved at a much earlier stage.

We are delighted that the minister now in post with responsibility for planning, Mr Kevin Stewart, has already delivered an official Scottish Government response to our report and is setting up a number of working groups to take forward reform and address recommendations where further evidence is required. We are encouraged that the minister is continuing the fast pace in the process for reform, with a target set for production of a white paper around the turn of the year and the aim of producing a new planning bill in 2017. That is a demanding timescale on a range of complex and interdependent processes, but it is correct to maintain the impetus towards reform that has been gained by the recent publication of the report.

We are aware that on-going constraints on public sector finances at national and local authority levels and additional budgetary pressures that have been created following the recent European referendum are likely to lead to severe challenges and difficult decisions on where the focus for reform should be. However, in virtually any economic circumstances in the foreseeable future, there is a proven need for the

report's recommendations to be taken into account in further work that is being undertaken and in forthcoming legislation.

We trust that the committee will agree that reform on the basis of the recommendations is essential for the achievement of key economic, sustainability and social development targets, including improvements that lead to more inclusive societies, economic growth, housing delivery, and in associated community and land reform legislation. Thank you for your patience.

**The Convener:** Thank you very much. We will move to questions. Kenneth Gibson will open up for the committee.

**Kenneth Gibson (Cunninghame North) (SNP):** Good morning, panel members. I am looking at the report's key recommendations. The first one includes a requirement to set out regional house-building targets. What do you mean by "regional"? Does that relate to a local authority or a wider context? I will put my question into context. On 29 June, when the minister gave evidence, I asked him specifically about the 10,000 houses a year that the Scottish Government is looking to build and whether that would be proportionate. He said that it would be demand led. How would a demand-led system work along with regional house-building targets? How would the work dovetail?

**John Hamilton:** An issue that we noted in the review is that housing targets are more or less seen as a snapshot in time. It is quite difficult for planning authorities at the local development plan level and in the strategic development plans to be fully aligned all the time, on the basis that the snapshots are made over periods of years. Aligning with housing policy—I am talking about specific housing policy as distinct from planning policy—can be quite difficult to achieve. We recommended that there be a regime that would, at the top level, look at the requirements for housing on the national scale. At the moment, we have strategic development plans and planning authorities, and how the targets are filtered down to local level is quite cumbersome.

We see the need to maintain regional targets, because we have relatively large urban areas in central Scotland and the north-east. We see it as essential that there is effective assessment of housing demand in those areas, so there must be regional assessments. We anticipate a lot of the work on that being done with the city deal structures that are beginning to emerge and the funding that will come from those. However, we are also conscious of the need for communities to be represented. The report recommends that strategic development planning authorities be reviewed and that the role should change so that there is closer alignment with national planning

policy and the national planning framework and a shorter management chain through to regional level, but with a process for communities to be represented at regional level.

**Kenneth Gibson:** I still do not know what you mean by "regional level". For example, Ruth Maguire and I are both MSPs in North Ayrshire, which is one of three Ayrshire local authorities. By "region", do you mean Ayrshire, North Ayrshire or the west of Scotland? If it is the latter, how would the west of Scotland be defined? Would it be the old Strathclyde region or the West Scotland electoral region? I am trying to pin down what you mean by the word "regional" so that we know what we are talking about.

**John Hamilton:** We would concede that we found it difficult to pinpoint the definition of a region. That possibly requires further work, but with the term "region" we were not thinking in any political structural sense but about something that would be aligned on the basis of the old regional authorities. However, those are now being replaced by large city authorities and there is a difference between the large city authorities and smaller local authorities. We would probably concede that we have not been specific enough in the report on how we define a region.

**Kenneth Gibson:** In paragraph 4.8 of your report, you say—

**The Convener:** Sorry, Mr Gibson, but Petra Biberbach indicated that she wanted to come in—I apologise for missing that.

**Kenneth Gibson:** Sorry—I did not realise.

**Petra Biberbach:** That is okay. I just wanted to add to that. We started from the role of strategic development planning authorities and considered what we can do to create greater efficiency, rather than just having yet another layer of plan making. It is probably the hallmark of our approach to leave the detail to many other stakeholders. We made recommendations after looking at the evidence that was in front of us. Some of the details will have to be worked through and other larger stakeholder work is now looking at precisely those questions. That is important to bear in mind. We made recommendations and I hope that most of them will be taken on board. We have discussed the principle of what is not working currently in the Scottish planning system but not exactly how it should work.

**Kenneth Gibson:** On that basis, in paragraph 4.8 of your report, you say:

"planning is not well placed to ensure it provides the right types of housing to meet the diverse needs of communities."

In paragraph 4.12, you say:

“it is difficult to find a definitive reason for the continuing low levels of housing delivery and to pinpoint planning’s influence in this.”

In my experience, numerous housing development plans are put forward, but one issue is that there is always significant local resistance. People who are themselves well housed do not necessarily seem too keen on other people being well housed in their area. They are all keen on new housing as long as it is somewhere else. How do we try to deal with those issues? Your report talks about community engagement but, at the same time, you talk about removing barriers to housing development, and those two things can often be contradictory. How can we square that circle? We need people to feel as if they have had an input, but we need to ensure that nimbyism does not defeat a host of necessary housing developments.

**Petra Biberbach:** Absolutely. That gets to the nub of the problem, which is that we have almost seen planning being used to address a democratic deficit. Local communities feel that the planning system is the only chance that they will ever have for somebody to listen to them. To an extent, we want a mature debate about what society requires. Housing is part of that, and we have a housing shortage, especially of affordable homes.

We also need to have that debate at a much wider, national level. It aligns with the recommendation that there be a discussion in Parliament about the national planning framework and housing requirements. Once the elected members have accepted the proposals, the debate can be taken into the local communities and sites can be identified.

10:15

We should also remind ourselves that we will need very different housing tenures in the future. Some of the models that are emerging in continental Europe and other places involve housing co-operatives, self-build and more in-town delivery above shops. Only one area of the simplified planning process deals with that. We need to look at the issue much more creatively instead of on the large scale that people envisage and fight against. If we involve actors such as community councils more at the earliest opportunity in development plan making rather than just in development management, that negative attitude can be turned round. We have seen that happening.

**Kenneth Gibson:** I have one further point—thank you for your indulgence, convener. It is on the slightly different issue of reporters. In paragraph 3.10 of the report, you state:

“Some fundamental questions about the role of Reporters and who they represent have been raised with us.”

It is ridiculous that, when a reporter finishes his or her work in January, it is July before a minister gets the report on their table. Why does it take six months to write a report? I wonder whether you can comment on that.

You also talk about planning fees being increased to ensure full cost recovery by planning authorities. Would that include the cost of public local inquiries?

**John Hamilton:** We are not recommending that the fees be increased to take account of public inquiries; we are looking at means of making planning more effective and ensuring that there is more effective consultation with communities. At the moment, planning in local authorities is drastically underfunded—the picture is fairly consistent across all the local authorities—with only quite a small proportion of the costs of the planning system recovered through fees. Our recommendations on fees are more about looking at the management of the planning system and increasing fees but possibly having more options for the type of planning applications that can be made. At the moment, major planning applications are those that consist of, for example, more than 50 houses, and there is a capped figure for the planning fees.

South of the border, other types of applications can be made that would potentially involve an outcome agreement—in effect some form of contract between planning authorities and applicants detailing what each of those parties has to provide in order for an effective decision to be made. We see that there is a need for slightly more choice in the type of planning fees and the type of planning applications that can be made, and local authorities could recover more of the costs to them.

**Petra Biberbach:** On the question of reporters, you are absolutely right that we have lots of evidence that elected members but also communities feel aggrieved by the lack of transparency and the length of time that it sometimes takes for reporters to report back. We want to repurpose the role of the reporter as playing a part at the gate check—at the start of the making of a plan. The reporter would be almost in the role of a mediator but would also have to feed back very quickly to the community what he or she has received. I think that a repurposing of the reporter’s role is required urgently.

**The Convener:** Before we move on, Graham Simpson has a question. Is it a supplementary question on an issue that has been raised already?

**Graham Simpson (Central Scotland) (Con):**

Not exactly, convener, but it kind of follows on from the things that have been said.

**The Convener:** Other bids are coming in, so if you bear with me, I will take your question in a second. I have a follow-on question, then Elaine Smith will ask about equal right of appeal.

My question is on community engagement, which Mr Gibson talked about. Petra Biberbach mentioned the way in which planning opportunities are seen. Because of a perceived deficiency in local democracy, they are seen as an opportunity to oppose things. There is an empowerment aspect to the planning process.

Another empowerment aspect of the planning process can be the mooting of section 75 agreements. In my local area, whenever developments are proposed, the first thing that communities—understandably—think is, “This is great. There’s new social or affordable housing coming to our area.” In the case of private housing, they might think, “How can this enhance a wider area?” Section 75 agreements are one of the ways in which that can be done.

Over the years, the use of section 75 agreements has diminished, which is a cause for concern. Likewise, the infrastructure levy sounds fantastic in theory, but my concern is that it might Hoover up developer contributions and take potential benefits away from a community that is impacted by a development. Is there a tension there? Rather than getting rid of section 75 agreements, would it be better if they were used more strategically for community benefit? How do we square the circle with the infrastructure levy? More information on that would be welcome.

**John Hamilton:** I would like to answer the point about section 75 agreements. The section 75 system has its drawbacks. I agree that there is a tension there, because section 75 agreements are primarily intended to mitigate the impact of development. However, time has moved on and we have the Planning etc (Scotland) Act 2006, but so far a planning levy, as such, has not been introduced. Essentially, we still have the same section 75 process.

Following the recession in 2008, section 75 contributions that might have come through the pipeline have largely dried up. To quite a large extent, the private sector stopped making those contributions. That is partly because, as the private sector might argue, it is a system that was not designed for, say, the funding of secondary schools or major transport intersections. The more heavyweight funding should be looked at jointly by the private sector and the public sector. Section 75 contributions are not really effective in every case.

**The Convener:** Are you talking about recommending ending section 75 agreements or their improved use alongside an infrastructure levy?

**John Hamilton:** We are not recommending that the end of section 75 contributions. There will still be a place for them. However, it should be recognised that there is a limit to the use of section 75 agreements in major public infrastructure projects.

**The Convener:** I have one final question on that. I have a very local example—members are terrible at doing this but I will indulge myself, as I am convener. There are 600 new homes coming to Hamiltonhill in my area, which is desperately in need of regeneration. Some long-standing residents have stuck it out—they have their homes there and are really keen to discuss with the planning authority and the housing association what that new community will look like. They think that it would be great to have a small tenants hall in the area, so that, rather than 600 houses, it would be 600 houses plus one small hall. Can that somehow be part of the co-production model? Could section 75 be used for that?

I am not asking you to comment on that; it was just to illustrate the point that it might be better if section 75 agreements were discussed by the developer and the local community rather than by the developer and the planning authority. Perhaps the discussion between the developer and the planning authority should be about the infrastructure levy rather than the community benefit. In my experience, communities know the community benefits better than planning authorities do.

**John Hamilton:** I would like to answer that because I think that it is all about the scale of the contributions. Section 75 agreements are often a private negotiation between the planning authority and the developer. It is about the scale of the issues that may be the subject of a section 75 agreement. If the issue is of an appropriate scale, it is quite correct that communities should be party to the negotiations. However, such issues might be of quite a small scale.

As I said, the problem that we have at the moment is that the community is removed from and not party to the funding of major infrastructure. In that sense, the section 75 negotiations are not completely transparent either.

**Petra Biberbach:** A section 75 agreement is just an instrument. If we really want to move community engagement proper into participatory planning, which I mentioned earlier, communities need to be involved at the stage when the houses are being allocated and discussed. We need to seek intelligence from communities on where,

when and how, rather than waiting until the final point when everything is done and dusted before negotiations start with the developer on what additional benefits can be had for the local authority.

We need to move to a more mature system with much earlier dialogue and not wait until there are 600 houses before the community says, "This is what we would like to see." The thrust of the reform is to try to make the system much more front loaded. If there has been a failure, it is that the Planning etc (Scotland) Act 2006 promised better community engagement, but we then had the recession in 2008 and little of the spirit of that was realised. Many communities out there do not readily engage and do not even know that there is such a thing as the planning system. It is only at the latest point that they start to say, "We want to be in there."

**The Convener:** Thank you—that is really helpful.

**Elaine Smith (Central Scotland) (Lab):** Thank you both for coming along this morning and for your report. Before I move on to questions on equal rights of appeal, I have a quick question that occurred to me when you introduced yourselves. I know that the Government appointed the three members of the review panel. Does any of you have a planning qualification or a community qualification, or do you have business backgrounds?

**John Hamilton:** I have a business background as a surveyor and developer in the house building industry, but also in regeneration. I started my career in the 1970s in regeneration in Glasgow, which was primarily about tenement refurbishment and the Glasgow eastern area renewal project in the east end of Glasgow, but my background is in development.

**Elaine Smith:** Sorry—I am not interviewing you, but it occurred to me when you were introducing yourselves that it might be worth asking the question.

**Petra Biberbach:** My background is in sustainable development and European law, and in both areas I have worked with communities for the past 20 years. I was appointed by the Convention of Scottish Local Authorities to work on sustainability, and I have worked at Heriot-Watt University, looking at greener infrastructure and so on. That is my background. It is not in business.

**Elaine Smith:** Thank you. In paragraph 1.8 of your report, you mention work

"to restore community trust in the system".

You have talked a bit about that in response to previous lines of questioning. The committee has inherited a petition about equal rights of appeal

and we indicated to the petitioners that we might raise some of the issues this morning. Not all of the 400 respondents to your consultation expressed a view on appeal rights in the planning system, but 70 per cent of those who did express a view on equal rights of appeal favoured the possibility. The issue has been around in the Parliament since 1999.

Given that the majority of people who responded were in favour, albeit that there was no specific question on the issue, why did you not think it was appropriate to refer the matter for further Government consideration? Basically, you concluded that you were not persuaded that a third-party right of appeal should be introduced. Why did you not consider that the Government should look at the proposal more, and what evidence did you take to inform your recommendation?

**John Hamilton:** I am happy to lead on that. The overwhelming requirement was for us to produce a report that could deliver a more effective planning system. We agree that there are deficiencies in our planning system, and we cover them in some depth. We address the matter from the point of view of the need to make the planning system in Scotland more effective, and as part of that we consider the requirement to make improvements for local communities and how they can contribute to the planning system.

10:30

One of the things that I was not aware of until we did the report is that there are more than 2,000 registered community councils in Scotland already. Those organisations have only a paltry amount of funding, but the fact is that they exist. We avoid use of the word "nimby" in our report, but it has been mentioned this morning. I do not think that there is any great argument that the nimby attitude from many parts of the community who are well housed might be a barrier to delivering improved housing for other people.

We approached the issue with the view that communities need to be far better represented and that that requires a step change from where we are just now. We think that communities must have a better and clearer role to play in the planning system. Although the large number of community councils means that this would be difficult, we were looking at a process whereby each community council would have the right to be represented in the local development plan process. A number of communities that we met put forward their own community plans—some were well received in their local authority areas and others were not. We could envisage a process through which community councils might have at least the option of opting into the formulation of a

development plan and having their voice heard at that stage.

**Petra Biberbach:** The journey that we are on is to have more collaboration and involvement, and a national debate about what society's requirements are and how society looks after excluded groups—and plenty of groups are outside the planning process. Evidence from across the United Kingdom was presented to us, including from academics who have worked both in the UK and in Ireland, and we listened to their views. First, the overwhelming evidence was that if the decision was to introduce a system of third-party right of appeal in Scotland, we would be the first to do that and it would be quite a challenge in the current climate. Secondly, the definition of who is a third party is very challenging, and that could be used vexatiously. Thirdly, the evidence from academics in Ireland is that the planning process becomes more centralised than local if there is a third-party right of appeal for planning decisions.

We listened to plenty of evidence and also tested things with some of the community councils that we wanted to hear from, given that many of them were cited as wanting to have a third-party right of appeal. We discussed with them a change of role that would mean that they would be engaged early in the planning process rather than at the very end. Each of them felt that having a statutory role in relation to early engagement in the process of development planning and enhanced resources would be far better than having to wait until the end of the process to become involved.

The term “appeal” implies a them-and-us situation, which is not what we want to see as part of any reform. We want reform that makes the planning process far more inclusive and allows communities to be far more proactive. Reforming the process was first mooted in 2005 but we are now in 2016. We have the Community Empowerment (Scotland) Act 2015 and land reform, and are in a post-Christie situation, with many more communities wanting to take on certain things. There is no such thing as one community and one community voice.

**The Convener:** Before other members come in, does Elaine Smith want to develop this area further?

**Elaine Smith:** Yes, please, but I do not know where to start. Perhaps I can start by saying that the idea of reforming the planning process goes much further back in the lifetime of the Parliament than 2005, because members' bills on the issue were talked about before then. It has been a running theme throughout.

I am not here to argue about whether it would be right or wrong to have equal rights of appeal,

but I would like an answer to a specific question. You are telling me that some of the people you took evidence from gave their views on equal rights of appeal, but why was there no question on the issue in the first place? More people could have given their response to that and you would have had more evidence on the issue. Because it is a big issue for them, some people chose to refer to it in their evidence to you, even though they were not asked a specific question about it.

With respect, it is not just about housing. Also, nimbyism is perhaps also just a wee bit overplayed. The Irish situation is perhaps a bit overexaggerated. If there is a planning application from a private developer to build an incinerator, for example, the council can refuse it and the community can say that it does not want it. However, the person who has a right of appeal in that case is the developer. If the developer then appeals, the decision of the community and the council can be overturned—that has happened.

Petra Biberbach said that sometimes appeals are not the right way forward. If that is the case—if an appeal might not be the right way forward for the community, for example—what about the fact that developers can appeal, with the wishes of the community and the local council overturned? My final question is, why not take specific evidence on those themes and why not ask the Government to explore the issue further? I do not think that we have all the answers on it.

**Petra Biberbach:** I think that you mentioned that 78 per cent of respondents wanted to see a third-party right of appeal—

**Elaine Smith:** No, I said that out of your 400 respondents, not all of them responded on the issue, which is unsurprising since you did not ask a specific question on it. However, of those who responded on and raised the issue, 70 per cent—not 78 per cent—of them were interested in equal rights of appeal.

**Petra Biberbach:** There is a fundamental question here. You gave the example of plans for an incinerator and you said that communities do not want incinerators. However, at the same time, we have a huge target to meet on how we deal with our waste. We have a huge target to meet for green energy. Those are national debates. Do we leave that to be decided at the local level?

**The Convener:** I will let Graham Simpson in next but Elaine Smith's specific question about why you did not ask the question in the first place was a reasonable question to ask.

**John Hamilton:** I do not have the original brief here but there were certainly questions in it around whether the debate was about a third-party right of appeal or about equal rights of appeal. That came up, so the issue was not just brushed aside. I

would have to go back and look at the exact framework of those questions, but the issue was certainly in there.

**Petra Biberbach:** The minister set the brief on the six themes. We then had a special session where the third-party right of appeal was discussed.

**The Convener:** It would be helpful if you could provide more information to the committee on that, perhaps in writing. I know that some of my colleagues want to comment further on the issue.

**Graham Simpson:** I should declare an interest—I am still a councillor in South Lanarkshire.

To develop the theme on the third-party right of appeal, do you see the problem here? You are suggesting a system like the one that we currently have, where developers such as Mr Hamilton can appeal. If your development was rejected, Mr Hamilton, you could appeal. However, the communities that you say you want to be more involved could not appeal. Do you see the issue there?

**John Hamilton:** No, I do not see the issue. We are looking to achieve a more focused and more direct planning system in which developers would be constrained and guided by an effective development plan based on applications. I would have no sympathy for a developer who made an application that ran completely contrary to a local development plan. That application could be appealed and could be refused, and the developer would have to make their own choice about the business plan that they put behind it—how much investment they would make, first, in the planning process and, secondly, in the delivery of that planning application.

I appreciate that this is not all about housing but we require a step change in the number of houses that we are building across all tenures in Scotland. The business investment decisions that would have to be made around that are very significant. Other large-scale projects, such as incinerators, have been mentioned. There is a crossover between the needs of the public sector to have such projects delivered and what, in terms of confidence, the business community and the investment community will put behind those projects to see them being achieved.

**Petra Biberbach:** The third-party right of appeal came out of discussions about the fact that there had not been sufficient community engagement. We are trying to front load the system by providing much more community engagement at the earliest opportunity.

At the same time, if we narrow down the right of appeal to a third or equal party, who defines that?

The recent case of Portobello high school drove a big wedge through the community. In such cases, who is the third party? I would rather have a much more proactive, engaged and inclusive system in which a third-party right of appeal is not needed because we got the system right. At the moment, we have not got it right.

**The Convener:** Graham Simpson has a brief supplementary, after which we will move on to Andy Wightman.

**Graham Simpson:** If you get the system right, perhaps there will be no need for any sort of appeals. Perhaps there will be no need for Mr Hamilton to appeal if he is not happy. If it is done right, no appeals will be necessary.

**John Hamilton:** I think that that is fair comment. I am not recommending that but, in principle, I agree with the suggestion that, if we had a perfect planning system, we would not have a right of appeal. However, our recommendation is heavily geared towards improving the planning system and making sure that planning applications are made that reflect national planning policy and local development plans.

**Petra Biberbach:** In my day job, I work with communities up and down Scotland, and a third-party right of appeal is the last thing that comes up. What is important is how we make our voice heard, how we make representations and how we achieve something.

Island communities, such as the community on Rum, that want to develop and grow are becoming developers. Development trusts that take on assets are becoming developers. That is the proactive side that we are now seeing more and more of. What communities want to understand is when, how and why. They want transparency in decision making and feedback on their recommendations. I think that we need to have a more mature debate.

**John Hamilton:** As Petra Biberbach said, apparently different recommendations are strongly interlinked. We make points about leadership through the planning system and making a commitment to planning policy. I think that this is part of that as well. We make recommendations even at the level of a chief executive approving a development plan. There has to be confidence on the part of the public sector and the private sector that planning policy is set correctly and that we have a system that delivers against that policy.

**The Convener:** The deputy convener would like to ask a supplementary, but given the time and the fact that Andy Wightman has been extremely patient, I will let him ask the final questions on equal right of appeal and third-party right of appeal. I give notice to Alexander Stewart that I

will come to him next to ask about planning enforcement.

**Andy Wightman (Lothian) (Green):** There are two new areas that I want to ask about, but before I do so, I have a comment on equal right of appeal. I take the point that Petra Biberbach makes about the need to get earlier engagement. The nub of the issue is whether we can get earlier engagement. There is still distrust.

As far as John Hamilton's comment is concerned, if in the future we can equalise the rights of appeal, if you see what I mean—

**John Hamilton:** I do.

**Andy Wightman:** We can discuss that going forward.

**John Hamilton:** We have looked at the issue almost through the other end of the telescope.

**Andy Wightman:** I have two substantial questions and one minor one. I think that Petra Biberbach said at the beginning that she considers it important to see the 48 recommendations as being linked. The Government has indicated its intention to take forward 10 of the recommendations—in other words, 38 of the recommendations will not be taken forward, at least at the moment. Are you concerned about what will happen to those 38 recommendations? Do you have any concerns about the extent to which the 10 that have been identified for early action might be linked to other recommendations that have not been identified for early action, with the result that what we get might not be what your bold and commendable vision is?

**Petra Biberbach:** I think that it would be fair to say that the timescale—

**The Convener:** I apologise, but can we get some clarity on that? I thought that 10 recommendations had been identified for early action and that the other 38 recommendations were under active consideration.

**Petra Biberbach:** Yes, nine plus one of the recommendations have been identified for immediate action; one of them is an inaction.

With regard to the other 38 recommendations, the collaboration—in the spirit of the report—is commendable. A number of working groups are being set up across the six different teams to look at the detail of how some of that can be delivered and worked through.

10:45

The thing about planning is that there are so many different stakeholders and interests. It is therefore important that everyone has some sort of

input so that it becomes a shared experience and we can move forward.

From what we understand, the working groups are being set up and will meet for the first time next week to look at the recommendations in more detail. We only make recommendations, so others may well feel that they want to work through some of those and look at the details. The timescale is quite ambitious.

**Andy Wightman:** Thank you—we will pick up some of that with the minister later.

My second substantial point is around recommendation 18, on land value uplift. In your view, how significant an issue is that with regard to the millions of pounds that currently flow as unearned increments to landowners? Who captures those at present, and what mechanisms are in place? We have heard that section 75 will potentially capture some of them at a later stage. Who should capture them? What would the implications be of moving towards a system more like the one that we had at the beginning in 1947—and like the one that I think still exists in Germany—in which those increments are captured to provide public benefits at the outset? They can then be invested in infrastructure, good planning and all the rest of it, and house builders can get ahead and build houses.

**John Hamilton:** There is unfairness in the system that we have just now. On the basis of a decision being made by an authority, a piece of land can become a great deal more valuable than if it is used simply to grow crops.

We have opened that area up to the potential for a land or planning levy. The reason is that, even in the development and house-building industry, it is recognised that the planning system confers value on land. However, that does not always mean that every piece of land is profitable or effective.

The house-building industry needs a process by which there is more certainty about the outcome for the value of a piece of land if planning permission is granted. At present, there is too much uncertainty. It depends on the area—not every single region or authority area is the same. It can be very difficult to put together business plans that will allow house building to progress where there is uncertainty around the cost of section 75 contributions.

A few years back, a great many people in the house-building industry would have reacted against any suggestion of a land tax or levy. Increasingly, there is a realisation—we heard evidence from Homes for Scotland and from individual house builders—that that is all part of the process. Costs have to be met, and a lot of the costs that might currently flow to the original

landowner may have to be charged for the delivery of education or transport.

The process will, if it is working correctly, still result in a fair payment to the landowner. I do not want to get into a discussion about compulsory purchase orders, but where a piece of land is required as part of a local development plan or as part of national policy, a compulsory purchase order is used in some cases. Instinctively, we would try to avoid that so that we have a better and more effective system that still allows for land to be paid for but also allows for infrastructure to be funded as part of the cost of a development.

**Petra Biberbach:** We recognised in our report that there is value in exploring that further—it was definitely accepted in principle. It is not just about housing: if you look at infrastructure provision such as the Borders railway, you see the yield and the uplift. That needs to be looked at in much more detail, but it fits in very well with land reform.

The other thing that we found with regard to the 2006 act and what we are seeing now is that there is much greater buy-in by different local authority and Scottish Government departments to make this reform much more far-reaching.

**Andy Wightman:** I have a third and final little point. Recommendation 16 of the report refers to Scotland's "diverse housing needs" and then says:

"It is ... important to ensure that support for new sectors does not inadvertently provide opportunities to build mainstream homes which do not meet established needs. Where special measures are introduced to promote the private rented sector, an assurance of the retention of use in perpetuity would therefore, in our view, be essential."

Can you say a little more about what you mean by that and whether what you mean actually applies to more than the example of the private rented sector that you have used?

**John Hamilton:** I think that it does apply to more than that. We have used the example of the private rented sector, but the fact is local authorities can be sensitive about this issue. That is particularly the case in West Lothian Council, where planning might be granted for a tenure that initially appears to meet affordable housing requirements. Shared equity would be an example where, if there is no ability to fix that type of tenure in perpetuity, within a very short period of time—possibly even months—the owner of the property could be attracted to the idea of putting it back on to the market. West Lothian Council has fairly strict guidelines about how, in the case of affordable housing, the title must legally require such housing to be affordable in perpetuity. That is a kind of older example, but it crosses over into the private rented sector where, if similar title provisions are not made, a developer, even of fairly big-scale developments, might get a consent

for private rented sector housing that in the short term meets the requirements of that part of the market, but they could then sell those rented units on the open market.

**Petra Biberbach:** That is exactly why we want to safeguard affordable housing.

**Andy Wightman:** So you are really proposing that in terms of use classes, for example, the planning system should be able to incorporate a more fine-grained understanding of the use to which land and property are put. You have cited the example of affordable housing and West Lothian Council, which has already been doing this through a legal process involving title conditions, but you are implying that you would prefer that to be done through the democratic planning process. In that way, if consent had been granted to develop, say, a retirement home, student flats, disabled accommodation or social housing and someone wanted to change those use classes, they would have to apply in future. In other words, that would be done through the planning system, instead of trying to do something more complicated.

**John Hamilton:** Yes. The example of student accommodation is a good one, because it is relatively easy for planning permission to be granted for such accommodation and for that development to become market flats at some point in the future without any further planning analysis.

**Alexander Stewart (Mid Scotland and Fife) (Con):** First, I should indicate that I am a serving member of Perth and Kinross Council.

Thank you very much for your presentation and the report, although I am surprised that the report itself does not contain a lot on the area of planning enforcement. We know of cases where building controls have not taken place or where permission has not been granted, but someone has built something in the process, and it is still a major concern across most local authorities. You have touched on the financial constraints on many local authorities, and that has a knock-on effect on the number of planning enforcement officers or things of that nature that they might have. What are your views on what is a complex issue and how it can be managed and challenged?

**Petra Biberbach:** The subject is vital. For a lot of communities—especially those that are interested in what is happening—seeing their actions being followed up is crucial to building confidence. However, the reality is that all planning authorities are cash strapped—planning fees and so on have not kept pace with costs—so something will have to give.

We need to move towards a planning system that has proper resourcing and which provides for full cost recovery. We must identify the functions

that help communities to feel trust in the system. I had a recent case of someone who told our advice service that 10 mature trees had been felled in a conservation area to make room for car parking and, weeks later, nothing had been heard. Such little things really exercise people and give planning a bad name.

**John Hamilton:** Perhaps we could have made the point more strongly that the Planning etc (Scotland) Act 2006 contains real enforcement powers and I see enforcement action being taken against developers regularly, although not daily. Such action could mean that a development is stopped quite quickly or that a developer is fined.

That goes with our recommendation about investment in the planning system to facilitate the public and private roles in planning. Greater investment probably means a requirement to increase fees, because planning authorities do not have enough resource for planning officers to act. Many such officers have to act as case officers and do enforcement. Unfortunately, this is partly a question of resource and how much the system is valued.

**Alexander Stewart:** You have given the right answer—for me, anyway—as I agree that the system needs to be managed effectively. If people do not put their money where their mouth is, they will not be able to manage the process. When developers do things wrong, there is an opportunity to penalise them—although some are quite happy to be penalised.

**John Hamilton:** Developers are less happy about development being stopped. Action was recently threatened to stop a major development, which would mean that people who contracted with the house builder involved would not be able to conclude entry to the property.

**The Convener:** I hope that we are asking the right questions, and I am delighted by the confirmation that the witnesses are giving the right answers.

**Alexander Stewart:** For me, anyway.

**The Convener:** The answers were right for one of our members. Mr Gibson has a supplementary question.

**Kenneth Gibson:** Alexander Stewart touched on the issue that I was going to raise: the fact that a developer might happily cut down some trees and take a small fine so that it can build a dozen houses that sell for a couple of million pounds. I was going to ask how we ensure that the punishment fits the crime, so to speak, and that there are barriers to people taking such action, which has happened in my constituency.

**The Convener:** I know that you have a specific question on island communities.

**Kenneth Gibson:** Recommendation 11 is that,

“Given their special circumstances, the island authorities should be given more flexibility where this would better reflect the distinctive local context for planning in an island setting.”

I agree with that and the islands bill will encompass that.

My constituency contains an island of 5,000 people—Arran—that is distinct from the rest of North Ayrshire and is more than 10 miles off the coast. I also have the island of Cumbrae, which is more integral to North Ayrshire. A lot of your suggestions—such as

“encouraging broader and more creative use of schemes of delegation”

and bringing forward

“integrated terrestrial and marine plans”—

apply to somewhere such as Arran. Is your recommendation only for island authorities or is there room for manoeuvre to allow distinctive island communities to have a bit more flexibility and autonomy in dealing with such issues?

**Petra Biberbach:** We put the recommendation out there, and I know that a working group has invited representatives of island communities to discuss in a bit more detail exactly what that should look like. There are challenges in marine planning in particular. Aligning that much better with spatial planning requires the views of all islanders and not just those of island authorities.

**Kenneth Gibson:** I asked my question because your recommendation mentioned island authorities rather than island communities.

**Petra Biberbach:** Sorry.

11:00

**The Convener:** That was a helpful clarification.

I will indulge myself by asking another question. I know that one of the recommendations is for development plans to be reviewed every 10 years rather than every five years. My understanding is that planning authorities produce 10-year plans and that there is a review in the middle of that process and, from my council colleagues, I understand that a massive amount of bureaucracy can be involved in doing that. However, my experience as an MSP and a local resident of engaging with Glasgow City Council's development plan is that I was sent a crate of documents. The area that I lived in was earmarked for dramatic changes but I did not know about them, either as an MSP or as a local resident. The local authority clearly had no particular desire to engage with the community about what a local development plan would look like. I might be one of the nimbyistic individuals that Mr Gibson was

talking about but I had some significant issues with the proposals as a resident.

In more general terms, I am worried that, under the proposal, errors in local development plans could be locked in for 10 years. I understand that it is in the interests of planning authorities to have that 10-year plan as it gives them more stability and enables them to take a more structured and strategic view, but how do we ensure that we get things right in the first place and co-produce some of the plans with communities rather than just letting a planning authority do what planning authorities do?

**Petra Biberbach:** Longer-term planning can help to ensure that there is a focus on delivery. Because of some of the experiences that we have currently with the system, we are proposing that there should be a longer-term plan that is flexible, and that that should be linked to a change in the role of the community council. In the example that you gave, I am sure that more people would have heard about what was being proposed if the community council had been a statutory consultee in the development plan.

North Ayrshire Council is a good example of an area that is introducing locality plans along with community planning. We are increasingly seeing that kind of planning of shared service delivery, which involves an understanding of what the police, health and education services want to happen over the next few years. That makes for much better and more integrated systems, and locality plans have to be informed by the local people.

Some of the experiences that we are having are born of the current system, which is not working as well as it should be. Our recommendations concern ways in which we could be working much better.

**The Convener:** My reflection on that would be that, if a planning authority holds a meeting in order to raise awareness, a man, a woman and a dog will turn up but that, if a local elected representative gets publicity for something that is happening in planning, they can get a full town hall. There are lessons to be learned about what engagement means and how people can advertise, promote and roll out a consultation. Sometimes, communities feel that planning authorities are quite happy when very few people engage, because that engagement creates extra work and so on. Is a culture change needed on the part of planning authorities?

**Petra Biberbach:** We want to see much more use of digital and social media such as Facebook and Twitter. Again, 10 years ago, that facility was not there.

When there was a development in Balloch, we set up a Facebook page, and lots of people who would not want to go into draughty community halls submitted comments to it. We need to be much more innovative in terms of how we use social media. Further, we now have the charrette process, which is visually attractive and can lead to the use of 3D technology and so on. All those elements can help engagement. We need to engage much more with social media. We have not done that in planning as much as we have done in other policy areas.

**John Hamilton:** The role of local members is key. I know that the scenario you describe can happen, but I would like to think that we will have an early consultation process where local council members and local communities will see the proposals coming much earlier in the process and will be much more prepared for them.

There is still a question of balance. We have two problems at the moment. One is that things happen too quickly without consultation; and the other is that we fall into a five-year cycle that is constantly repeated and constantly under-achieved. We have to get away from both of those failures.

**The Convener:** Okay. I promise that I was listening to you, Mr Hamilton, but I was getting bids for supplementary questions as you were answering that question. I will have the final question soon, but not right now—Elaine Smith will ask it in a moment. There are a couple of supplementaries on the current theme. We will have Graham Simpson first, followed by Andy Wightman.

**Graham Simpson:** I want to follow up on community engagement. Community councils were mentioned—we have all had varied experiences with community councils. One issue is that they sometimes consist of very few people, and they have their own agendas and do not engage with the communities that they are meant to serve. Did you look at different models of engaging with the wider community—whatever we mean by that—other than community councils, which very often cannot and do not work?

**The Convener:** I suppose that that is about models of engaging people as well as community councils rather than instead of them. All community councils that I go to are good. I am not just saying that—they are. *[Laughter.]*

**Alexander Stewart:** That is not everyone's experience, convener.

**The Convener:** I do not know which ones Mr Simpson goes to—I see him laughing. He can stand to account for that. Community councils are representative only of those who attend them and, by definition, that is a tiny section of society. How

to engage with the wider community outwith community councils is a valid question.

**Petra Biberbach:** I think that we touched on that in our report. Community councils are the only bodies that have a statutory role, so many local authority planning officials go to them, but we are increasingly seeing with locality planning that communities can elect their own representatives to sit on the locality plans. Those two things have to come together.

If we have a particular instrument, that attracts a particular kind of people. Right now, the statutory role of community councils is limited to development management. That is very much about saying, "I don't want that", "I want that", "No, not here" or "Not there". If that is in the development plan stages, different types of people will be attracted, because it is about vision—it is about the next 10, 15 or 20 years.

Because of the United Nations Convention on the Rights of the Child, we need to bring in more young people. That is not about having yet another token group. In order to raise awareness among young people and for them to be involved in the discussion, it is up to us now to demonstrate that we can bring them in and that they have a role in the democratic process.

There are many active development trusts and amenity groups out there. They do not have a statutory role, but they engage. There is a lot more work to be done.

**The Convener:** Mr Simpson, I think that I managed to get one of us out of a hole on community councils. I am not sure which one of us, but I think that one of us got out.

**Andy Wightman:** An issue arose in my constituency. An applicant wanted to demolish a building, but there was widespread community opposition and there unanimous rejection by the council. The case went to appeal and the reporter approved it. Is that fair?

**Petra Biberbach:** Without having looked at the evidence and from how you described that, that seems not to have been fair, but we have to look at the evidence and at exactly what the building was for. It is very challenging. That again touches of the role of the reporter, and why and at what point the reporter comes in. We want a much more front-loaded system, so that the reporter is at the front end and is not an adjudicator at that late stage, which—again—is negative.

**Andy Wightman:** I raised that particular issue because there was no front loading of the system—someone suddenly came along and said that they wanted to demolish a building.

**Petra Biberbach:** We see that a lot.

**John Hamilton:** It is difficult to comment on one specific case. Obviously, no matter what the forum is, the person who made the application would expect to have a hearing. What we are looking to achieve through the report is not only planning applications but planning hearings being dealt with at the local level. The system can currently seem very remote to communities; matters are taken away to the reporters unit in Falkirk. We are making recommendations about how appeals or hearings should be conducted earlier, if possible, through the gate-check system. The principle is that if they can be held in the local area, they should be.

**Ruth Maguire:** My question also relates to aligning development planning and community planning. We have talked about front loading of consultation. Some witnesses mentioned that community councils are one group, and Petra Biberbach has made the point a couple of times that there is no single community. Do the witnesses agree that, when we consult, we need to find ways to enable communities of interest to opt in and out so that they are not bound to a single structure, such as a community council, as their only way of contributing? Do we need to find a way to enable people to come in and out of the process?

**Petra Biberbach:** Yes. We must not forget that local community councils, of which there are many, are very hard working and we work with almost all of them. They are definitely underresourced; they are supposed to be the lowest level of democracy so something has gone wrong when they get only a couple of hundred pounds a year. In many areas, they depend on a lot of goodwill and there is only so much that they can do in their current role. That system does not currently work well.

I totally agree that, when they are being more representative of their whole communities, community councils should be required to ask for communities of interest to come forward. For example, there is a big food-growing crisis in some areas and there are many allotment holders who want to be more involved and want more allotments to be created, and many more hydro power schemes are being developed. Those are the communities of interest in some areas, not the community councils, but community councils sometimes object to such proposals. There definitely needs to be much broader dialogue.

**The Convener:** We have time for one final question. I call Elaine Smith.

**Elaine Smith:** Perhaps I will roll two into one. Kenneth Gibson asked about the reporters unit. There are issues with that, but I clarify that the Scottish Government does not have to take the reporter's advice; it can take a different decision.

Recommendation 28 of the report ties in with a lot of what has been said. It says that

“repeat applications should be managed more effectively.”

Will you give a bit more detail on how that could happen? What would it entail?

**John Hamilton:** The legislation needs to be tightened to avoid the problem with repeat applications. Because developers can come back time and again, there is potential for abuse. I know how wearing it is for a community that thinks that it has dealt with an application that has gone through the appeal process and has been refused, then a similar, but slightly different, application suddenly starts to run. I understand how that can have a very negative effect on communities and how it can anger people.

Recommendation 28 is not the most drastic of the recommendations. Scotland has a very well-regarded planning system but, on that matter, we need to consider powers that are similar to the enforcement powers.

**The Convener:** Petra—do you want to add to that?

**Petra Biberbach:** No. I totally agree with John Hamilton. It is the nub of many communities' objections that there is consultation on an application, they object but then the application comes back again and again. Something needs to be done about that.

**Elaine Smith:** If the community has objected, the local authority has refused planning, the application goes to appeal and to a reporter and the reporter recommends that it should go ahead, the Scottish Government can take a different view?

**Petra Biberbach:** Yes. Also, as John Hamilton said, the fact that the reporter sits somewhere else is not helpful for the current perception of the system.

**The Convener:** All that remains is for me to thank both witnesses for attending. We have a small amount of time left for anything that they want to say that our questioning has not given them an opportunity to put on the record. Do you want to make any final comments?

**John Hamilton:** I will say something about our recommendations on the formulation of an infrastructure agency in Scotland. It is a big handicap in the planning system that there is no appropriate forum for the key public sector agencies that are involved in funding development to convene around development plans. At the moment, the system is almost chaotic at times because we have in the planning regime different agencies that have no way of consulting one another properly.

11:15

We appreciate that there is a constraint on public spending, but to make a step change in the planning system, we would have to consider forming an infrastructure agency or, as in England, a homes and communities agency. We do not have an equivalent in Scotland. The nearest equivalents that we had were the Scottish Special Housing Association and Scottish Homes. They are now obsolete, although I am not sure why. There is a requirement for such an agency to be considered seriously.

**Petra Biberbach:** We hope that our recommendations will make the system not only more efficient but much more inclusive. We can achieve a lot by front loading it and opening it up to much more diverse groups of people.

**The Convener:** I thank both witnesses for their evidence. We will suspend for a few moments.

11:16

*Meeting suspended.*

11:20

*On resuming—*

**The Convener:** Welcome back, everyone, and good morning again—it is still just morning. I welcome our second panel—Kevin Stewart, the Minister for Local Government and Housing, and John McNairney, the chief planner. Thank you both for coming. I believe that you have an opening statement, minister.

**The Minister for Local Government and Housing (Kevin Stewart):** Yes, convener. Thank you, and good morning. Over the past year, we have had a unique opportunity to take a fresh look at the Scottish planning system. The independent panel that was chaired by Crawford Beveridge undertook a comprehensive review of the system. The review drew on extensive written and oral evidence, and resulted in a positive and insightful report.

The panel set out 48 recommendations for improving planning in Scotland. Our task now is to consider their findings in more detail and to decide how we can change the planning system so that it delivers more for Scotland's economy and communities.

The independent review covered six areas of the planning system where there is room for improvement. We have now begun work to develop a full programme of planning reform. We recognise the importance of planning in supporting inclusive growth that enables positive change for all of Scotland's distinctive places and communities. It is too early to say exactly what

future reforms might look like. However, I do have some initial thoughts on the priorities for a future white paper and wider actions.

I agree that there is much to be gained from significantly streamlining development planning in Scotland. The strategic scale of planning is key to that. Over the coming weeks, we will work with stakeholders to explore alternative models that prioritise infrastructure delivery and provide communities with a greater say. Housing delivery is, of course, a key priority for the Government—not least given our commitment to delivering 50,000 new affordable homes. The panel suggested a different approach to planning for housing that focuses on long-term strategic planning and aims to diversify delivery. We will be exploring how that can be achieved in the coming weeks.

The panel concluded that infrastructure is critical. We need to look at different approaches that better align investment in infrastructure with the areas where growth and development are happening, in order to ensure that high-quality places are created for communities.

The independent report also highlighted the need for improved efficiency and transparency in development management. I agree that an overhaul of development management is not required, because it improved significantly as a result of the Planning etc (Scotland) Act 2006. However, there is still scope for targeted improvements. I will be particularly interested to see how more applications can be removed from the planning process in order to free up resources.

Leadership, resources and skills are another key theme that emerged from the report. We began a process of culture change with the 2006 act, but it remains unfinished business. There is a need to ensure that planning authorities are adequately resourced and that there is continuing emphasis on improving performance.

Finally, I believe that community empowerment in the planning process must be central to the future of planning reform. We need, if we want to get the most out of the system, to ensure that communities and individual members of the public understand, trust and actively participate in planning.

We will explore all those issues with a wide range of stakeholders in the coming months. We will set out a range of options and ideas in a white paper, and I expect further open and inclusive debate on the issues, following its publication.

Although the review panel found around the country innovative examples in which planning makes a positive contribution, it was tasked with focusing on where the system is not realising its potential. I believe that we are on the cusp of

realising the full potential of planning to create great places for all of Scotland's people and that we should grasp that opportunity.

I am happy to hear the committee's views and to answer members' questions on our on-going programme of work on planning reform.

**The Convener:** Thank you, minister. We are grateful for that statement.

Perhaps we can start where we left off in the previous evidence session, with Mr Hamilton on behalf of the independent review group drawing our attention to the recommendation of a national infrastructure agency or even something like the Homes and Communities Agency in England. The picture that was painted was that, although a lot of good effort is being made in the development and planning process in local authorities and across Scotland, that effort is not always focused and people are not always talking to each other. In that respect, the idea of a national infrastructure agency would be beneficial. Will you say something about that?

**Kevin Stewart:** As I said, we are at the very beginning of a process, and we are going to talk to stakeholders about all the recommendations that have been made. I am aware of the English situation, and I am also aware of some of the difficulties that have arisen from what has been established there. One of the things that I would want to ensure if we were to move along those lines is that we do not make the same mistakes.

I will bring in Mr McNairney to talk about some of the engagement that we have already had on the matter and where we intend to go in the next few weeks.

**John McNairney (Scottish Government):** One of the six research projects that we have let to support the outcome of the planning review is on infrastructure charging and learning from experience elsewhere, particularly with regard to the community infrastructure levy south of the border. We have recognised that, over the past decade or more, the funding of infrastructure has become a real challenge for delivery, and this is a good time to build on the recommendations and try to learn how we can join things up and use the available finance more effectively.

The working groups, which will start on Monday and Tuesday, will include a group of experts on infrastructure, and we will take some of these questions to them as the start of the engagement process, with regard to not only infrastructure but the other six themes.

**Kevin Stewart:** One of the major criticisms of the English system—which you mentioned, convener—has been that it is overly complex and is suited only to market conditions in the south-

east of England and around London in particular. Obviously, we will look at it, but we have to be aware of the criticism of what some have deemed to be an overly complex system.

**The Convener:** That is helpful. On the funding of infrastructure, the review suggested a potential infrastructure levy on developers. Perhaps we can set that beside section 75 agreements, which have declined, are not as useful as they used to be and have not always been used for their intended purposes. In our earlier discussion, they were suggested as a way for communities to buy into and get some local community benefit from a development. Although that is not necessarily the purpose of section 75 agreements, there might be some concern about any intentions in that respect and some concern that any money that is taken for national infrastructure might further undermine such agreements. The question whether they are being used for their initial purpose is moot.

Has there been any early thinking about where section 75 agreements sit beside an infrastructure levy and how we can get community benefit from developments at the earliest stage?

10:30

**Kevin Stewart:** As I think you said, convener, section 75 agreements were never about additional benefit. It is about ensuring that the infrastructure is there. As I went about the country over the summer, I asked the folk that I came across various questions about section 75. As you can well imagine, developers are often not particularly happy about having to pay for new schools, for example. The other side of the coin is that some communities feel that their local authority is not making the best use of the section 75 arrangements. Mr McNairney can correct me here, but I believe that two councils were responsible for a certain percentage of section 75 agreements. What is the figure?

**John McNairney:** It is 36 per cent.

**Kevin Stewart:** I need to get some knowledge of why certain folk are making that much use of section 75 agreements and others are not.

This area is of great interest to me in relation to what the stakeholders come up with. As Mr McNairney said, the workshops that we will hold next Monday and Tuesday are really important to us in terms of our engagement and the need to gain knowledge about what is going on out there. We also held a number of round-table events with various parties between the publication of the report and the Government's response. The information that we gather will help to guide us to where we need to go on some of the issues.

**The Convener:** That is helpful. Without presupposing what the working groups will take forward, would it be reasonable to suggest that, if section 75 agreements are not always being used as was initially intended, there may be some discussion—given that there is already discussion about an infrastructure levy—about what community benefit looks like and whether section 75 is the most appropriate vehicle for that? Community benefit may be about community empowerment rather than infrastructure. That could be discussed in order to tease out how to enable co-production with community benefit from the early stages of developments.

**Kevin Stewart:** I am sure that those issues will come up at the workshops next week. We will have community representation at them and we are keen to hear communities' views on the current arrangements and the independent panel's proposals.

**The Convener:** Are the workshops that you have talked about different from the six working groups that are being—or have been—established?

**Kevin Stewart:** No. The working groups will take part in the workshops on Monday and Tuesday.

**The Convener:** It would be helpful for us to know either now or later on—perhaps you could write to us—who has been invited to sit on the working groups. We have an open petition from Planning Democracy, which has written to me to ask how we ensure that individual members of localised community organisations can be represented on some of the working groups. It is not for me to say who should or should not be on them, but I suspect that Planning Democracy was making an appeal to be involved.

**Kevin Stewart:** There are well over 100 invitees. I signed all the letters personally because I wanted to see exactly who was coming to the event and to ensure that it was as diverse and representative as possible. Planning Democracy has been invited to the event next week, as have a number of other community organisations.

I will get my officials to write to the committee with the names of all those folks who were invited. Beyond that, I believe that all the attendees will appear on the website at the beginning of next week. Am I right in saying that, Mr McNairney?

**John McNairney:** Yes.

**The Convener:** That is helpful. It is not for our committee to make a plea for one organisation over another. The organisation that I mentioned made representations to the committee, so it was name-checked in this morning's evidence session.

There are working groups, whose work will be on-going, and some of the groups will be hosting workshops next week. I am interested to know who sits on the working groups rather than who is going to the workshops, which are two separate things.

**Kevin Stewart:** I have perhaps confused things a little bit, convener. I will let Mr McNairney explain.

**John McNairney:** Invitations went out to a range of people to be part of the working groups, and next week's workshops are an opportunity for them to come together. The six working groups will meet in plenary and they will also drive forward answers to some of the key review questions. We will publish an overview of how the workshops have gone. There will also be an online discussion platform between now and the publication of a white paper, which we intend to be in about December.

**The Convener:** That is really helpful. Thank you.

**Kenneth Gibson:** I want to focus on housing, and one issue that I want to talk to the minister about is simplified planning zones. You say in the 10 recommendations that you are moving forward immediately that you will pilot simplified planning zones for housing. Will you say a wee bit to explain what a simplified planning zone is and how it will work? Where is the pilot likely to take place? When is it likely to be up and running?

**Kevin Stewart:** We will progress pilot simplified planning zones for housing as a priority. We do not yet know where the pilots will be, but we will work with planning authorities to identify suitable areas. There are currently arrangements for only two SPZs in Scotland: Hillington business park and Renfrew town centre.

Simplified planning zones offer an adaptable approach to delivering high-quality housing and making areas investment ready. Front-loading of site assessments, site briefs and masterplanning allow for early and effective community engagement at the beginning of the development process while supporting place making in a holistic way. I put emphasis on place making, which is really important. SPZs could assist by embedding an infrastructure-first approach to development and encouraging greater innovation in delivery models.

We are putting in place those plans to pilot SPZs for housing and we will examine the issues further in practice when they are in place. I am afraid that, as I said, I cannot tell the committee at this time where the pilots are likely to take place. I will share that information with the committee as soon as I have it. Do you have anything to add, Mr McNairney?

**John McNairney:** I have a couple of points about what simplified planning zones do. They remove the need for full planning permission so, as the minister said, there would be a front-loaded process around defining the area that might be subject to a simplified planning zone. The planning authority would do that. I think that we will ask for interest from planning authorities and work with them in taking that forward.

There are some restrictions. For example, a simplified planning zone would not apply to areas that are protected habitats. We would need to look at the requirements for environmental assessment and community involvement. Once that is in place, it would be for developers to build. There might be a design brief, but there would be no need to go through the planning process. Therefore, the approach would remove the need for planning permission. There would still be a need for a building warrant but, by working with the planning authority, we would hope to align any other consents so that there would be a much more straightforward route to getting on site.

**Kenneth Gibson:** Thank you. That is really helpful and informative.

Paragraph 4.15 of the planning system review report says:

"some communities are not receptive to new housing development, and this is exacerbated where infrastructure is already under pressure."

There is an issue about improvements to infrastructure, which is something that we all want. I had a meeting with the chief executive of Ayrshire and Arran NHS Board, who expressed concern that the planning system does not really involve health boards. There could be a proposal to build several hundred new houses without any interaction with the local general practitioner practice to see whether it has sufficient space to take on additional medical staff or whatever. Are you looking at that issue?

Are simplified planning zones a way of trying to square the circle of ensuring that housing is provided even though communities might not be receptive to that, or is that part of the front-loading exercise? I just wonder how all this ties together.

**Kevin Stewart:** Your questions are on bits of the jigsaw that are maybe not all together at present. The issue is how we bring all those pieces of the jigsaw together to make the planning system much simpler and easier and ensure that it takes account of varied views.

I start with your point about a lack of consultation with the health service in some aspects of the planning system. I have come across that in my constituency at some points. What we need to do—we have a great opportunity to do it—is to ensure that everybody who needs to

be and should be engaged in the planning system is engaged in it. We have the opportunity to look at all those issues that, in fairness, have in the past largely been put to one side a little. I hope that, in the work that we are doing on engagement and in the formulation of the white paper, we will look a lot more at engagement to ensure that we have the right infrastructure to support development in particular areas.

Beyond that, various suggestions have been made about how we deal with some of the infrastructure questions that are often raised. One suggestion is that, rather than up-front contributions at a certain point, we should perhaps try to facilitate loan investment from Government or other agencies to do whatever is required and then recoup that money at a later date. I am willing to look at all those things. There are a huge number of suggestions in the recommendations from the independent panel's report. Since it was published, a number of other issues have come up from stakeholders, which we will consider and look at. They will be discussed in greater depth next Monday and Tuesday.

**Kenneth Gibson:** On regional housing targets, you might recall that I asked you on 29 June how the 10,000 affordable houses a year would be distributed. You said that that would be demand led and would be based on housing proposals being put forward in specific local authority areas. How does that tie in with the regional housing targets? You said that the process for affordable houses would be demand led by developers and local authorities working together in certain areas to put forward proposals, but the regional housing targets almost seem to contradict that by taking a top-down approach.

I tried to tease out from the previous witnesses what they meant by regional targets, but I do not feel that I got a very clear answer to that. I see Mr Hamilton, who is in the public gallery, smiling. We need to define what we are talking about if we are going to take this forward.

**Kevin Stewart:** As Mr Gibson is well aware, local authorities currently carry out housing needs assessments and decide where to target resource to deliver the affordable housing that they require. However, all of that normally feeds into the strategic development plan, and sometimes the two are not entirely in sync.

I cannot speak for the previous panel, which I think was talking about trying to get all of this in sync. However, at present, it is local authorities that look at housing needs assessments. That is how we go about deciding what investment we will put into a local area. As I said, I cannot speak for what the panel thought about that, but I assume that it is something to do with what can be a lack of linkage between housing numbers in the local

development plan and the strategic development plan.

11:45

**John McNairney:** I am making an assumption here, too, but I read that recommendation as being part of a simplifying of the landscape of plans—in this instance, around strategic development plans. If targets were more visible in the national planning framework, there would be tighter alignment between that framework and what is provided in local development plans. We support strategic planning, but one of the issues about strategic development plans is that they commence at various dates, so it is quite complicated. It is important to be clearer.

On what the regional area would be, which you were probing us about earlier, on the face of it, it might be the four city regions. However, one might think that other parts of the country, from Highland to the Ayrshires, would also look for a steer. That is exactly the kind of thing that we look to the working groups to discuss, and they can then propose some options.

**Elaine Smith:** Good morning, minister. It still is morning.

In your opening statement, you mentioned the importance of community empowerment and involvement with stakeholders. I think that we would all agree that that is an important issue. However, we have heard evidence about third-party or equal right of appeal and there is an ongoing petition on that issue. Given that that is an issue, and that it is supported among certain parts of the civic sector and the policy and planning sectors, why have you come to the conclusion, in number 9 of "Immediate actions", that

"in line with the panel's recommendation, we do not intend to introduce a third party or equal right of appeal"?

The reason I ask is that there were no specific questions on the issue when the panel called for evidence, but—as I put to the panel—of those people who mentioned it, 70 per cent agreed with some kind of equal right of appeal or at least an examination of it. It looks like the debate on this has been closed down a bit, minister; perhaps you could give an explanation of that.

**Kevin Stewart:** I agree with the panel that the key thing in all this is to ensure that communities are involved in the planning process at the very start. If that happens, we see some areas of tension being ironed out quite quickly. I give you two examples. During the summer I was in Ardrossan, in Mr Gibson's constituency, where Cunninghame Housing Association is building 70 units. I broke the ground at that development. A huge number of members of the community were there—the community had been engaged in the

process from the very start. As is always the case, some folk were not happy about various things. However, those difficulties were ironed out as a result of the community engagement, so you have got a happy community and the development can proceed.

There was a similar scenario this week in Aberdeen, at Craiginches prison, which will have 124 affordable homes for key workers. The community council and residents there were not happy about the siting of one of the buildings. Early engagement meant that Sanctuary Housing, which is building the development, agreed to move one of the buildings to suit the community and local residents.

Early engagement is good for all. Some of the past difficulties have occurred because there has not been enough engagement with communities, or not the right engagement. As we move on, we can use technology, as the panel highlighted. We have the ability to do 3D visualisations and walk-throughs of developments that do not exist yet, and they can show developments alongside the current features. It is difficult for some people, including me, to look at a plan on a piece of paper and envisage exactly what is going to happen. With technology, the opportunities are huge, and getting communities on board early with their ideas can iron out tensions at an early stage.

I return to third-party right of appeal. You are right—our response confirms the consistent line that Governments have held for a number of years. We agree with the panel's recommendation and we do not intend to introduce a third-party or equal right of appeal. We will focus—definitely—on more effective methods of engaging people at an earlier stage.

As Ms Smith is well aware, because she has been in the Parliament since the beginning, the introduction of a third-party right of appeal in the planning system has been considered in this place on a number of occasions. In advance of the previous planning bill in 2004, the then Scottish Executive undertook a full public consultation on the introduction of a third-party right of appeal, and the issue was also considered by Jeremy Rowan Robinson in his paper "Options for Change: Research on the Content of a possible Planning Bill", which was published in 2003. At every stage, the Parliament has said no.

**Elaine Smith:** You have made the decision in line with the panel's recommendation, but I do not understand specifically what evidence it was based on, as the panel did not call for evidence on the issue so that people could respond—there was not a specific question on it.

We all want to avoid conflict, and I certainly hope that front loading will be the way forward. If

you are confident that it will be, however, I wonder why there should be any right of appeal. My colleague Graham Simpson asked the panel about that earlier.

On the evidence that has been taken on the subject, it seems that the only research is by Professor Ellis of Queen's University Belfast. He told the Public Petitions Committee:

"in the context of the Irish planning system, extended rights of appeal played an important and valued role; they were accepted and welcomed by a wide range of parties and ... there was very limited evidence of abuse."

That seems to put to bed the nimby fears and makes them rather unfounded.

I suppose that what people are really concerned about is that the proposal seems to have been shut down rather than being part of a wider consultation. I note that 2004 was a long time ago. I cannot recall—perhaps because I have been here for too long—the exact outcome of the public consultation at that time. Did the public overwhelmingly want such a right of appeal? I know that, over the years, several members have toyed with introducing a member's bill on the subject.

I am not advocating one way or the other; I am just trying to tease out why it looks as though the proposal might have been closed out of the debate. For instance, will it be discussed next week?

**Kevin Stewart:** Convener, I think that Ms Smith is playing devil's advocate a little bit, which I do myself from time to time.

First, I think it is fair to say that the panel got a fair number of views on a third-party right of appeal. If I can play devil's advocate a little bit as well, the question that I would ask is, "Why would you engage at the start of the planning process if your intention is to object at the end, come what may?"

I am not aware of the professor's work, but I will look at that. In some of the arguments that I have read about the system in Ireland, there is an accusation by many that it is a centralisation of the planning process. I would much prefer decisions to be taken locally, in the main, with the level of community engagement that is required.

The other thing—again, I am playing devil's advocate—is that we have probably all, in councils and in Parliament, come across somebody who has told us that they are going to object to every development that is put forward for their neighbourhood. How do we deal with that kind of vexatious situation, whereby there might be appeal after appeal after appeal after appeal?

**John McNairney:** Our systems are different. In Scotland, we have tended to have quite full

examinations of the development plan quite early in the process, whereby the public have an opportunity to comment on the plans. We also have pre-application discussions around major developments in which the public have a similar opportunity. The 2006 proposals sought to front-load community engagement in order to reduce the number of cases in which people were unhappy at the end of the process and in response to arguments for a third-party right of appeal. However, it is clear, from the review panel's findings, that those proposals can be built on and that we can go much further.

The aspiration is for people to take ownership of the development plan, which is what has the force of law. One of the questions that the panel was asked was about how we can collaborate more with communities. There was no specific question on a third-party right of appeal, but we asked whether we need to change the system to ensure that everybody gets a fair hearing in plan and decision making, which is in the same territory of fairness and trying to avoid communities feeling that planning is something that is done to them.

The other key ingredient is the impact on how the system would work overall. Would a third-party right of appeal streamline the system or would it make it more bureaucratic? Would it make the outcome more unpredictable? Would it make it more unlikely that people would invest in Scotland if there was no third-party right of appeal in other Administrations? The whole issue of economic growth, particularly at this point, is brought into sharp focus in the debate around the third-party right of appeal.

**The Convener:** Graham Simpson has a supplementary question, after which he will ask about shared services. Once you have asked your supplementary question, Graham, there will be an opportunity to move the conversation on.

**Graham Simpson:** I do not want to get bogged down with this issue, minister, but you played devil's advocate and I want to turn your argument on its head. You asked why, if we were going to involve communities right from the start of the planning process, we would allow them to appeal—I think that is what you said. However, you could say the same about developers, could you not?

**Kevin Stewart:** We have a system in which the right of appeal harks back to 1947, when it sought to ensure that any denial of what had previously been a right to develop received appropriate scrutiny. What we have here is the opportunity to make a huge change in public engagement and to involve as many folk as possible in the process—not just in relation to a single application but in every aspect of the process itself.

I think that if we do that—if we front-load the system to ensure that there is the level of engagement that I would like to see, which follows through on the Government's empowerment agenda in other areas—we will create a much better outcome for all.

12:00

As far as the appeal scenario is concerned, I am not an expert on the Irish system, but the accusation is made that it is centralised. Previously, questions have been asked about why reporters get to make decisions when they do not know anything about a local area and about why, ultimately, I might get to make a decision when I do not know anything about an area. If we introduced third-party right of appeal, we would have a system that would be much more bureaucratic and much more centralised. As has rightly been pointed out, we would have a system that would not be fit to deal with the difficulties that might occur with economic development if Brexit goes ahead. If we had a system that was markedly different from the system elsewhere in these islands, folk might well choose to invest elsewhere and, in my opinion, that would be a difficult situation to find ourselves in.

I think that the best way of dealing with such matters is at the early stages. I have given the committee examples of cases in which, if engagement is done right, it is possible for developers to take communities with them. I think that that is the way that we should go, not just on single applications but on every aspect of the system.

Mr McNairney, do you want to add anything?

**John McNairney:** The only other thing that I would add is that, since the 2006 act, practice on engagement has drastically improved and it is now more common for communities to use engagement techniques such as the charrette process. The place standard is being taken up across the country as a good method for having conversations with communities about what is important to them.

I think that we need to do a lot more to align community planning and spatial planning, but that it is all part of the process of getting stronger collaboration on what people feel are the important things that need to change in their areas.

**Andy Wightman:** I have a brief follow-up question. It was section 14 of the Town and Country Planning (Scotland) Act 1947 that gave the right to appeal. One of the questions that we will be grappling with is the extent to which, if the system is better front-loaded, there is more engagement early on, the plans are clearer and there is more consent and more buy-in, that

undermines the case for having any right of appeal for any party. At the end of the day, if we can equalise the rights, as it were, that might come close to persuading those who remain to be persuaded that the system will deliver better up-front planning and consultation.

**Kevin Stewart:** One of the issues here is delay and uncertainty for the public sector and the private sector. The system is already criticised for being slow and unresponsive. Were there to be a third-party right of appeal, it could be abused even more through unjustified opposition to development proposals that were intended to serve the wider public interest. People already have the ability to go to judicial review on a point of law.

On my home patch, the western peripheral route, the Aberdeen by-pass, which was first envisaged in 1948 and was backed by the vast majority of the people of the north-east of Scotland, was delayed again and again because of court processes. We would probably enter such situations more regularly if the third-party right of appeal was introduced. Cases would end up at the reporters, which already some folks say is centralisation, and then possibly end up on my desk.

**The Convener:** I do not want to interrupt you, minister, but I do want to move on from this because there is a whole range of issues that we want to discuss. Just for clarity, if we get the front-loading correct, or if we improve it, is there a rationale for diluting a developer's right of appeal? That is what I was asking. I do not want to dwell on it; I really want to move on, but I think that was the core of what Mr Wightman was asking and we did not hear anything about your views on that.

**Kevin Stewart:** Okay. First I will let Mr McNairney in because he wants to make a point, and then I will answer that question.

**John McNairney:** The 1947 situation is essentially that the landowner was no longer free to dispose of his property as he saw fit; he had to seek permission. That is the context for being able to appeal against the decision that he was aggrieved about.

The current situation is not just landowner versus an aggrieved community; there is also the role of the local authority. An applicant for planning permission needs to approach the local authority and decisions are generally taken by members who are elected to take such decisions. If a decision on a major development is contrary to the development plan, the full council will take a decision on it. There is also a democratic element to it, all of which is built on the initial engagement, the strength of the plan, and then the member involvement in that decision.

**Kevin Stewart:** There is another thing about the dilution scenario. We are mostly talking about individual applications. If we have gone through the scenario of designating something in the local development plan, or perhaps even in the national planning framework, and the individual application is, for whatever reason, rejected at the local level, then there is the argument about why it cannot be appealed when it is in the local development plan or the national planning framework.

Sometimes, when people talk about planning as a whole, they focus on the individual application. I hope that we can engage many more members of the public not just about individual applications but about planning in their area as a whole. At that point, we might get rid of some of the tensions that exist.

**The Convener:** We are not going to ask any more questions about the third-party right of appeal, but that was a helpful clarification because it was a clear answer to the question of the dilution of the developer's right of appeal. I am grateful to you for putting it on the record.

Graham Simpson wanted to ask about shared services.

**Graham Simpson:** I will ask about shared services and another matter, because it is all related to the effectiveness of local authority planning departments. You will be well aware that many of those departments are struggling for money. Could you give us your thoughts on what you mean by shared services and what services you are thinking of? Could you also touch on planning fees and say why individual councils should not be able to set their own fees? Would you be minded to allow charging for pre-application advice, for example? I do not think that that has been mentioned anywhere.

**Kevin Stewart:** When I was before the committee at the beginning of the session, I talked about the exporting of best practice across the country—I probably harp on about that far too much. We need to export best practice. Beyond that, there is the ability to share the experts. Planning authorities may have an unusual application for their patch and may not have the expertise on that particular area. Why not share expertise right across the country? There should be no difficulty in doing so as far as I am concerned.

I think that fees will be one of the major planks of discussion next week. Many folks feel that fees should rise, including a number of folk in the development industry. However, if we choose to increase fees, we will also have to ensure that productivity rises. I am quite sure that those points will form a major part of the discussion next Monday and Tuesday, without a doubt.

**John McNairney:** The sharing of services or skills varies across the country, but planning authorities already share specialist staff that other authorities do not have in-house. It is for planning authorities and COSLA to consider the extent to which they wish to take it further. Obviously, there is the potential to do much more on shared services.

The planning fee in Scotland is significantly lower than in other administrations at just over £20,000, as the minister says. There will be interest in us consulting on how that situation might change.

**Kevin Stewart:** We have already confirmed that we will consult on enhanced fees as one of those early actions. It will be one of the things up for discussion next week, without a doubt. However, enhancing fees has to lead to improvements in performance.

**Graham Simpson:** On shared services, councils already talk to each other and share best practice—that is going on right now. Are you thinking of forcing shared services on to councils, or will you leave it up to them? If you are going to leave it up to them, why do anything?

**Kevin Stewart:** I am not in the business of forcing people to do things. However, councils should be looking at what they can do to enhance the services that they provide by sharing expertise—which may be about sharing people—to provide that improved service that is required. Heads of Planning Scotland is a key stakeholder in what we are embarking on. I am quite sure that it is aware that there could be better use of personnel if some sharing went on. Again, I am sure that that will feature very highly in the discussions that take place next week.

As I have said, I would much rather use the carrot, and encourage folk to do these things, than use the stick to force them. There have been pretty positive noises from Heads of Planning Scotland about the independent panel's report as a whole, and I think that it is recognised that expertise could be shared much more widely.

12:15

**The Convener:** I sat on the Local Government and Communities Committee when the Arbutnott review—the Clyde valley review on joint working and shared services—was published with great fanfare. We are still waiting for action points from that review to be taken forward, which shows that, just because local authorities are up for it, that does not necessarily mean that we will ever see any change.

**Kevin Stewart:** We are seeing change in many areas of shared services. I have previously given

the example—from where you are sitting now, convener, rather than from this side—of Aberdeen city and shire joint procurement unit with regard to best practice in sharing services and the amount of money that has been saved for the public purse and invested in public services. Others are now looking at some of those things. Highland Council is about to join Aberdeen city and shire, and other councils are considering the options. I believe that we are seeing a sea change in attitudes towards shared services. It was an area in which I had a great interest when I was on the Local Government and Regeneration committee, and I will continue to keep a close eye on it as minister.

As I go around the country, I have been encouraging folk to look carefully at what they can do to share services. That does not necessarily mean sharing services with their next-door neighbour, because it does not have to be geographical, and nor does it have to involve working with other local authorities. I am sorry, convener—we are drifting away from planning a bit here. Sharing could involve other public bodies too. Folk are beginning to realise that shared services are a way forward that can save the public purse money and allow for more investment in public services during tough times.

**The Convener:** Perhaps Andy Wightman will get us back on track. You have asked a question already, Mr Wightman. If your new question is not on shared services or on fees, I will bring in Alexander Stewart, who has not yet asked a question in this session.

**Alexander Stewart:** As the report indicates, there is no doubt that there must be serious and significant changes in the planning process so that we can ensure that it is much more positive. At present, there is a lot of negativity around the whole issue of planning, and many communities and authorities have to deal with that. We are trying to move from a situation in which planning is a problem rather than a positive thing to a situation that is more positive. The workload, given the number of applications that many authorities have to manage, means that authorities require more funding and resource. If we are going to achieve a more positive situation, we have to look at some of the areas that we have already touched on today. That is vitally important.

I spoke to the panel members earlier before they came into the meeting today. The biggest issue seems to be the enforcement of planning and how that can be managed and evolved. If we can crack that nut in some way, we may manage to make a much more positive contribution. I would like to hear your views on that.

**Kevin Stewart:** You raise a very good point. From my perspective, there have been points at which enforcement—or in some cases, a lack of

it—has caused me some trouble during my years on the council. I have already said that we will look at whether the penalties are severe enough, although it would be better if people did not do naughty things in the first place. Are the penalties severe enough to stop some of the things that have gone on? We will look at that question closely, because at present I do not know whether the penalties would put folk off doing certain things in certain areas. We are getting to a point at which, in this case, we need to apply more of the stick.

**Alexander Stewart:** I agree that the stick is much needed in this process. You touched on the point that there is no question but that some developers regard the few thousand pounds that they would be charged for knocking down a few trees, for example, as peanuts in comparison to what they could make from a development that could progress thereafter. I look forward to seeing what comes forward, and I think that we can contribute to it.

**Ruth Maguire:** We have heard this morning how improving planning can help with all manner of things for community engagement and empowerment. What is your opinion on the extent of the problems in housing delivery? How much of that is down to planning and how much is down to other factors?

**Kevin Stewart:** In my job at the moment, I am trying to get all the ducks in a row to ensure that we deliver on the Government's target of 50,000 affordable homes over the course of this session of Parliament. There are difficulties with planning, but there are also difficulties with utilities, land and a number of other things. Planning causes some difficulties, but it is not the only thing that does so, by a long chalk.

On the issue of communities and places, planning itself has a great role to play in what we are embarking on. Mr Stewart said that there are sometimes not many positives, but we are not embarking on delivering 50,000 houses without thinking about place making to create the right environments. Of late, I have seen examples of good planning and project management, with community input, which means that we are seeing some of the best places that we have seen for a fair while. An example is the Fernan Gardens housing development in Shettleston in the east end of Glasgow, where everything has come together in that little community because the planning is right, the design is right, the place is fantastic and there are a lot of happy people there. If folk are happy, that often resolves other difficulties that we might have to deal with from a public service perspective.

In all that we are about to do here, one thing that we cannot lose sight of is that it is all about

place making and creating the right communities that folk want to live in and can be happy in.

**The Convener:** I point out to members that we have about 10 minutes left for questioning.

**Andy Wightman:** I have a couple of very brief questions on process. In your response to the review, you said:

“As the panel have thoroughly considered the evidence, we do not intend to re-open the debate on what should be done”.

Can you confirm that, although the panel made some very welcome recommendations and the Government no doubt has some great ambitions, ultimately it is Parliament that decides what should be done? The Scottish ministers did quite a bit of work at the back end of 2015 looking at the recommendations of the land reform review group on a number of issues around housing, such as public interest-led development, majority land assembly and so on, and working groups were set up. Are the outcomes of that work going to inform the work that you are taking forward in the working groups in response to the panel?

**Kevin Stewart:** Parliament always ultimately decides. I will bring in Mr McNairney on the working groups.

**John McNairney:** We will take into account the outputs from the working groups in future legislation. The scope of the planning bill will certainly be for consideration. In that territory, there are also commitments to improve compulsory purchase arrangements, which have been reflected in the programme for government. The Scottish Law Commission has been carrying out a review, and we expect to get its analysis of responses from that in the next few weeks. We will also outline what steps we can take in the short term to enhance and make more straightforward compulsory purchase procedures.

**The Convener:** Are you content with that for the time being, Mr Wightman?

**Andy Wightman:** Not entirely. A lot of good work was done on six or so issues. I know that they are not necessarily in your portfolio, but in practice the issues are very much in your territory. I am still not clear whether you will take forward that work in the review. Perhaps you can communicate formally by letter on that.

**Kevin Stewart:** I will look at the output from the working groups. I imagine that some of the stakeholders who will be at the events next Monday and Tuesday are likely to raise some of those issues. I will consider what that output would add to the development of the white paper. I will maybe write to the committee in more depth on that, because I have to say that I am not entirely au fait with every aspect of those working groups.

**The Convener:** That is helpful, minister.

**Elaine Smith:** I have a supplementary question on enforcement, if you do not mind returning to that, minister. Actually, it is not about enforcement; it is about how to tackle the blatant avoidance of rules. An example of that is the advertising boards that litter the country and cause visual pollution. The issue is not just the look of them, as they can also be dangerous when they are at the sides of motorways. There are certain rules about posters being put at the sides of roads and motorways, but people get round that, presumably because the posters are put on what are supposedly portable boards, although we know that they are not and they are there indefinitely. Rather than just looking at enforcement, can we look at the way in which some rules are being got round?

**Kevin Stewart:** I am certainly willing to look at anything that might be being “got round”, as you put it. I am not entirely sure of the designation of some of those things, but maybe Mr McNairney can help me.

**John McNairney:** The member might be referring to agricultural vehicles. There is an exemption in the advert regulations, which are quite ancient, in relation to agricultural vehicles, which can display an advert. We have not looked at the advert regulations for a long time and there has been no pressure to do that. If that became a priority, we would do that. In the first instance, enforcement, whether in relation to adverts or anything else, is down to the planning authority identifying an issue and then addressing it, for example by removing adverts that do not have express consent.

**Kevin Stewart:** I realise that we are perhaps not answering in enough depth for Ms Smith in that regard, so we will send more detail on that to the committee.

**The Convener:** That is helpful. I suspect that you have a detailed briefing in front of you, but a question about advertising hoardings is a bit of a curveball, even given the depths of your knowledge, so we can forgive that one.

**Kevin Stewart:** Briefings often cover a lot of bases. I am never surprised by curveballs, but there is no point in me trying to give any great detail, because I do not have it, so we will write to the committee about that.

12:30

**The Convener:** That is great. Of course, the planning authority in Glasgow has helped greatly by banning all election materials on street furniture. I know that the political activists from all parties in Glasgow are quite grateful for that, given

that we have to take down any materials that we put up.

**Kenneth Gibson:** For me, the highlight of any campaign has always been climbing up lamp posts and putting up posters, so I cannot agree with the convener on that.

**The Convener:** We are definitely going off on a tangent now, minister.

I have one very brief question that I asked in the previous evidence session and to which I suspect the answer will be that the working groups will have to look at the issue. A slight concern was raised about development plans, which I know are set for 10 years but with a review every five years. I appreciate the issues around this: that you are just settling into a development plan and then you have to review it as a long-term strategy. I suppose that my concern is that, if you do not get the development plan right in the first place, you are locking in any unsatisfactory aspects.

In my experience in Glasgow—and I suspect that this is less a particular issue about Glasgow and more a cultural issue for planning authorities across the country—planning authorities are not particularly good at making elected representatives, never mind local communities, aware of anything contentious in their city or local plans. They go through almost a very basic statutory process that you would never know was happening unless it was dangled in front of your nose. We are talking about what are sometimes the most contentious changes in local plans, and if we are to accelerate planning approvals, get more houses built and build sustainable communities, we have to move quicker on that and ensure that the development plan is fit for purpose in the first place. Given the indication that development plans will be reviewed less often, will there be a health check to ensure that there is robust consultation with communities and, where possible, co-production of some plans?

**Kevin Stewart:** One issue that has come up again and again—even before I came into this role—is, as people at the coalface of the development of these plans have said, they have no sooner finished one than they are starting on another without delivering anything that was in the original. The focus was on continuous planning, if you like, but not necessarily on delivery of what was in the plan.

I would expect everyone to carry out what you have called health checks of any aspect of the work that they are doing. However, one of the key things with participation from communities is that some of them get worn out in the move from developing one plan to developing another. Communities say, “Why are we not seeing any change or any of the development that was

proposed in the plan that we took part in?" That sort of thing leads to drop-off and less participation.

I therefore think that the proposed balance looks right. Obviously, we will deal with this matter in the workshops; folk might have other views, or some good points might come out in that regard. However, I think that previously it was just plan after plan after plan after plan and not a huge amount of delivery, and I think that we have got to strike the right balance and ensure that tangible change can take place.

**The Convener:** That is a reasonable point, minister.

We have come to the end of our time. For the sake of clarity, though, can you confirm whether a planning bill was mentioned in the programme for government that was announced by the First Minister yesterday? I do not think that it was. Can I just check what your anticipated timescales are for any legislation that might be coming through Parliament?

**Kevin Stewart:** Autumn 2017, convener.

**The Convener:** Thank you very much. That is what we call clarity.

Just before we move into private session, I realise that we have been asking all the questions. Given that we are keen to have a constructive dialogue with the Government, I want to give you and Mr McNairney a chance to put something on the record before we close today's meeting.

**Kevin Stewart:** I will let Mr McNairney go first if he wants to.

**John McNairney:** We are happy to come back and give you informal updates on the progress with the review and whatever information you need or briefings that would be helpful, either face to face or in electronic form. We will do all that we can to keep you up to speed as things develop.

**Kevin Stewart:** We are trying to create a more open and transparent system. To allow you to scrutinise that properly, we need to be open and transparent with you, too. We will keep you updated about where we are in the process, and if there is anything that the committee requires, I am more than happy to answer any of your questions. As I said the committee on my previous visit, I am more than happy to come back at any point on this or any other issue.

**The Convener:** We very much welcome that offer of on-going engagement.

All there is to do is to thank the minister and Mr McNairney for their time this morning—or this afternoon, as it is now. We now move to item 4, which we have previously agreed to take in private.

12:35

*Meeting continued in private until 13:21.*



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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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